

**FINAL REPORT OF THE INDEPENDENT PANEL FOR THE ELECTION
OF COMMISSIONERS TO THE
INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

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I. INTRODUCTION

In recent years, calls for reforms to selection procedures have grown louder for international bodies, particularly those charged with the monitoring, interpretation, and application of international human rights and international humanitarian law. These initiatives aim to ensure that members selected for these bodies meet the qualifications requirements established by the relevant instruments; make selection procedures more open and transparent; take into account the overall makeup of these bodies, especially the diversity of their membership on a number of different parameters; and enhance the legitimacy of these institutions. In response to these calls, States have reformed selection procedures in meaningful ways for a number of international bodies, including for example, the European Court of Human Rights and the International Criminal Court.

Concerns about the visibility of elections, selection criteria and selection procedures for the Inter-American Court of Human Rights (the Court) and Inter-American Commission on Human Rights (the Commission) motivated the Open Society Justice Initiative and interested partners to convene and support an Independent Panel for the Election of Inter-American Commissioners and Judges in 2015, composed of leading jurists with expertise in the Inter-American System. Their mandate was to review selection procedures, offer a broad assessment of nominated candidates' qualifications and make recommendations for how to improve future elections. The 2015 Panel delineated the criteria by which they assessed candidates for the Court and Commission, assessed individual candidates using these criteria, and made recommendations to states for how to improve selection procedures at the national and regional levels. In their review of candidates, the 2015 Panel considered written materials submitted by the candidates in the form of Curriculum Vitae, biographical summaries, personal data, and responses to a specially designed questionnaire distributed to candidates. Where available, the Panel looked to judicial decisions, academic papers, panel presentations, candidate blog posts and other public information that did not require independent verification. Although the 2015 Panel received suggestions from civil society groups in the region on recommendations for the future, it chose not to receive information on specific candidates.

The 2015 Report set new standards in transparency and visibility for elections in the Inter-American System, and it was endorsed by over 80 regional non-governmental groups, universities and legal clinics throughout the region. The 2015 Report helped to mobilize the OAS General Assembly to instruct its Permanent Council, via resolution AG/RES.2887 (XL VI-O/16), to invite all candidates nominated to either the Commission or the Court to present publicly to the Council their vision, proposals and initiatives, if elected. In addition, it encouraged states "to nominate and elect persons that would ensure a membership that provides balance in terms of gender, representation of the different regions, population groups, and legal systems of the Hemisphere, while

guaranteeing the requirements of independence, impartiality, and recognized competence in the field of human rights.”

The Permanent Council held its open session with all of the Commission candidates on 5 May 2017. In addition, all candidates participated in a public forum hosted by civil society at the Inter-American Dialogue on the same day, and several responded in writing to additional questions submitted in writing by civil society. In line with the OAS Resolution, states nominated three men and three women to serve as Commissioners. The 2015 Report also made a number of additional recommendations to states, including the use of open, transparent and participatory national nomination procedures, and the establishment of an Advisory Committee to evaluate the suitability of candidates for the Court and the Inter-American Commission on Human Rights. States have yet to take action on these recommendations.

In preparation for the upcoming 21 June 2017 election of three (3) new Commissioners by the OAS General Assembly, the Center for International Justice and Law (CEJIL), the Due Process of Law Foundation (DPLF), and Open Society Justice Initiative (OSJI) decided jointly to convene this Independent Panel for the 2017 Election of Commissioners to the Inter-American Commission on Human Rights (2017 Panel). The objectives of the 2017 Panel, as established by the convening organizations, are to: “a. Assess broadly the qualifications of all IACHR candidates presented by OAS member states. b. Highlight the process by which these candidates were identified or nominated at the national level, and identify key recommendations and/or areas for improvement. c. Invite civil society and media attention to the selection process, so as to encourage greater accountability on the part of nominating states.”

Following this Introduction, the 2017 Panel Report includes parts II) Criteria for Evaluation of Candidates and Methodology, III) Candidate Assessments, IV) Recommendations, and V) Annexes. The 2017 Panel hopes that its assessment of the 2017 Commission candidates is useful to OAS Member States in their evaluation of each individual candidate’s compliance with the relevant normative criteria and principles, as well as provides guidance to States for future nominations to both the Commission and the Court. In addition, based on the responses it received from the vast majority of candidates to its questionnaire and their 5 May 2017 statements at the civil society candidate forum, the Panel hopes that States will consider seriously steps to make national nomination procedures more transparent, participatory and merit based, as well as to institutionalize an independent assessment of candidates at the regional level.

II. CRITERIA FOR EVALUATION OF CANDIDATES AND METHODOLOGY

A. Criteria for Evaluation of Candidates

Article 106 of the Charter of the Organization of American States establishes that “[t]here shall be an Inter-American Commission on Human Rights, whose principal function shall be to promote the observance and protection of human rights and to serve as a consultative organ of the Organization in these matters.” Reflecting and reinforcing this mandate, the Commission's 2017-2021 Strategic Plan provides that its mission is “[t]o stimulate awareness and promote the observance and defense of human rights in each and every one of the States of the Americas in accordance with the highest international standards in order to safeguard the dignity of all people and consolidate the rule of law and democracy.”

The American Convention on Human Rights and the Statute of the Inter-American Commission on Human Rights set out the minimum requirements for service as a member of the Commission. Article 34 of the Convention, Article 1 (3) of the Rules of Procedure of the Commission and Article 2 (1) of the Statute of the Commission state that members “shall be persons of high moral character and recognized competence in the field of human rights.”

Article 8 (1) of the Statute also establishes that “[m]embership on the Inter-American Commission on Human Rights is incompatible with engaging in other functions that might affect the independence or impartiality of the member or the dignity or prestige of his post on the Commission.”

Article 9 of the Statute indicates the duties of members of the Commission with regard to their assistance and service are:

- (1) Except when justifiably prevented, to attend the regular and special meetings the Commission holds at its permanent headquarters or in any other place to which it may have decided to move temporarily.
- (2) To serve, except when justifiably prevented, on the special committees which the Commission may form to conduct on-site observations, or to perform any other duties within their ambit.

Another essential reference for the Panel is the aforementioned OAS Resolution AG/RES.2887 (XL VI-O/16) approved in 2016, regarding “Gender equity and balanced geographic and legal-system representation on the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.” It begins by underscoring “the importance that the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights be composed of impartial, independent individuals of recognized competence in the field of human rights, in keeping with the

principles of nondiscrimination, gender equity, and geographic representation, so that they can continue to carry out their mandates properly,” and resolves:

1. To encourage states, in selecting judges of the Inter-American Court of Human Rights and commissioners of the Inter-American Commission on Human Rights, to nominate and elect persons that would ensure a membership that provides balance in terms of gender, representation of the different regions, population groups, and legal systems of the Hemisphere, while guaranteeing the requirements of independence, impartiality, and recognized competence in the field of human rights.
2. To instruct the Permanent Council to invite the candidates proposed by member states for the position of judge on the Inter-American Court of Human Rights or commissioner on the Inter-American Commission on Human Rights to deliver a public presentation to the Council prior to the elections, if possible, in order to describe in greater detail their vision, proposals, and the initiatives that they would undertake if elected. Such presentations will be made, if possible, at the same meeting of the Council and be disseminated as widely as possible.

Given that the work of a Commissioner includes the processing of individual petitions and other quasi-judicial duties, the Panel also considered the 2002 Bangalore Principles of Judicial Conduct. These include several relevant principles: independence, impartiality, integrity, propriety, equality, competence and diligence.¹ The definition of independence includes both individual and institutional aspects. Independence and impartiality include not only avoiding actual bias or control by other organs, but also avoiding the appearance of impropriety or lack of independence.

In addition, the Panel took into consideration the requirements and preferences for the most analogous positions in other human rights bodies. For example, the United Nations Treaty Body system created the “Guidelines on the independence and impartiality of members of the human rights treaty bodies” (the Addis Ababa Guidelines) to apply to the independent experts who staff these bodies. These Guidelines stress the independence and impartiality of members of those bodies: “treaty body members shall not only be independent and impartial, but shall also be seen by a reasonable observer to be so.” Moreover, they may not be subject to direction or influence of any kind or to pressure from the State of their nationality or any other State or its agencies, and they shall not seek nor accept instructions from anyone concerning the performance of their duties.

¹ Bangalore Principles of Judicial Conduct, available at:
http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

In terms of competence and suitability, the Panel concluded that key criteria were the candidate's knowledge of and experience with the Inter-American Human Rights instruments and the Inter-American System, for example, through a record of academic publications or substantial work experience or lawsuits in the system. As regards diligence, the Panel took into account the candidate's ability to carry out her or his responsibilities given other duties and commitments.

In addition, the Panel took into account additional qualities that would facilitate the Commission's work, including capacity to work in one or more of the Commission's official languages; knowledge of different legal systems in the region; and widespread exposure and understanding of the regional and sub-regional political, social and cultural environment. Finally, the Panel took into account whether the candidate would contribute to balance in the overall composition of the Commission in terms of areas of expertise, gender, career path (*e.g.*, diplomacy, academia, NGOs, etc.) and other forms of diversity.

B. Methodology

To reach its conclusions, the Panel considered written materials submitted by the candidates, including their Curricula Vitae, biographical summaries and personal data. If available, the Panel examined judicial decisions, academic papers, candidate blog posts and any other public information issued by an official source or provided by the candidate. The Panel also took into account answers to a questionnaire sent to candidates, which was designed to evaluate each candidate's compliance with normative and other requirements discussed above. This questionnaire is available in Annex A of this Report.

A letter was sent to civil society organizations along with a press release announcing the creation of the Panel and of a mechanism for receiving information via e-mail from civil society and the public in general. For transparency and due process purposes, communications received were forwarded to the relevant candidate for his or her knowledge and to provide an opportunity to respond. The Panel was not able to consider communications received after the deadline.

Finally, the Panel considered public presentations and candidate statements and responses to questions at the 5 May 2017 meeting of the OAS Permanent Council, in accordance with the resolution mentioned above, as well as at a public civil society forum held on the same day in Washington, D.C. The Panel would have liked to hold interviews with the candidates to gain as complete a picture as possible of each candidate during the evaluation process, but due to lack of time and availability, this was not possible.

The Panel did not utilize any information in its evaluation of candidates that could not be verified given time and resource constraints. All conclusions and decisions reached by the Panel were by consensus.

III. CANDIDATE ASSESSMENTS

Gianella Bardazano Gradin (Uruguayan) Nominated by the Oriental Republic of Uruguay

Gianella Bardazano Gradin is a member of the Executive Council of the Institute of Legal and Social Studies of Uruguay and teaches in the Faculty of Law of the University of the Republic, specializing in human rights and its relationship with the administration of justice, penal systems and drug policy.

A. Background and recognized competence

Gianella Bardazano Gradin is a graduate of the Faculty of Law of the University of the Republic and holds a master's degree in humanities from the Faculty of Humanities and Educational Sciences. She is at present studying for a PhD in law at the National University of the Littoral (Santa Fe, Argentina). Her career as a jurist has developed in the areas of philosophy and theory of law. She has been teaching since 2001 and became an adjunct professor in 2015 at the University of the Republic. Since 2013, she has served on the Academic Committee for the Diploma of Specialization in Drug Policy in the Faculty of Social Sciences. Since 2005, she has also served on the governing body of the Institute of Legal and Social Studies of Uruguay (IELSUR), working on administration of justice, penal systems and human rights and coordinating the areas of drug policy and human rights.

Based on her curriculum vitae, her replies to the questionnaire and her professional career, this candidate demonstrates capabilities in various areas of international human rights law, which she has pursued academically and through her activities in civil organizations. Those areas include the administration of justice, penal systems, human rights, drug policies and their effects on human rights as well as on prison systems. In those activities, Bardazano Gradin has worked not only on Uruguay's situation, but also on the situation in the entire region. She has also collaborated on the legislative and jurisdictional implementation of the processes of memory, reparation and determination of criminal liabilities concerning violations which occurred during Uruguay's dictatorship. Her activism in civil society is considerable. Her membership for more than ten years in IELSUR, a recognized human rights organization with regional and universal networks, demonstrates her commitment to and experience in the human rights protection system.

