



Final Report of the Independent Panel to evaluate candidacies to the IAHR Bodies 2023

May 31, 2023

Evaluation of the candidacies to the Inter-American
Commission on Human Rights of:

Panel Secretariat: American University Washington College of Law

AMERICAN  UNIVERSITY
WASHINGTON
COLLEGE OF LAW



Panel Independiente
para evaluar **candidaturas**
a los **órganos** del **SIDH**

**FINAL REPORT OF THE INDEPENDENT PANEL TO EVALUATE
CANDIDATES TO THE INTER-