Bardazano Gradin's curriculum vitae lists 14 publications since 2006 on several of the above-mentioned subjects. The academic articles she has written demonstrate sound legal knowledge. As regards her knowledge of various legal systems, her replies to the questionnaire show that she has studied drug legislation in several of the western hemisphere's Spanish and Portuguese-speaking countries. Bardazano Gradin indicates that, in addition to her native Spanish, she can read and understand English without difficulty. In her replies to questions during the sessions of the OAS's Permanent Council

and at the civil society forum on 5 May 2017, she spoke only in Spanish. The articles listed in response to the questionnaire are written exclusively in Spanish.

In terms of the challenges facing the Inter-American system of human rights, Bardazano Gradin stresses the necessity of increasing the independence and autonomy of justice systems in the region. She believes this is “a critical issue for the consolidation of democracy and the prevalence of the rule of law,” maintaining that the problems of justice in the region “are rooted in the failure, at the local level, to apply the standards of international human rights law and the recommendations of the [Inter-American System of Human Rights],” leading to “a ballooning of cases” which “increases the pressure on a subsidiary protection system, diverting attention away from more serious situations.” She also advocates for cooperation between the Commission and the Inter-American Court, as well as with the universal system, with the aim of finding long-term solutions to jointly diagnosed problems. She considers that the Commission “should be financed through the OAS’s Regular Fund.” As regards the Strategic Plan, she believes it reflects a realistic vision of the situation, but she is worried that, firstly, it will take a long time for the solutions to be implemented, and secondly, that the Plan may not adequately assess the effect the new rapporteurship arrangements will have on a Commission with scarce resources.

Based on her curriculum vitae, her replies to the questionnaire and her above-described professional career, it is possible to conclude that the candidate fulfils the requirement for “recognized competence in the field of human rights.”

B. High moral character, independence and impartiality

Nothing was found in the public record to indicate any professional sanction, warning or ethical lapse. Also, if she were to be elected to the Commission, Bardazano Gradin affirmed that “to the extent the IACHR’s work would allow, I would continue teaching at the university, engaging in academic research and keep my relationship with civil society organizations.”

The candidate indicated that she has no difficulty or disagreement with the proposition that she will not manifest or appear to condone bias or prejudice in the discharge of her duties, should she be elected as a Commissioner.

C. Balanced composition

The members of the Commission who will serve until 2019 include Jose Eguigaren Praeli (Peru), Margarette May Macaulay (Jamaica), and Esmeralda de Troitino (Panama). According to the 2015 Report of the Independent Panel, at the time of his candidacy, Dr. Eguiguren Praeli was a scholar and teacher of constitutional law, consultant to UN agencies, and had a long career in government, including as Minister of Justice and Human Rights and as a diplomat. Ms. Macaulay served as an attorney representing clients in the constitutional, civil and criminal courts in Jamaica, served as a Judge on the Inter-American Court of Human Rights, and was an academic in the area

of human rights, and an NGO advocate for women and children's rights, gender equality, gender based violence, environmental rights, and against the death penalty. Ms. Arosemena de Troitiño was a national judge in Panama with legal academic experience and sensitivity to issues of gender, family, sexual orientation and children's rights. Luis Ernesto Vargas Silva (Colombia) was elected by the Permanent Council of the Organization of American States to the Commission on May 10, 2017; he worked in the Colombian judicial system for over 40 years, was a magistrate, and his areas of knowledge and experience are personal law, private law and procedural law.

Bardazano Gradin is an academic specializing in the theory and philosophy of law and is also involved in public policy on matters concerning both drugs and the prison system. In her response to the questionnaire, she emphasized that her experience as an academic and as a lawyer in a non-governmental human rights organization "may have a positive effect on the reports and recommendations themselves and on the process preceding their adoption, as well as on the legitimation of the IACHR (and the mandate of the Inter-American system, definitively), by offering various points of view." Moreover, as stated by Uruguay's representative during the presentation of candidates before the Permanent Council on 5 May 2017, she would be the second person of Uruguayan nationality to have the opportunity to serve as a Commissioner on the IACHR.

D. Selection procedure

The vacancies on the Commission were made known to civil society through a public announcement concerning vacancies in international organizations. A group of non-governmental organizations proposed her name to the Foreign Ministry.

E. Conclusions

In the opinion of this Panel, considering her replies to the questionnaire, her career in the field of human rights in civil society organizations, her academic work, especially concerning drugs and penal systems, and her participation in the process of restoring human rights following dictatorship, the candidate fulfils the requirements established by the Convention to be a member of the Inter-American Commission on Human Rights.

Douglas Cassel (American)

Nominated by the United States of America

Douglas Cassel is a law professor with a long and distinguished career in human rights at the global and regional levels, with particular expertise in the Inter-American System of Human Rights.

A. Background and recognized competence

The candidate is a widely recognized scholar and expert in human rights and the Inter-American system in particular. Since 2005, he is Professor of Law and Notre Dame Presidential Fellow at the Law School of the University of Notre Dame in the United States, as well as Director of the Center for Civil and Human Rights. Previously he taught at and founded and directed human rights centers at both DePaul College of Law (1990 to 1998) and Northwestern University School of Law (1998 to 2005). He is a graduate of Yale University and Harvard Law School.

His scholarship is published in top ranked international law and international human rights journals and books, in both English and Spanish. He has published dozens of written works addressing topics as wide ranging as business and human rights, transitional justice, preventative detention, teaching international law in the United States, fact-finding in the Inter-American System, the practice, procedure and jurisprudence of the Inter-American Court of Human Rights, the use of military commissions in the United States in the wake of the September 11, 2001 attacks, amnesties, reparations, undocumented migrant workers and labor rights, and challenges to the functioning of the Inter-American Human Rights System. He has spoken on these and other topics all over the world, including in Africa, the Americas, Asia, and Europe, and before a wide range of academic, professional and judicial audiences. These include the Inter-American Commission on Human Rights, the Inter-American Juridical Committee, and the Committee on Legal and Political Affairs of the OAS Permanent Council.

In addition to his academic expertise, he has advised governments, non-governmental organizations and the United Nations, and is a member of the General Assembly of the Inter-American Institute of Human Rights in Costa Rica. He was nominated by the United States Government and elected by the OAS General Assembly on four occasions to serve on the Board of the Justice Studies Center of the Americas, and has twice served as President of the Board. He also participated as a citizen member of the US Government delegations in OAS General Assemblies, and in meetings of OAS governmental human rights experts. In 2015-2016, at the request of Colombian President Juan Manuel Santos, Cassel served for the Government of Colombia as a negotiator of the transitional justice provisions of the peace accords with the FARC guerrillas, and in 2016, Colombia awarded him the Order of Merit "Guillermo Ferguson." He also served as Legal Advisor to the United Nations Commission on the Truth for El

Salvador in 1992 to 1993, where he was a principal draftsman of the Commission's Report.

During his presentations before the OAS Permanent Council and Civil Society on 5 May 2017, Professor Cassel demonstrated his ability to speak in both English and Spanish, and submitted written materials in both languages for review to this Panel. Also, he has published scholarly works in both languages. His questionnaire states that he has the ability to read in French and Portuguese as well. In addition, Professor Cassel has experience with different legal systems, as he has taught courses comparing regional systems of human rights protection requiring knowledge of different national systems, as well as undertaken consultancies and served in NGOs that require knowledge of both civil and common law systems.

As regards the challenges that the Inter-American System faces, in his questionnaire, Professor Cassel pointed to the lack of resources, procedural delay, lack of compliance with resolutions and recommendations of the Commission, relations with states, and a lack of transparency. He wrote (*verbatim*):

“There are many great challenges. Without being exhaustive, the following five challenges are among the most important: lack of funds, procedural delay, non-compliance with the IACHR's resolutions and recommendations, difficult relations with various States and lack of transparency.

In a brief summary:

Lack of funds: The IACHR has never had sufficient resources, and has even fewer now, in relation to the high numbers of petitions. If I am elected, I would work to minimise budget cuts by my country's government; I would lobby to see that other countries, Canada for example, contribute more; I would promote agreements with university centers specialized in human rights to work with the IACHR, under the IACHR's supervision; and I would seek ways of simplifying the formalities required in cases presented to the IACHR and reducing unnecessary litigation and paperwork (see below).

Procedural delay: The long delays in cases brought before the IACHR are unfair to both parties, but especially to victims. In the current procedure system, too much paperwork is needed and excessive litigious activity is permitted. One of the measures I recommend is for each Commissioner, or at least for those, like me, who so wish, to have the opportunity of inspecting every petition from the start when the documentation arrives from the countries concerned.

With the experience the Commissioners have, they can and must identify the most serious and best prepared cases so as to transmit them to the State immediately, without the need for extensive reporting. (When there are too many petitions for a single Commissioner, he or she must have the assistance of one of the most experienced lawyers from the technical team).

In addition to precautionary measures when appropriate, the transmission to the State must include two requests: first, that the State should issue a prompt initial reply in writing and, second, that the State meet with the Rapporteur Commissioner soon for a working meeting with the victim or his/her representative. Such meetings would have two objectives: if feasible, to seek an amicable solution without delay. If no resolution to the whole case is achieved, the solution should at least identify the matters of fact and law of which there is no genuine disagreement, so that, thereafter, the dispute focuses only on questions which really merit discussion.

In both cases – amicable resolution and speedy agreement about what can be agreed – the result must be a faster and less onerous process for both the parties and the IACHR, with fewer arguments and unnecessary documents than in the current system.

Non-compliance with the IACHR's resolutions and recommendations: I agree with the positive initiatives set out in the IACHR's Strategic Plan.

Relations with the States: Whenever possible, a friendly, diplomatic, open and constant relationship should be sought with the States. Such a relationship must be feasible at almost all moments. If I am elected, I would seek a frequent periodical meeting with all the governments of which I am rapporteur and with civil society in their countries with a view to examining the range of human rights matters in the country and the portfolio of cases and recommendations awaiting implementation. I would recommend the same to the other Commissioners. To the extent that it is possible to collaborate with the States and with civil society in order to anticipate, analyze and take measures to prevent or mitigate human rights problems in the country, we must make the best use of a positive relationship between the IACHR and the relevant participants. At these sessions, working meetings could also be held concerning cases, as mentioned in the preceding paragraph.

Lack of transparency: In recent years, the IACHR has made a considerable effort to improve the transparency of its activities. However, much remains to be done in that area. For example, in chapter six of the recently published Annual Report for 2016 on administrative and financial matters, no explanation is given as to how the IACHR uses its human resources for each activity. The report states the size of its staff, the amount of its income and expenditure and the subjects covered, but not the number of employees devoted to each of its functions, or their professional level. The result is that, from the Annual Report, it is not possible, for example, to assess the level and quality of the IACHR's efforts to overcome the backlog of matters concerning the admissibility of petitions compared with the human resources devoted to its themed reports. Without that and other information, it is difficult for an outsider to assess the suitability and effectiveness of the IACHR's use of its scarce resources.”

As regards his evaluation of the Commission's Strategic Plan, Cassel applauded the Commission's efforts in developing the plan, especially the use of consultations in its elaboration. On the other hand, he expressed concerns about the lack of prioritization of the five objectives and 21 programs laid out therein, among others.

Based on his curriculum vitae, his replies to the questionnaire and his professional career, it is possible to conclude that the candidate fulfills the requirement for "recognized competence in the field of human rights."

B. High moral character, independence and impartiality

Nothing was found in the public record to indicate any professional sanction, warning or ethical lapse.

In his questionnaire, he indicated that he would not participate in any case involving previous clients, cases involving the United States, and cases alleging that "provisions on transitional justice in the peace accords in Colombia" are incompatible with the American Convention on Human Rights or other international norms. In addition, should he be elected Commissioner, he would quit his work in non-governmental organizations, with the exception of his membership on the Executive Board of the Inter-American Institute of Human Rights, as its members include members of the Commission and the Court.

The candidate indicated that he has no difficulty or disagreement with the proposition that he will not manifest or appear to condone bias or prejudice in the discharge of his duties, should he be elected as Commissioner.

C. Balanced Composition

The members of the Commission who will serve until 2019 include Jose Eguiguren Praeli (Peru), Margarette May Macaulay (Jamaica), and Esmeralda de Troitino (Panama). According to the 2015 Report of the Independent Panel, at the time of his candidacy, Dr. Eguiguren Praeli was a scholar and teacher of constitutional law, consultant to UN agencies, and had a long career in government, including as Minister of Justice and Human Rights and as a diplomat. Ms. Macaulay served as an attorney representing clients in the constitutional, civil and criminal courts in Jamaica, served as a Judge on the Inter-American Court of Human Rights, and was an academic in the area of human rights, and an NGO advocate for women and children's rights, gender equality, gender based violence, environmental rights, and against the death penalty. Ms. Arosemena de Troitiño was a national judge in Panama with legal academic experience and sensitivity to issues of gender, family, sexual orientation and children's rights. Luis Ernesto Vargas Silva (Colombia) was elected by the Permanent Council of the Organization of American States to the Commission on May 10, 2017; he worked in the Colombian judicial system for over 40 years, was a magistrate, and his areas of knowledge and experience are personal law, private law and procedural law.

Given that the other candidates for the Commission are from civil law countries, Professor Cassel would join Commissioner Macaulay as a second representative of a common law country with English as a first language. He brings a primarily academic perspective to bear, in addition to his work with NGOs, clients before the Inter-American System and as a consultant to governments and international organizations.

D. Selection procedure

Professor Cassel indicated in his questionnaire and in his presentation before civil society on May 5, 2017, that he was invited to apply to serve as a Commissioner by the United States Department of State. To his knowledge, the Department of State engaged in informal consultation with civil society and perhaps with academic experts, but he is not aware of any formal or pre-established process for selecting candidates for the Commission.

E. Conclusions

Professor Cassel's responses to this questionnaire, interventions in the Permanent Council and before civil society on May 5, 2017, as well as his record of scholarship, teaching and service in the human rights realm, reflect substantial knowledge of and experience in human rights and the Inter-American System of Human Rights protection, and therefore, the Panel believes he meets the requirements for service on the Commission.

Carlos Horacio de Casas (Argentine)
Nominated by the Republic of Argentina

The candidate is a lawyer and a graduate of the Faculty of Legal and Social Sciences of the National University of the Littoral, Santa Fe, Argentina. His career has developed primarily as a litigator in the field of criminal law.

A. Background and recognized competence

Carlos de Casas is a lawyer who graduated from the Faculty of Legal and Social Sciences of the National University of the Littoral (Santa Fe, Argentina) in 1977. He also holds a P.D.G. from the Business School of Adolfo Ibáñez University (Santiago de Chile, 1997). He is actively engaged in the practice of law.

According to his curriculum vitae, in the public sphere he is a co-judge in the Federal Court of Mendoza and has been an advisor in criminal law and evaluator of candidates for the Magistrature. He was Director of Criminal Matters of the Province of Mendoza (1984-86), advisory lawyer to the Government of the Province of Mendoza (1986-89), and legal representative in Mendoza of the Argentine Central Bank (1986-2000).

In the educational field, he is a professor of Criminal Law in the Faculty of Legal and Social Sciences at the University of Mendoza. He has taught General, Economic and Special Criminal Law. He is also director of the Institute for Research into Criminal and Procedural Law at the same university's Faculty of Law.

Although his curriculum vitae indicates that since 2015 he has been a member of the Honorary Consultative Council of the Latin American Centre for Human Rights, an NGO founded in 2006 as a special consultant to the ECOSOC, in reply to question 12 in the questionnaire on possible conflicts of interest, the candidate wrote: "I have not held any public office for years, nor do I occupy any functions in civil organizations which litigate or have interests in the [Inter-American System of Human Rights]."

In his curriculum vitae, the candidate indicates that "he has written numerous works in his specialty," among which he highlights *Manual de Derecho Penal, Parte General* [Manual of Criminal Law, General Section], written jointly with Juan H. Day and Gonzalo Nazar, published by Editorial Zavallía (Buenos Aires, 2012)." The curriculum vitae does not contain a list of the publications. In the questionnaire, de Casas refers to the Manual and to a note entitled: "Something more about criminal guarantees" (*Algo más sobre el garantismo*, Revista del Foro On-line, 2006)." The other documents the candidate referred to in the questionnaire are a request for provisional measures before the Inter-American Court of Human Rights and an application for precautionary measures presented to the Commission. The Panel also became aware of an article entitled, "Freedom of Expression and Professional Secrecy in Information (some thoughts about the de-criminalization of contempt and professional secrecy of journalists)," published in the Review of the University of Mendoza, number 16.

In the Panel's opinion, those publications do not demonstrate recognized competence in the field of human rights. The brief note entitled "Something more about criminal guarantees" does not offer sufficient material with which to assess his knowledge of international human rights law or his position with respect to human rights. The presentation by the candidate and two other professionals to the Inter-American Court requesting provisional measures in favor of three brothers who were detained in Uruguay (the Peirano brothers) was rejected by the Court for procedural reasons, because the matter was still being considered by the Inter-American Commission.²

Regarding the article "Freedom of Expression...", the Panel notes that the candidate criticizes the repeal of criminal contempt in Argentina as part of an amicable solution in accordance with the standards of the American Convention. The article rejects Argentina's compliance with an amicable solution reached with the Commission, thus lessening the value of decisions which are important for the Inter-American system. In the same article, he also writes:

"We agree that certain aspects of the sphere of morality are outside the proper scope of criminal dogma. However, we do not agree with the simplistic enunciation of the subject, because that would impede Criminal Law in particular, legislating, for example, on obscene exhibitions [*sic*], or the State in general, denying gays legal personhood (the Court's recent pronouncement on the subject is well known), or prohibiting marriages and adoptions between and by people of the same sex, etc." (page 2)

When the candidate was given the opportunity to reply to objections by civil society, he maintained that the article "was written before the Inter American System on Human Rights' standards on the subject were issued and that the article therefore could not be opposed to them. It does not express my present thoughts on the matter."

In his replies to the questionnaire, the candidate identified six challenges facing the Inter American System on Human Rights:

"1. To generate greater commitment to the System by the States. The IACHR must have a more fluid relationship with the States. It must use its hard-earned legitimacy by working side by side with the States in the region. The States must view the Commission as an entity which exists not only to point out errors – which is necessary – but also to help them improve their policies on human rights.

It is undeniable that there is a low level of compliance for the Commission's recommendations: only 48 cases out of 207 fulfil them completely (according to the 2016 report) and that number includes amicable solutions. This information

² REPORT N° 86/09, paragraph 16, available at <https://www.cidh.oas.org/annualrep/2009sp/Uruguay12553.sp.htm>

suggests that the States' commitment to the System is not always reflected in practice. And although it is true that the low compliance with the decisions of international bodies is a worldwide phenomenon – and not only of the Inter American System – I believe it demonstrates the risk that the States may view the Commission as merely an outside observer.

Ignoring the part played by the States in our System jeopardizes its long-term effectiveness and hinders that commitments become visible.

2. Procedural delay within the IACHR must be tackled urgently. I discuss this particular challenge in greater depth further on, explaining how I think my work could contribute to its solution.

3. The IACHR must help strengthen the rule of law: at least since 1977, the Inter-American Commission on Human Rights has linked the enjoyment of human rights with the survival of the democratic system. That is to say that, without democracy – or with a weak democracy – on the one hand, violations of human rights will become more frequent, and on the other it will become harder to restore them internally.

Along those lines, the Inter-American system of human rights has identified three basic rights for the survival of democracy: (i) judicial independence; (ii) freedom of expression; and (iii) respect for political rights. Throughout the System's history, the jurisprudence and practice of its entities have consistently protected those three elements.

They are the rights which allow the democratic system to improve itself. In a certain sense, democracy has the positive characteristic of bearing in its DNA the gene of its own way of perfecting itself.

Now, if the improvement processes are to function, those basic pillars of the rule of law must not fall.

Effective judicial supervision of transgressions of the law is necessary. For that, capable and resourceful judges are needed, judges who are independent (of both the government and of individuals).

Freedom of expression is basic, because it allows effective social control through a press which investigates and a civil society which brings pressure to bear.

Lastly, it is of fundamental importance for political rights to be respected, so that dissident voices can act effectively and to ensure that the conditions governing participation in the political sphere are equal. An authority which does not accept criticism ends up violating human rights.

Another increasingly important factor in the consolidation of democracies and the rule of law is the fight against corruption, with respect to which the IACHR

must not be removed. I believe that the Commission can become a relevant player in that area in a creative manner.

4. The effective protection of economic, social, cultural and environmental rights. The recently formed ESCER Rapporteurship is a good decision by the Commission, one that must be supported and maintained. Thought must certainly be given to how work is done on that subject, as agreed conventional limits cannot be overstepped (limits also extended by the San Salvador Protocol), but there is room for interpretation in which the ESCER can make rapid progress.

5. Universalization of the Inter-American System: The primary objective must be for an ever-increasing number of OAS countries to become full and effective members of the System, ratifying the Convention and accepting the jurisdiction of the Inter-American Court of Human Rights. This will generate the much desired commitment by the member States, which includes – but is not limited to – financial support, to the benefit of the protection of the human rights of the inhabitants of the continent. To achieve that end, my undertaking is, from the IACHR, to make a more inclusive System for all the region's legal systems – each with its own characteristics – linked to the principle of subsidiarity. That principle allows the participants in the IASHR a flexibility which will help make the System universal.

This attitude obviously presents the risk that the States might think they are free to violate human rights and feel that they are endorsed by subsidiarity. That would, of course, be negative and, personally, I do not understand subsidiarity in that way. However, at the same time it must be considered that if the System is extremely rigid – for example, if it means that the conditions of a country with a very high poverty rate are identical to those of the continent's most prosperous countries – that would be harmful.

6. Emerging from the crisis: the problem of financing. While the aftershocks of what was called the “strengthening process” are still being felt, the IACHR is nevertheless gaining a strong foothold in the continent. A few years ago, it withstood the harsh attacks of countries which questioned the System, restricting its operation and its financing or – in the case of my own country – not attending hearings which were not to its liking.

In 2016, the IACHR was at the point of dismissing half its staff for lack of funds. How can lasting financing be generated which is consistent with the Commission's important mission? I believe the answer is in point 1: commitment by the States. It is the States which must primordially finance the Commission. It is a mistake to think that financing organizations or other States which do not belong to the Inter American System will resolve the problem, without prejudice

to their merit. I believe that the American States must substantially increase their support.”

As regards languages, he says that Spanish is his native tongue and that he understands and reads Portuguese, English and Italian. In the presentations made on 5 May 2017, he expressed himself exclusively in Spanish.

Based on his curriculum vitae, his replies to the questionnaire and his professional career as described above, it is not possible to conclude that the candidate has “recognized competence in the field of human rights.”

B. High moral character, independence and impartiality

Nothing was found in the public record to indicate any professional sanction, warning or ethical lapse.

In his replies to the questionnaire, the candidate says that there are no conflicts of interest which affect his independence and impartiality. He says “My current activity – which has been the same for many years – is totally focused on private practice. It has been many years since I occupied any public function, nor do I hold any posts in civil society organizations which litigate or have interests in the Inter American System on Human Rights. If chosen, I will abstain from the cases in which I still maintain the status of petitioner before the IACHR.” In the questionnaire, he says “to the extent the time allowed to me permits, I envisage continuing with my professional work as a lawyer and in my classes at the university.”

The candidate indicated that he has no difficulty or disagreement with the proposition that he will not manifest or appear to condone bias or prejudice in the discharge of his duties, should he be elected as Commissioner.

C. Balanced integration

The members of the Commission who will serve until 2019 include Jose Eguiguren Praeli (Peru), Margarette May Macaulay (Jamaica), and Esmeralda de Troitino (Panama). According to the 2015 Report of the Independent Panel, at the time of his candidacy, Dr. Eguiguren Praeli was a scholar and teacher of constitutional law, consultant to UN agencies, and had a long career in government, including as Minister of Justice and Human Rights and as a diplomat. Ms. Macaulay served as an attorney representing clients in the constitutional, civil and criminal courts in Jamaica, served as a Judge on the Inter-American Court of Human Rights, and was an academic in the area of human rights, and an NGO advocate for women and children’s rights, gender equality, gender based violence, environmental rights, and against the death penalty. Ms. Arosemena de Troitiño was a national judge in Panama with legal academic experience and sensitivity to issues of gender, family, sexual orientation and children’s rights. Luis Ernesto Vargas Silva (Colombia) was elected by the Permanent Council of the Organization of American States to the Commission on May 10, 2017; he worked in the

Colombian judicial system for over 40 years, was a magistrate, and his areas of knowledge and experience are personal law, private law and procedural law.

The candidate practices and teaches law, specializing in criminal law, and he has advised individuals, companies and public institutions. In his replies to the questionnaire, he says that he would contribute “his independent profile as a practicing lawyer and as an academic.” Although the candidate maintains that his unusual background would contribute “opinions offering different perspectives,” this Panel emphasizes that Commissioners must possess recognized competence in the field of human rights.

D. Selection procedure

In his questionnaire, the candidate indicated that the Argentine government appointed him through an internal procedure. There was no consultation with civil society before the Government’s announcement of his candidacy.

E. Conclusions

Having assessed the information provided, the Panel expresses its concern about the candidate’s fulfilment of the requirement of recognized competence in the field of human rights.

Joel Hernández García (Mexican)
Nominated by the Republic of Mexico

Ambassador José Hernández is currently the Director General for the United Nations of the Foreign Ministry of Mexico. He has been a member of the Mexican Foreign Service since 1992, with the rank of Ambassador.

A. Background and recognized competence

Ambassador Hernández is a lawyer and a graduate of the National Autonomous University of Mexico (UNAM), and he obtained a master's degree in International Law from New York University. He is at present the Director General for the United Nations of the Foreign Ministry of Mexico and has been a member of the Mexican Foreign Service since 1992, with the rank of Ambassador. He also serves as an International Advisor to the American Law Institute, on the Inter-American Juridical Committee and on the Board of Directors of the United Nations Interregional Crime and Justice Research Institute (UNICRI).

He has pursued his career as an officer in the Mexican Foreign Ministry in various positions, several of them with responsibilities to United Nations entities and to the Organization of American States. These positions include, from 2011 to 2013, Mexico's Permanent Representative, chairing the Permanent Council; President of the Working Group of the OAS's Permanent Council for the Strengthening of the Inter-American Human Rights System, which led to reforms in the System. Concerning that negotiation process, the Panel received an observation from civil society questioning the transparency of the process, although it recognized the merits of the outcome.

As a representative of his Government, the candidate has taken part in various international negotiations and has represented his country before several authorities. In recent years, he has given courses as a guest professor of law at the Center for Economic Research and Education (CIDE) and in the Postgraduate Division of the Autonomous Technological Institute of Mexico (ITAM), both in Mexico City.

The candidate shows knowledge of and skills in international law and international human rights law, as well as professional experience in the work of international bodies, demonstrated in the development of public policy, drafting laws and regulations, litigation before international courts, negotiating international instruments on various subjects, and defending migrants before foreign authorities. Outstanding among these is his activity in the context of the death penalty; he led the Mexican legal team in the request for the interpretation of the *Avena* case before the International Court of Justice, and supervised and coordinated a network of 30 lawyers in the United States advising Mexicans who may face the death penalty in their criminal proceedings. He has also represented Mexico as co-agent in two cases before the Inter-American Court of Human Rights. Additionally, he worked on the draft of a law to implement the Rome Statute of the International Criminal Court.

He also presents substantial experience in the resolution of sexual and labor harassment, among other matters, within the Mexican Foreign Ministry. As regards human rights, his specialization in the rights of migrants and the prevention and fight against discrimination are noteworthy. He shows skills in the negotiation and promotion of outcomes through amicable processes.

Ambassador Hernández's curriculum vitae lists five published essays. The most recent ones concern migrants' rights (1998) and his reflections on the Mexican experience in the Inter-American Court (2012). Through his study and work experiences, he has knowledge of the Mexican, American and international legal systems. According to his curriculum vitae and his replies to the questionnaire, in addition to Spanish, he is fluent in English and has broad knowledge of French. In his replies to questions during the sessions of the OAS's Permanent Council and before civil society on 5 May 2017, he spoke in both Spanish and English.

Regarding the challenges confronting the Inter-American human rights system, the Ambassador indicated in his questionnaire:

- "It lacks sufficient and reliable financing to fulfil all the functions derived from the Charter of the Organization of American States itself, from the American Convention on Human Rights and from the mandates of the States. The commitment to strengthen the Commission's financing must come from the States themselves. However, the Commission must respond to that commitment with concrete answers to the challenges facing it.
- The Commission's inadequate resources and its growing relevance in the past ten years as a mechanism for individuals to claim possible human rights violations have caused a delay in the attention the system pays to individual petitions within the Commission. Procedural delay is certainly one of the greatest challenges confronting the Commission, and eliminating that delay is also one of the principal requirements of the system's users. An adequate budget and better administrative management are essential if progress is to be made concerning this objective.
- State compliance with the Commission's resolutions and recommendations is needed if the Commission's original mandate of promoting and protecting human rights is to be achieved. With the Commission's collaboration, the States must demonstrate their responsibility for strengthening the credibility and effectiveness of the Inter-American Human Rights System by committing themselves to observing the decisions of its entities.
- The universality of the Inter-American Human Rights System remains a work in progress requiring leadership, not only by the IACHR and the States, but also by the Commissioners themselves.

As a result of the reflection and strengthening process carried out by the OAS between 2011 and 2013, the Commission responded to the requirements of the States and civil society organizations by reforming its Regulations in exercise of its autonomy and independence. The reforms introduced strengthen the legal framework on which the Commission's action is based, especially in the processing of petitions and cases, with the aim of achieving better compliance by the States with the Commission's decisions to the benefit of both victims and the system as a whole. Based on that process, the Commission must continue to consolidate the application of its legal system and to make the best use of the tools that system gives it in order to devise new ways to enable it to tackle procedural delay.

The promotion of the amicable solutions mechanism and the Commission's active participation in it is a way of cutting procedural delay by encouraging agreements between parties which ensure that attention is paid to human rights violations and their reparation according to the highest Inter-American standards. Moreover, amicable solution agreements would have to imply the States' commitment to prevent future violations through measures designed to prevent their recurrence and the implementation of public policies. The Commission's role in the achievement of robust amicable solution agreements and the monitoring of their proper fulfilment by the States has great potential which must be used.

I am convinced that, as a Commissioner, my contribution in that respect would be of special value – acknowledging that the amicable solution route is an important way of tackling delay, although probably not the only way. In that respect, I also believe that my role as a Commissioner could help generate internal consensus on pursuing the adoption of integral measures for a more effective operation of the system of individual petitions, which would tackle challenges not only arising from their registration to their admissibility and merits, but also compliance with decisions and recommendations.

Dialogue with all the system's users, States, civil society organizations and victims, is essential for the application of the Commission's resolutions with the aim of doing away with delay in the system of individual petitions."

Based on his curriculum vita, his replies to the questionnaire and his professional history, it is possible to conclude that the candidate meets the requirement for "recognized competence in the field of human rights".

B. High moral character, independence and impartiality

Nothing was found in the public record to indicate any professional sanction, warning or ethical lapse.

The candidate asserts that he will not have any conflict of interest due to his

forthcoming resignation from his post in the Mexican Foreign Ministry before the election of Commissioners and his withdrawal from the foreign service should he be elected. As evidence of his independence, the candidate declared that during his service he was always free to express his opinions without any restraint. In his questionnaire he states that, “[i]f elected Commissioner, I shall be able to devote all my time to the work and responsibilities that important task implies. In any case, I would look to become involved in yet to be planned academic activities.”

The candidate indicated that he has no difficulty or disagreement with the proposition that he will not manifest or appear to condone bias or prejudice in the discharge of his duties, should he be elected as Commissioner.

C. Balanced integration

The members of the Commission who will serve until 2019 include Jose Eguiguren Praeli (Peru), Margarete May Macaulay (Jamaica), and Esmeralda de Troitino (Panamá). According to the 2015 Report of the Independent Panel, at the time of his candidacy, Dr. Eguiguren Praeli was a scholar and teacher of constitutional law, consultant to UN agencies, and had a long career in government, including as Minister of Justice and Human Rights and as a diplomat. Ms. Macaulay served as an attorney representing clients in the constitutional, civil and criminal courts in Jamaica, served as a Judge on the Inter-American Court of Human Rights, and was an academic in the area of human rights, and an NGO advocate for women and children’s rights, gender equality, gender based violence, environmental rights, and against the death penalty. Ms. Arosemena de Troitiño was a national judge in Panama with legal academic experience and sensitivity to issues of gender, family, sexual orientation and children’s rights. Luis Ernesto Vargas Silva (Colombia) was elected by the Permanent Council of the Organization of American States to the Commission on May 10, 2017; he worked in the Colombian judicial system for over 40 years, was a magistrate, and his areas of knowledge and experience are personal law, private law and procedural law.

Ambassador Hernández would contribute his experience as a diplomat, his knowledge of international organizations, his capacity to encourage consensus and his participation in substantial aspects of the reform of the Inter American System on Human Rights. He would contribute his experience in the area of the rights of migrants and the prevention of the death penalty and discrimination and action to combat them.

D. Selection procedure

Ambassador Hernández indicates that when he found out that the IACHR would have three vacancies, he reported his interest in the opportunity to the Mexican Foreign Ministry, which undertook the nomination of candidates. Both in his questionnaire and in his presentation to civil society on 5 May 2017, he stated that civil society did not participate in the selection process, a fact also pointed out by observations received from civil society.

E. Conclusions

In the opinion of this Panel, his replies to the questionnaire and his observations, as well as his career in the field of human rights, especially concerning migration and the strengthening of the system, indicate that the candidate fulfils the requirements that the Commission has established for membership of the Inter-American Human Rights Commission.

Flavia Piovesan (Brazil)

Nominated by the State of Brazil

Flavia Piovesan is a Professor at the Pontifical Catholic University of Sao Paulo. She is a lawyer and holds a master's degree and a Ph.D. from the same educational establishment. She is also a Professor at the Programme for the Doctorate in Human Rights and Development of Pablo de Olavide University (Seville, Spain) and in the doctorate programme (intensive module) of the University of Buenos Aires. Since June 2016, she has served as Special Human Rights Secretary to the Government of Brazil.

A. Background and recognized competence³

She has experience in working on human rights issues, particularly women's rights, as well as economic, social and cultural rights.

The candidate is a professor of constitutional law and human rights at the Pontifical Catholic University of Sao Paulo and of postgraduate studies of the Pontifical Catholic University of Paraná. She has participated as a teacher in the human rights and development programme of the Pablo Olavide University in Seville, Spain, as a visiting professor at other institutions (Harvard, Oxford, Heidelberg and American University) and as a researcher. She has served on the OAS's Working Group to examine the periodic reports of the States Parties to the Protocol of San Salvador and on the United Nations High Level Task Force on the implementation of the right to Development. Moreover, she mentions that she was and still is affiliated with the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), the National Council for the Defense of Human Rights, Justice and Peace Commission, Association of Democratic Constitutionals and SUR – Network of Universities in Human Rights. She is now serving as the Special Human Rights Secretary of Brazil, as indicated above.

In her curriculum vitae, the candidate adds that she is a scientific advisor to the Research Foundation of Sao Paulo and an *ad hoc* consultant to the National Research Council of Brazil. She also highlights her participation in seminars and courses concerning human rights. Moreover, she has taken part in strategic litigation concerning women and human rights.

The candidate refers to 23 publications in Portuguese and English on various subjects, including Human Rights and International Constitutional Law, the Jurisprudence of Social Rights in the Repertory of the Regional Institutions for Monitoring Human Rights, the Impact of the Decisions of the Inter-American Court of Human Rights on the

³ The candidate did not provide direct answers to the questionnaire, but remitted a series of publications which gave information relevant to the questions. This assessment is based on the following contributions: letter of introduction, note published in the daily paper *O Globo* entitled "The Challenges facing the Inter-American Commission on Human Rights," and her curriculum vitae.

Jurisprudence of the Brazilian Supreme Court, and Development Law.

At the Permanent Council's session on 5 May, the candidate stressed that the IACHR plays a strategic and extraordinary role in safeguarding the human dignity of victims, reacts to and prevents the suffering of the people of the region, establishes standards and has the capacity to interact with various social players.

On the other hand, in her presentation to the Permanent Council she considered that the Inter-American System is faced by three challenges:

1. The existence of new subjects in the human rights agenda, namely the multiple forms of discrimination, businesses and human rights and sexual diversity in the region.
2. On the promotion of human rights in the region, she points out that the IACHR acts more "as fire-fighters than architects," which is to say that it attends to human rights violations rather than encouraging a human rights culture. She therefore proposes the creation of an observatory of best practices in the region which would promote exchanges between the systems of education, social movements and the people who form part of the justice systems of the States.
3. The necessity of intensifying dialogue at global, regional and local levels, the OAS-UN dialogue, the dialogue between the OAS and other regional human rights protection systems, the dialogue between the OAS and the Member States, between the OAS and NGOs, etc.

Later, during the questions, in the context of the presentation organized by civil society on 5 May 2017, she touched on two further challenges. First, she mentioned the challenge of re-thinking security by avoiding militarization and, secondly, that the austerity policies in the region are a challenge for economic, social and cultural rights. Moreover, she highlighted the part played by the technical indicators of ESCR in the San Salvador Protocol group and the problem of the feminization and containment of poverty.

In her presentation to the OAS's Permanent Council, the candidate highlighted seven principles which guide her candidacy: (i) effectiveness, (ii) efficiency, (iii) transparency, (iv) institutionality, (v) independence, (vi) universality, and (vii) sustainability.

Her native language is Portuguese, and she is fluent in English and Spanish. She spoke in these three languages in her presentations on 5 May 2017. This Panel has no direct knowledge of her background in judicial systems other than that found in her country of origin, but her list of publications suggests knowledge of Latin American constitutional law.

Based on her curriculum vitae, her replies to the questionnaire and her above-described professional career, it is possible to conclude that the candidate fulfils the requirement for "recognized competence in the field of human rights."

B. High moral character, independence and impartiality

Nothing was found in the public record to indicate any professional sanction, warning or ethical lapse.

A communication was received from a group of NGOs claiming that, despite the “legal expert’s academic excellence and the history of her activism in the cause of human rights,” the candidate’s mandate as Human Rights Secretary “was marked by silence and omission,” during a period of perceived serious deterioration in human rights in the country. When given the opportunity to respond to that communication, the candidate reaffirmed the importance of human rights and considered those statements to be a legitimate exercise of free speech.

The candidate has emphasized her professional record in civil society and points out that she has occupied the post of Special Human Rights Secretary of Brazil for only ten months. She has also indicated that, if elected, she would resign from that public office and maintain only her teaching activities.

The candidate indicated that she has no difficulty or disagreement with the proposition that she will not manifest or appear to condone bias or prejudice in the discharge of her duties, should she be elected as Commissioner.

C. Balanced composition

The members of the Commission who will serve until 2019 include Jose Eguiguren Praeli (Peru), Margarette May Macaulay (Jamaica), and Esmeralda de Troitino (Panama). According to the 2015 Report of the Independent Panel, at the time of his candidacy, Dr. Eguiguren Praeli was a scholar and teacher of constitutional law, consultant to UN agencies, and had a long career in government, including as Minister of Justice and Human Rights and as a diplomat. Ms. Macaulay served as an attorney representing clients in the constitutional, civil and criminal courts in Jamaica, served as a Judge on the Inter-American Court of Human Rights, and was an academic in the area of human rights, and an NGO advocate for women and children’s rights, gender equality, gender based violence, environmental rights, and against the death penalty. Ms. Arosemena de Troitiño was a national judge in Panama with legal academic experience and sensitivity to issues of gender, family, sexual orientation and children’s rights. Luis Ernesto Vargas Silva (Colombia) was elected by the Permanent Council of the Organization of American States to the Commission on May 10, 2017; he worked in the Colombian judicial system for over 40 years, was a magistrate, and his areas of knowledge and experience are personal law, private law and procedural law.

The candidate’s possible election as a Commissioner would contribute to the diversity of the IACHR’s formation as she is a woman, originates from Brazil and her native language is Portuguese. She would contribute knowledge and experience of ESCR, her work with international organizations and her academic work on international human rights law, gender, right to work, equality and justice, among other matters. Moreover,

her career includes experience in civil society, academia, government and international organizations.

D. Selection procedure

At the session on 5 May 2017 before civil society, the candidate indicated that in Brazil the selection process was handled by the Executive Branch, and she suggests looking for best practices in the region.

E. Conclusions

The Panel's opinion is that the candidate fulfils the established requirements to serve as a Commissioner, given the information considered, her career and academic history, her knowledge and experience of ESCR, gender and international human rights law, and her work in civil society, government and international entities.

Antonia Urrejola (Chilean)
Nominated by the Republic of Chile

Antonia Urrejola is Human Rights Advisor to the General Secretariat of the Chilean Presidency. She is also a lawyer at the University of Chile with a graduate degree in human rights and transitional justice from that University's Human Rights Centre. She is an expert in human rights and indigenous law, with over ten years of experience.

A. Background and recognized competence

The candidate has served as an advisor to several of her country's public administrative authorities, including the General Secretariat of the Presidency, the Interior Ministry, the Public Criminal Defense Office, and the Ministry of Planning and Cooperation, among others. She has been a consultant in governmental, academic and international authorities, principally on topics of indigenous law and transitional justice. She has worked on the development of public policy and legislation for the acceptance of human rights standards.

She has also worked on the rebuilding of Chilean societal institutions on topics involving human rights and transitional justice, where she considers that "important goals have been achieved in giving equal opportunities to access to justice for all." Her academic career and professional experiences in various posts are closely linked to childhood and indigenous communities. Her work as Advisor to the OAS's former Secretary General, as well as her participation in the reports presented by the Chilean state before the Inter-American system and her oral presentation, demonstrate knowledge of the Inter-American System and principal human rights issues.

In her curriculum vitae, the candidate refers to some ten case studies and monographs on indigenous rights, including one concerning the strengthening of the Inter-American Human Rights System entitled "The Inter-American Human Rights System: the debate about its strengthening within the Organization of American States" (University of Chile, 2013).

Additionally, the candidate points out her regular participation as a teacher in courses and diploma programmes focused on human rights, principally in relation to topics involving indigenous communities. For example, among other activities, she teaches in international diploma courses in several Latin American countries for the specialized training of a critical mass of professionals, civil servants and international academic and technical entities who work in public affairs, to ensure that their professional work is guided by the principles and standards of international human rights law and international humanitarian law.

Regarding the challenges, the candidate considers the following points to be the priorities:

“Most of the countries in the region have made considerable efforts to tackle their grievous heritage of brutal human rights violations. In this situation, there is no doubt that the support of the multilateral institutions, and especially of the Inter-American Commission, has been central. However, systematic violations of human rights persist which the Commission must confront to see that justice is done. Forced disappearances, extra-judicial executions and the practice of torture continue. Nevertheless, the current order of things presents new and complex challenges material to the recognition of economic, social and cultural rights and of the rights of especially vulnerable groups.

Critical areas exist in matters of equality and non-discrimination for reasons of nationality, religion, sex, race or ethnicity. In the sphere of racial equality and the protection of women and young girls and boys, combating the culture of chauvinist violence so deeply rooted in our culture presents an enormous challenge. Extreme poverty, corruption and the unexpected and increasingly frequent effects of climate change especially impact on the most vulnerable people, with dramatic consequences both socio-economic and on the realization of their fundamental rights. In too many cases, the rights of migrants and refugees are disregarded and xenophobic discourse proliferates, not only in Europe and the rest of the world, but in our region too. The importance of protecting human rights in the sphere of private investments is another challenge which demands to be taken on board and confronted in a coordinated way. I believe it is of fundamental importance to strive for the incorporation of the United Nations Guiding Principles on Business and Human Rights. Businesses and their agents are new players which must be incorporated into the work on human rights in the region, and wherever the States need help to understand the consequences that economic activities undertaken by the companies can bring on the satisfaction of human rights. States can incur international responsibility if they are unable to understand the implications that business activities can generate that are material to matters concerning the realization of human rights.

In that context, it seems to me that, in the first place, the Inter American System on Human Rights should work hard on the recognition of rights and the generation of the institutionality of human rights in the countries concerned. The Commission must be an entity which helps the States to ensure that their laws and democratic institutions comply with the human rights standards. Internal changes often require societal agreements and on occasion, it is not always the various State powers which are reluctant, but society as a whole. An understanding of human rights, of what the human rights are, many times does not exist among the population. Process of cultural change are required and, to that end, work must be done on the promotion of rights, on generating collective consciousness that those topics which were not previously considered human rights or were not made visible as such, today are. Changes require the various actors in a society to take part in dialogues leading to the achievement of objectives. The advances made in human rights, the application of universal standards within our countries, are processes of dialog that are as important as the end results of those processes. Supporting those processes, setting up education and training programmes and other activities aimed at promoting

human rights, is essential. The IACHR is doing that now, but its work needs to be intensified and expanded.

Secondly, and related to my previous point, is the IACHR's role as a supporter. I am aware that sometimes the member States do not really feel represented by the IACHR in matters which are among the challenges they face in their own countries every day. I am also aware that the region's governments often feel they are under the Commission's permanent scrutiny. And they are. It is part of the Commission's function. However, I also strongly believe in the necessity of creating permanent spaces for dialogue and cooperation with the member States on a wide range of subjects and of generating a shared agenda. Technical assistance, legislative advice and the construction of stronger and more lasting relations between the IACHR and the national authorities of the various States are very important. Achieving them, working jointly with the States, means there will also be a positive space to enable the entities to learn from the member States, bearing in mind their different origins, the diversity of their legal systems, their cultural and political contexts and the obstacles and challenges the countries are facing.⁴ International entities such as the IACHR must condemn when they have to, but they must also act as advisors and supporters to enable the member States to make progress in the construction of fairer and more inclusive societies.

Thirdly, the development of shared working agendas. I think the creation of working parties between the Commission and the member States is very important, through the various sub-regional groups, to discuss matters of common interest and to propose a human rights agenda in order to work together. That agenda must concern the countries' priorities and take account of the particular characteristics of each country, the starting point, its own history and its political and institutional capacity. Dialogue with the States cannot be confined to the specific cases brought before the Commission or the strengthening of the System. The priority is to create spaces for dialogue to enable the Commission to listen to the problems and priorities that the States have to confront and, based on those priorities, to set up a working agenda with the active participation of civil society and organized victims.

Fourthly, dialogue between the system's organs. I think that dialogue between the OAS's various promotional bodies and the universal system is of fundamental importance. Within the Inter-American System we have the Inter-American Commission for Women, the Inter-American Human Rights Institute and the Inter-American Institute for Children and Adolescents. And, of course, the Inter-American Court. Increased coordination is needed to strengthen the system and avoid duplications. I think it would be interesting also to explore ways of working with the Inter-American Development Bank as a relevant participant in the sphere of investment projects to incorporate not just environmental safeguards but also the effect of such projects on human rights.

⁴ What is known in Europe as "the margin of appreciation" in the execution of the decisions of the European Court of Human Rights.

Fifthly, gender diversity and equality. The Commission must become representative not only of the regional diversity of the various member States; it must also set up standards of gender equality not only as regards its members of both sexes but also in the executive posts on the Secretariat's permanent staff. The IACHR should also do much more to include on the staff of its Permanent Secretariat professionals originating from various member countries, and especially from the Caribbean. The Commission's staff should reflect the diversity of the region's nationalities, cultures and languages. In that respect, the Caribbean countries represent a unique opportunity for the IACHR to acquire the stamp of greater integration and diversity. An example of that is in the legal traditions of some of those countries, which differ greatly from those which dominate in other parts of the region. Internship and scholarship programmes must be strengthened. One way of confronting the current financial crisis is for the member States to work with professionals serving an internship with the Commission. But it is also a fundamental tool to provide the Commission's Secretariat with the support of professionals originating from the various countries, with their own backgrounds, exchanging views and then returning to their countries to help construct public policies on human rights.

Sixthly, the Budget. It is essential for all the States to consider, among themselves, how the regular budget that the Organization currently devotes to the human rights agenda can be increased. I am convinced we need more multilateralism, more cooperation and more coordinated action. I think the States should give realistic commitments according to their needs, but also demanding ones. The manner in which to tackle the Commission's current financial crisis is not a problem that the Commission should have to resolve on its own. It is an ethical duty and a commitment which the States, together with the IACHR, must confront jointly, creatively and with conviction. The IACHR is an entity of the OAS. It was created by the States and it is the responsibility of its member States not only that it continue to exist, but also that it be strengthened.

In seventh place, procedural delay. There is no doubt that procedural delay is also a real challenge whose resolution will be hard to achieve. The IACHR has made efforts in the matter by proposing its Strategic Plan. I think that proposal is a starting point for dialogue with the States aimed at jointly defining how the problem should be approached. It is not a problem of the IACHR. Or of the States. It is a problem that affects the victims and a commitment to them, to approach the question jointly. In that respect, it appears to me that the amicable solutions mechanism, among other actions, is a tool which must be a priority. Later on, in relation to the Strategic Plan, I will point out my considerations on this point. We should not forget that, behind the financial crisis and the procedural delay there are people, children, women, adolescents and people of flesh and blood who are victims, waiting for an answer from their States and from international organizations.

In spite of everything I have said, I believe that the fundamental, priority and urgent challenge is to defend the very existence of the IACHR and the enormous, albeit insufficient, progress made by human rights in the region. I think there are

real threats of retrogression today, not only respecting the existence of multilateral systems and the protection bodies, but a danger that the human rights agenda in the world, and in our hemisphere, will take a step backwards. And that is a challenge that will require not just great technical abilities, but also dialogue and conviction. It will require a compact and strong Commission, committed to the cause of human rights and democracy in our country.”

In her curriculum vitae, she says she has knowledge of English and during the event on 5 May, she answered in both Spanish and English. At that event, she also said she had some knowledge of the various legal systems, having lived in England, and through her experience in the OAS.

Based on her curriculum vitae, her replies to the questionnaire and her above-described professional career, it is possible to conclude that the candidate fulfils the requirement for “recognized competence in the field of human rights.”

B. High moral character, independence and impartiality

Nothing was found in the public record to indicate any professional sanction, warning or ethical lapse. She has stated that, if elected, she would give up her position in the government. In that respect she says:

“If I am elected, my time, my energy and my main priority will be the work of the Commission. My interest is to devote myself to it. Secondly, I would propose continuing with my classes in the various diploma courses at the Henry Dunant Foundation and to return to other educational spaces, for example in the various human rights centers of my country’s universities. I should also like to resume some of my independent consultation work on the subject of human rights standards by writing law reports. In that field, I shall obviously have to ascertain case by case the people with whom I can conduct such consultations without compromising my present or future autonomy as a Commissioner.”

The candidate indicated that she has no difficulty or disagreement with the proposition that she will not manifest or appear to condone bias or prejudice in the discharge of her duties, should she be elected as Commissioner.

C. Balanced composition

The members of the Commission who will serve until 2019 include Jose Eguigaren Praeli (Peru), Margarete May Macaulay (Jamaica), and Esmeralda de Troitino (Panama). According to the 2015 Report of the Independent Panel, at the time of his candidacy, Dr. Eguiguren Praeli was a scholar and teacher of constitutional law, consultant to UN agencies, and had a long career in government, including as Minister of Justice and Human Rights and as a diplomat. Ms. Macaulay served as an attorney representing clients in the constitutional, civil and criminal courts in Jamaica, served as a Judge on the Inter-American Court of Human Rights, and was an academic in the area of human rights, and an NGO advocate for women and children’s rights, gender equality,

gender based violence, environmental rights, and against the death penalty. Ms. Arosemena de Troitiño was a national judge in Panama with legal academic experience and sensitivity to issues of gender, family, sexual orientation and children's rights. Luis Ernesto Vargas Silva (Colombia) was elected by the Permanent Council of the Organization of American States to the Commission on May 10, 2017; he worked in the Colombian judicial system for over 40 years, was a magistrate, and his areas of knowledge and experience are personal law, private law and procedural law.

From her biography as an expatriate and her personal experience with grave violations of human rights, the candidate demonstrates a special sensitivity toward victims. She would contribute her experience and knowledge of the workings of the OAS and her relationship with human rights organs, which give her a holistic view of the region. Her possible election as a Commissioner could contribute to gender balance in the composition of the IACHR.

D. Selection procedure

The candidate said that she had no knowledge of any public or private selection process. The President's Cabinet had proposed her as a candidate. In that respect, the candidate suggested in the questionnaire that she thought it "very important for the Commission itself, with the States, to promote participatory nomination mechanisms, not only with the participation of civil society and academic entities, but also by promoting mechanisms involving other players, such as victims' organizations and also members of Congress."

E. Conclusions

In this Panel's opinion, considering her career in the field of human rights, especially but not exclusively concerning indigenous peoples, transitional justice and youth, and her experience with the OAS and as an advisor in public administration in the region, the candidate fulfils the requirements established by the Convention to become a member of the Inter-American Commission on Human Rights.

IV. RECOMMENDATIONS

A. The current election system and its defects

Election of members of the Inter-American Commission on Human Rights is governed by the American Convention on Human Rights (Art. 36-37) and by the Commission's Statute (Art. 3 to 5). All Member States of the OAS in active standing can nominate and vote for Commission members. The elections take place at the meeting of the General Assembly of the OAS, either at a regular annual meeting or a specially convened one.

States are allowed to present three candidates for each position, in which case at least one of the nominees must be a national of a different State. In practice, however, States generally appoint one person for the open vacancy.

Candidates' responses to the questionnaire and questions on the selection procedure show that the national nomination procedure is rarely open or transparent. There appear to be no public calls for candidates nor any process established for evaluating candidates' qualifications at the national level. Additionally, it is not clear who participates in the selection process, nor what opinions are taken into account when selecting candidates at the national level. There are no public consultations in the country, for example. At most, there is an occasional exchange of information and comments with a few actors in civil society organizations, usually in an informal manner.

In general, it is fair to say that there is no selection procedure. Instead, some authority, usually the Ministry of Foreign Affairs, appoints candidates at the national level. Therefore, nomination by the States does not necessarily lead to candidates who are highly qualified for the work, nor does it guarantee fulfilment of "recognized competence," impartiality and independence required by the relevant norms and principles. There is no indication that States take into account the overall composition of the Commission in their nominations. It is not known, for example, whether national nomination procedures consider the importance of including people with expertise in populations particularly vulnerable to human rights violations—like children, women, racial, religious and sexual minorities, persons with disabilities, people previously deprived of their freedom or others, or whether or not they intend to encourage the Commission to include people with different professional histories.

Nevertheless, it cannot be denied that, over the years, the Commission has benefitted from the presence of persons with impeccable credentials and extensive experience in matters of human rights. These good results have generally coincided with demonstrations of interest in the Inter-American system of protection in several countries, which results in more active involvement of the public and particularly of the domestic human rights organizations in the decision-making leading to nominations. But it is also undeniable that the process has been at best uneven. It certainly cannot be said that all of the candidates have always been suitable or that they have always

fulfilled the requirements. Additionally, the lack of transparency in nomination of national candidates can also affect perceptions of the legitimacy of the Inter-American System of Human Rights Protection and its efficacy.

Once the nominations are submitted and made public, States initiate campaigns to obtain votes in support of the candidates they have presented. This takes place mostly as a series of bilateral meetings with the Permanent Missions of other countries before the OAS, at which States other than the nominating State can ask questions and become familiar with the qualifications of the candidate. In some instances, the visits take place at the capitals of States whose vote is sought. Civil society organizations that follow or attend the General Assembly can, and often do, make their views known about which candidates should be chosen. On a few occasions, those campaigns have been quite public, generally to prevent a candidate from being elected on account of past conduct considered inimical to human rights. Nonetheless, there is no formal or institutionalized opportunity for States to receive commentary from civil society on candidates.

As described above, what usually happens is that States seek to obtain promises from other States to vote for their candidate. These promises are not publicized, although rumors generally spread about how many votes a candidate is already counting on or whether a State is leaning towards voting in favor of a certain candidate. In order to obtain more commitments, States engage in an exchange of votes, as in most cases there is more than one vacancy for the respective organ. However, the exchange of votes is not limited to the same election or organ. States can exchange a vote for a judge for that of a Commissioner, and not infrequently for votes in elections for positions in organs not related to the IAHR, but also for other elected positions, and not even solely within the OAS.

The result is that, on the one hand, successful candidates tend to be those whose countries of origin have a very active, committed and participatory diplomacy and who can offer benefits to other States in exchange for their votes. The system does not automatically favor people nominated by more powerful States, but historically, the more powerful States only very rarely have been denied posts in the Commission. And conversely, some small Latin American States have had a comparatively harder time getting their candidates elected to the Court or the Commission. On the other hand, the system also favors voting in blocks, so that a number of small States that have language, geography and other interests in common generally do vote together and become crucial in electing certain members or denying others election or re-election. Ultimately, the ballots are secret, which means that previously made promises to vote for a candidate are sometimes ignored, whether or not they have been made in exchange for other votes.

As described above, both the national nomination and international election procedures are opaque, and consequently, may not guarantee election of the most qualified candidates to fulfil the Commission's purpose established in its own Statute, namely "to

promote the observance and defense of human rights and to serve as consultative organ of the Organization in this matter.” Furthermore, these procedures do not result in an overall composition that reflects the diversity of the region's people and communities, nor those disproportionately affected by or vulnerable to human rights violations.

B. The experience of other jurisdictional supervisory and quasi-supervisory bodies

In evaluating mechanisms for strengthening nomination and selection procedures in the IASHR, it is worthwhile to consider how other human rights bodies have nominated and selected their members. Of course, each system is unique. Nonetheless, it is useful to pull from other experiences that may be useful as the IAHR works toward an improved process.

1) European Court of Human Rights

Council of Europe member States must present three candidates each, who then are elected by the Parliamentary Assembly of the Council of Europe. The list of requirements includes high moral character; the qualifications required for appointment to high judicial office or be juris consults of recognized competence; proficiency in one of the official languages of the Court; know the national legal systems and public international law; and certain provisions on incompatibility. As a general rule, lists of candidates must contain at least one person from the under-represented sex.

The bulk of the requirements for the election of ECHR judges come into play in the internal processes of Member-states. There are a number of non-binding guidelines on soliciting and drawing up a list of candidates, focused on the national selection body, which should be of balanced composition representing a range of stakeholders. This body should conduct personal interviews based on a standardized format with each of the candidates, including an evaluation of their language competences. In practice, national bodies vary: some countries use their Judicial Council or similar bodies to choose both national and international judicial candidates, while others use a more ad-hoc body. In most cases, positions are advertised in the press and through legal and academic websites.

The list of candidates, along with their standardized curricula vitae, goes to the Advisory Panel of Experts on Candidates for Election as Judge to the ECHR. The Panel provides a reasoned opinion to States, confidentially and in writing, on whether the candidates meet the criteria set out in the Convention and in the Guidelines of the Committee of Ministers. The Panel is composed of seven members, each acting in his or her personal capacity. The Committee of Ministers appoints the members of the Panel, and the costs and secretariat are borne by the Court. Once States' candidate lists are finalized, the Panel makes its views available, confidentially and in writing, to the Parliamentary Assembly as to whether the candidates meet the criteria stipulated in Article 21(1) of

the Convention.

Following the Panel's review, the Parliamentary Assembly's Committee on the Election of Judges (composed of 20 parliamentarians with legal experience) interviews each candidate and scrutinizes his or her curriculum vitae to assess his or her qualifications. The Committee then deliberates, and provided that all three candidates are considered sufficiently qualified for the position, the Committee will recommend accepting the list—along with a reasoned ranking of the candidates—or reject it. In the case of rejection, the State must withdraw the list and submit a new one.

The ECHR has a much larger number of judges, as each State must have one. In addition, they serve full-time. These differences with the IAHRs are significant; however, there are some useful features of the procedure: the designation in each State of a nominating body with some degree of independence from the Executive, publicity for potential vacancies, interviews according to a standard format, and the creation of a standing Advisory Panel in the Council of Europe.

2) International Criminal Court

The ICC Advisory Committee began as an initiative of the NGO Coalition for the International Criminal Court (CICC). For a number of years, the Coalition advocated for such a panel, and in addition asked all nominees to complete questionnaires that provided additional information about their qualifications, held interviews with all the candidates, and organized public seminars with available candidates and experts, as well as public debates between candidates. In 2011, the Assembly of States Parties established an Advisory Committee on Nominations.

The Advisory Committee must make its recommendations to States Parties and observers through the Assembly of States Parties (ASP). In its internal procedure, the Committee decided to conduct personal interviews with each candidate, in addition to reviewing curricula vitae and written documentation. The candidates come to where the Committee is meeting, and a 60-minute interview is conducted.

The Committee reports whether the candidate has the required fluency in one of the Court's official languages, and whether he or she meets the requirements set out in the Rome Statute. The evaluations are 1-2 paragraphs long and recount the candidates' experience relevant to the position. The Committee's work is facilitated by the specific criteria in the Rome Statute for judges, which include not only high moral character, independence and impartiality, but also established competence and extensive experience in criminal law and procedure or established competence and extensive experience in "relevant areas of international law such as international humanitarian law and the law of human rights..." To ensure that there are sufficient judges in the two different areas of expertise, candidates are separated into two lists, and elections must be organized to maintain a proper proportion "on the Court of judges qualified on the two lists."

Moreover, in addition to language capability, States Parties are directed to consider the representation of the principal legal systems of the world; equitable geographical representation; fair representation of male and female judges; and the need to include judges with legal expertise on specific issues, including but not limited to violence against women or children. Thus, the Committee simply applies these criteria. In contrast, criteria for election to the Inter-American Commission and Court are minimal, and so an improved process would require developing its own list of criteria, which could in many respects track the ICC, but would have some differences.

Despite the existence of this formal mechanism, the CICC plays an important role in providing information on elections, circulates and publishes a questionnaire on candidates and organizes interviews with the candidates, debates among the candidates and public seminars with candidates and other experts. The CICC firmly opposes the exchange of votes in ICC elections.⁵

3) African Court on Human and Peoples' Rights

The process and criteria for nominating and electing judges in the African human rights system are quite similar to those of the IASHR. An important difference arises in the constitutive instrument of the African Court on Human and Peoples' Rights, which requires that "[d]ue consideration shall be given to adequate gender representation in the nomination process." When voting on candidates, the Assembly of Heads of State and Government must ensure that "there is representation of the main regions of Africa and of their principal legal traditions," as well as "adequate gender representation."

4) Holders of a United Nations Special Procedures Mandate

The process for selecting and appointing mandate holders may hold some lessons, especially for the Commission. Mandate holders must have expertise and experience in the field of the mandate, independence, impartiality, personal integrity and objectivity. Due consideration should be given to gender balance, equitable geographical representation and representation of different legal systems. Candidates must be highly qualified and possess established competence, relevant expertise, and extensive professional experience in the field of human rights.

Anyone may nominate candidates, and there is a standing list. Upcoming vacancies are publicized. A consultative group made up of one representative of each Regional Group in the UN, appointed in his/her personal capacity, chooses a short list of the nominated candidates, consults with stakeholders, can add its own nominees, and presents public and substantiated recommendations to the President of the Council, who conducts further consultations and makes the final decision. The candidate so chosen is then

⁵ Coalition for the International Criminal Court, "The Nomination and Election of Six New ICC Judges: December 2017:
http://www.coalitionfortheicc.org/sites/default/files/cicc_documents/cicc_memo_2017_icc_judicial_elections.pdf

voted on by the Human Rights Council (HRC Resolution 5/1, 18 June 2007, Annex).⁶

C. Proposals for selecting candidates made to the Inter-American Commission on Human Rights

1) Introduction

Shortcomings of the current process and the existence of other international institutions that have taken steps to create an improved selection process guide the Panel in its present recommendations. Additionally, it is logical to conclude that, in a human rights system, the members of its principal organs should be chosen in conformity with the principles of transparency and reasonableness. Our proposals fall into two broad categories: :

- 1) That States create a transparent, participatory and open procedure at the national level, which allows for the selection of the best possible candidates that meet the normative requirements; and
- 2) That the OAS election process be improved to avoid many of the previously raised shortcomings and to ensure the election of Commissioners that meet the normative requirements and reflect the diversity of the region as a whole.

We are aware that these proposals go beyond the letter of the American Convention on Human Rights, but far from contravening it, they aim to improve its operation and do not require modifications to it. Only the political will of the States themselves is necessary to introduce these rules into their national legal systems, to reinforce the legitimacy, efficacy and transparency of this supervisory organ of human rights.

2) National processes

Each State should have a formal body for selecting candidates that is diverse, independent and non-political in composition. Many States already have institutions that could carry out this nomination process by designating some of their members for this task; if not, the Panel finds that an institution of this type should be created. Whichever modality is chosen, members performing the selection should be independent, impartial, and knowledgeable about the purpose and duties of the Commission, as established in the Charter and the Statute of the Commission, and have a strong background in the field of human rights. This body should ideally be representative of different constituencies within the State. It should be permanent or should be formed well in advance of upcoming elections.

States should publish a call for candidates, explaining candidate nomination and

⁶ Basic information on the selection and appointment process for independent United Nations experts of the Human Rights Council,
<http://www.ohchr.org/EN/HRBodies/SP/Pages/BasicInformationSelectionIndependentExperts.aspx>

election criteria and processes. Additionally, when States select and nominate their candidates for the Commission, they should include information on the nomination procedure utilized. This is important for the transparency and legitimacy of the selection process, as well as the legitimacy of the IASHR.

States should nominate at least two candidates for the election. Given the history of underrepresentation of women and overrepresentation of men in the Commission and Court, at least one candidate should be from the under-represented sex. This would guarantee the possibility of a true election in the General Assembly and allow voters the opportunity to elect candidates taking into account the need for human rights organs to reflect the diversity of those protected by their constituent and conventional instruments, including candidates from under-represented communities. This change could create opportunities of access to these positions for members of minority or vulnerable groups in our hemisphere, such as indigenous communities, Afro-descendants, the disabled, members of sexual minorities, among others. The Commission and the Court face a wide range of problems; therefore, it is necessary as well that they be composed of members with diverse areas of expertise and life experiences.

Candidates should present evidence of compliance with the requirements of the Convention and Statutes of the respective organ. Since the Convention and the Statute do not provide details of the qualifications required by a member of either body, these should be elaborated upon at the national level. To evaluate whether candidates comply with the requirement of recognized competence in the field of human rights, the State must request documents, opinions or evidence of defense in the area of human rights. Each person's background should be carefully studied to determine their recognized competence in the field of human rights, apart from their independence and impartiality.

Candidates should be asked to provide information on activities they plan to carry out at the same time as their duties as Commissioners. In the spirit of Article 71 of the Convention, the Panel recommends that States, as a matter of policy, should abstain from nominating persons who would – simultaneously with their service on the Commission – occupy positions of authority and responsibility in the governmental sphere that might give rise to conflicts of interest and harm the actual or perceived independence and impartiality that any judicial or quasi-judicial organ must have.

Broad competences and bilingualism are essential criteria. Since all the work of the Commission takes place in English or Spanish, fluency in one of those languages and at least passive knowledge of the other is essential. Clarity that candidates are committed to be available for their work whenever they are needed is also important. Other useful qualities include broad exposure to and understanding of the political, social and cultural context of the region and its sub-regions, along with negotiation and/or fact-finding skills.

Interviews should be part of the selection process. Once the period for the presentation of candidates is over, the national selection body should interview candidates to evaluate their qualifications. There should be rules to allow the presence of delegates of the most representative national human rights non-governmental organizations in the interviews. Interviews should be carried out on the basis of a template to guarantee equality to those being interviewed. The questionnaire provided in the Annex, prepared by this Panel, could provide a model for the kind of questions to be asked of the candidates.

The selecting body should further make candidates aware of the limitations they will have, if elected, regarding their future field or work, so as to prevent any conflict of interest. The decisions of the selecting body need not be binding, but the political authorities could only deviate from its advice with a public, reasoned decision.

3) OAS elections

Affirmation and realization of the principles of competence, independence and impartiality in the IASHR are intimately related to the process of the election of suitable members for the Commission. After the nomination of candidates at the national level, the OAS General Assembly election process is the second and final stage where these values can be firmly and resolutely upheld.

The Panel strongly endorses the principle that States should base elections strictly on both the merit and qualifications of candidates, and on their independence and impartiality. Also, it is necessary that the election reflect the diversity of the region, vulnerable populations, etc. In light of this position, the Panel strongly opposes reciprocal political agreements (vote-trading) in the election process, which do not relate to the suitability or diversity of the candidates. To this end:

The Panel recommends that the OAS establish an Advisory Committee, responsible for ensuring the suitability of candidates for service as Commissioner, to play the role of this Panel. This exercise, undertaken twice, has led to an instructive accumulation of methodology, procedures and recommendations that can serve as the basis for institutionalizing it. The Panel recommends that this Advisory Committee be composed of diverse and independent members, including for example, representatives from civil society and academia, and an equal number of male and female representatives.

The Advisory Committee's terms of reference would be to assess and evaluate the candidates in regard to their suitability for service as Commissioners. The Committee would be authorized to meet with candidates, compile independent information on the candidates, host public panels to afford them the opportunity to introduce themselves to States, as well as regional and national civil society associations. The Advisory Committee could also access the information compiled on the candidate at the national level and in the national nomination process. The Committee should assess the suitability of the candidates based not only on the criteria

in regard to professional eligibility for the election, but also on the personal qualities of independence, impartiality, integrity, propriety, competence, diligence, fairness and empathy. Finally, it should also take into account the diversity of candidates presented in its recommendations.

The Panel affirms the value of continued use of an interview process as an integral part of the Committee's work. The Panel notes that the presentation and interview of candidates for the Commission before the Permanent Council in 2013 and 2017 were believed to be effective and productive activities in terms of facilitating the election of the best suited candidates. The Panel suggests that the questionnaire used in 2017 could be useful for developing standardized questions for these interviews.

The Panel recommends that the Advisory Committee draft a final written report for the OAS regarding the evaluation of candidates and that States take this report into account when voting. The Committee report will provide guidance and advice through independent evaluations and information collected independently, which states could use in electing the most qualified candidates.

The Panel encourages States to take into account the need for diversity in the election process, whether on the basis of gender, ethnic origin, sexual orientation or other considerations, as well as balanced composition in relation to professional history (e.g., diplomatic career, NGOs and academia, among others), so long as candidates meet the normative requirements for service as Commissioner. Selection between two or more suitable candidates could be determined on the basis of this need, provided that the candidates satisfy the criteria for eligibility and personal qualities. As noted, it is particularly important for the Commission to have a wide range of experiences, as well as different and complementary skill sets. The Panel also encourages States to elect the most qualified persons based on their relevant skills and other qualities and the needs of the Commission for the fair, just and efficient discharge of its functions.

V. ANNEXES

Annex I. Questionnaire for candidates to the Inter-American Commission on Human Rights

This Independent Panel of Experts was convened to evaluate whether each candidate complies with the criteria and requirements established by the American Convention on Human Rights, as well as by other relevant instruments; also to consider and make recommendations regarding processes for selecting and nominating candidates for the Inter-American Commission on Human Rights.

As background, there are similar practices in which representatives of States, independent experts and/or civil society organizations have participated in nomination or evaluation of candidates to judicial or quasi-judicial bodies at the international level. These include the Caribbean Court of Justice, International Criminal Court, European Court of Human Rights, Court of Justice of the European Union and Court of Justice of the Economic Community of West African States.

Because these independent evaluation processes strengthen the transparency and legitimacy of selection procedures and institutions themselves, we cordially invite you to provide us with the information requested in this questionnaire. The Panel may disclose your answer to the public unless you have any objection to this.

The questionnaire covers the following areas: (I) Background and recognized expertise, (II) Conflicts of interest, impartiality and non-discrimination, (III) Nomination procedures. Finally, we would like to thank you for your time and kindly request you to provide us with any further information you consider relevant for consideration by the Panel.

I. Background and established competence

1. Why do you want to be a Commissioner?
2. What are your specific areas of knowledge and experience in the field of human rights?
3. What do you think are the greatest challenges facing the Inter-American Human Rights System and how could they affect your work? Regarding the above, one of the greatest difficulties encountered by the IACHR is the delay in processing individual petitions: How could you help to resolve this issue if you were elected?
4. Recently, the IACHR drafted its Strategic Plan. What elements do you find to be most positive or least positive?
5. Given your professional history, how would you assess your contribution to the IACHR and how would you complement its current composition?

6. Do you have knowledge or experience in working with legal systems other than that of your country?

7. Have you been an activist in civil society movements in favor of human rights?

8. What are your specific language skills?

9. Please provide us with links to your most significant papers, opinions or advocacy in the area of human rights, amicus curiae, declarations and specific votes, emphasizing those with a critical stance towards norms, administrative or court decisions and public and private institutions that you have criticized or challenged for human rights or humanitarian purposes. (Maximum 3). If you drafted a professional thesis to obtain academic degrees, please provide the title and the final conclusion you reached or its main argument.

10. a) Have you had the opportunity to apply or utilize the American Convention on Human Rights or other human rights or humanitarian treaties in your work? Please describe your experience and direct us to other documents that evidence this application.

b) Have you advocated for the adoption or implementation of treaties or other human rights or international humanitarian law instruments? Please describe your experience, making reference to specific activities carried out to disseminate, uphold or strengthen the Inter-American Human Rights System.

11. Please attach your CV.

II. Regarding conflicts of interest, impartiality and non-discrimination

12. Please indicate any possible conflict of interest that may prevent you from being independent and impartial in your work as a Commissioner.

13. During your eventual period as a Commissioner, what other positions or professional activities do you expect to be involved in?

14. Have you ever been sanctioned for professional misconduct?

15. It is expected that a Commissioner shall not, by words or conduct, manifest or appear to condone bias or prejudice, including but not limited to bias or prejudice based on age, race creed, color gender, sexual orientation, religion, national origin, disability, political opinion, marital status, socioeconomic status, criminal background, alienage or citizenship status. They are also expected to require others subject to his or her direction and control to refrain from such words or conduct.

a. Do you disagree or have difficulty with this expectation?

b. Please provide any relevant information regarding your ability to meet this expectation.

16. If you have been a public servant, have you carried out any activities in public life to demonstrate that this does not prevent you from exercising your full rights as a citizen beyond voting?

III. Nomination procedure

17. How were you chosen as a candidate of the Inter-American Commission? What nomination process was used? Was a pre-established procedure followed? Was it publicly advertised? Did civil society, academic entities and/or others play any role in it? If so, what was it?

Annex II. The Panel's Biographies

Nienke GROSSMAN (USA) is Associate Professor of Law and Deputy Director of the Center for International and Comparative Law at the University of Baltimore School of Law. Her scholarship focuses on the legitimacy of international courts and tribunals, as well as achieving gender balance in the international judiciary. Professor Grossman has presented her work at law faculties and conferences around the world, as well as at the United Nations. Prior to entering academia, she was a Research Fellow at Georgetown University Law Center, an Associate in Foley Hoag LLP's international litigation practice, and a law clerk to United States Federal District Judge Gerald Bruce Lee. She has served as a legal advisor to Latin American states in cases before the International Court of Justice and advised petitioners in cases before the Inter-American Commission on Human Rights. She is a Strategic Advisor to Gqual, a group dedicated to increasing the percentage of women on international law-making bodies. She is a graduate of Harvard College and Harvard Law School, and she has an LLM from Georgetown University Law Center.

Miguel GUTIÉRREZ (Costa Rica) graduated in Economics at the Costa Rica University (1983), has a PhD in Education with a major in pedagogical mediation issued by la Salle University (2006). He studied philosophy and theology for two years at Seminario Mayor in the Diocese of Choluteca (1966 and 1967) in Honduras. He was also granted a Fellowship by the Kellogg Institute of the University of Notre Dame. He is facilitator of the National Dialogue process for all political parties with representation in the Legislative Assembly. He was founder and director of the State of the Nation Program (1994-2014), backed by the National Provosts Council and Office of the Ombudsman. Under it he published nineteen national reports and four on the State of Education under his direction. During this period, he coordinated the Central American Regional Project in preparation of some reports on the development of countries and another four on the development of Central America. He has been an outstanding consultant researcher before diverse academic and public administration institutions.

Cecilia MEDINA (Chile) graduated from the Faculty of Law at the University of Chile (1958) and obtained her PhD in Law at Utrecht University, Holland (1988). She has taught at the University of Chile, Diego Portales University and various European and American universities. Founder and former Director of the Human Rights Center of the Faculty of Law at the University of Chile, she was appointed professor in the Robert F. Kennedy chair for distinguished Latin Americans at Harvard Law School (1997). She was a member (1995-2002) and President (1999-2001) of the United Nations Human Rights Committee and judge (2004-2007) and President (2008-2009) of the Inter-American Court of Human Rights. She participated in a five-person commission – the Independent Panel on International Criminal Court Elections - whose objective was to analyze the backgrounds of candidates applying to the International Criminal Court in light of the requirements of the Rome Statute, so that this study would serve as

background information on candidates to be elected for this Court at a later date. In 2015, she participated in the Independent Panel for the Election of Inter-American Commissioners and Judges convened by the Open Society Justice Initiative with the supported of many non-governmental organizations, universities and bar associations from all over the region. She was awarded the grade of Commander of the Order of Oranje Nassau by the Dutch Crown based on her distinguished work in human rights.

Elizabeth SALMÓN (Peru) is senior lecturer in International Law at the Pontifical Catholic University's Faculty of Law in Peru. Director of the Institute of Democracy and Human Rights (IDEHPUCP) and the Human Rights Master's Program. Doctor of International Law from Seville University, Spain. She is the author of various papers on International Public Law, International Law of Human Rights, International Criminal Law, International Humanitarian Law and Transitional Justice. She was a consultant at Peru's Ministries of Justice and Defense as well as the United Nations Commission of Truth and Reconciliation and the International Committee of the Red Cross. She is also visiting lecturer to the University for the Externado University of Colombia and a guest lecturer on the annual course of the Institut International des Droits de l'Homme (France, 2016).

Miguel SARRE (Mexico) is a tenured professor at the ITAM Department of Law. He was a member of the United Nations Subcommittee for the Prevention of Torture (2007-2014). He has a master's degree in law from the University of Notre Dame and an undergraduate degree in law from Mexico City's Free School of Law. He was an advocate for the institution of the Ombudsman institution the first to occupy the position of ombudsman in the country. He later on became Third Inspector General and Technical Secretary of the National Commission on Human Rights in Mexico. He worked on the legislation and instrumentation of state offices that support public defender's investigative tools, autonomous forensic and expert services in Federal entities, as well as the due process inside the penitentiary system and the incorporation of the adversarial system into criminal justice in Mexico. He is counsellor of the pioneer organization for families of persons deprived of their freedom, "Mothers and Sisters of the Luis Pasteur Plaza" and the Due Process of Law Foundation (DPLF).

Anexo III: Endorsing Organizations

The following organizations have diverse opinions about the candidates and the selection process that may differ from the Panel's assessments. Their endorsement is based on a commitment to the principle of fair and transparent elections.

Argentina

Asociación Civil por la Igualdad y la Justicia (ACIJ)
Justicia Colectiva Asociación Civil de Defensa del Consumidor
Poder Ciudadano, Capítulo Argentino de Transparencia Internacional
Usuarios y Consumidores Unidos (UCU)

Bolivia

Alianza libres sin violencia
Asociación "Derechos en Acción"
Asociación de mujeres JUMAMPI LURATA
Comunidad de Derechos Humanos
Conexión Fondo de Emancipación
Confraternidad Carcelaria Santa Cruz
Construyendo Redes para el Desarrollo
Coordinadora de la mujer
Católicas por el derecho a decidir
Fundación Construir
Fundación Observatorio de Derechos Humanos
Oficina Jurídica Para la Mujer
Unión Nacional de Instituciones para el Trabajo de Acción Social (UNITAS)

Brazil

Conectas Direitos Humanos

Chile

Chile Transparente

Dominican Republic

Participación Ciudadana

Ecuador

Centro de Documentación en Derechos Humanos "Segundo Montes Mozo S.J." (CSMM)
Fundación Ciudadanía y Desarrollo
Fundación Paz y Esperanza
Fundamedios

El Salvador

Fundación Democracia Transparencia Justicia (DTJ)
Fundación Nacional para el Desarrollo (FUNDE)
Fundación Salvadoreña para el Desarrollo Económico y Social (FUSADES)
Junta Ciudadana por el Derecho Humano a la Comunicación
Instituto de Derechos Humanos de la Universidad Centroamericana José Simeón Cañas (Idhuca)

Guatemala

Fundación Myrna Mack

Honduras

Casa Alianza

Equipo de Reflexión, Investigación y Comunicación de la Compañía de Jesús en Honduras (ERIC-SJ)

Mexico

Causa en común A.C

Centro de Derechos Humanos de la Montaña "Tlachinollan"

Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh)

Centro Diocesano para los Derechos Humanos Fray Juan de Larios A.C.

Ciudadanos en Apoyo a los Derechos Humanos A.C.

Comisión Mexicana de Defensa y Promoción de Derechos Humanos (CMDPDH)

Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD)

FUNDAR, Centro de Análisis e Investigación A.C.

Grupo de Información en Reproducción Elegida (GIRE)

Instituto de Justicia Procesal Penal (IJPP)

Instituto de Liderazgo Simone de Beauvoir (ILSB)

Instituto Mexicano de Derechos Humanos y Democracia A.C (IMDHD)

México Unido Contra la Delincuencia A.C.

Servicios y Asesoría para la Paz (SERAPAZ)

Nicaragua

Centro Nicaragüense de los Derechos Humanos (CENIDH)

Panama

Alianza Ciudadana Pro Justicia

Fundación para el Desarrollo de la Libertad Ciudadana, Capítulo Panameño de Transparencia Internacional

Peru

Asociación Pro Derechos Humanos (Aprodeh)

Contribuyentes por Respeto

Coordinadora Nacional de Derechos Humanos (CNDDHH)

Instituto de Defensa Legal (IDL)

PROETICA, Capítulo Peruano de Transparencia Internacional

Puerto Rico

Instituto Caribeño de Derechos Humanos (ICADH)

United States

Academy on Human Rights and Humanitarian Law, American University Washington College of Law

Center for Human Rights and Humanitarian Law, American University Washington College of Law

The Columbia Law School Human Rights Institute

Regional

Amnesty International

Centro Regional de Derechos Humanos y Justicia de Género

Center for Justice and International Law (CEJIL)

Due Process of Law Foundation (DPLF)

Washington Office on Latin America (WOLA)

Open Society Justice Initiative

Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo (PIDHDD
Regional)

Plataforma Internacional contra la Impunidad

Robert F. Kennedy Human Rights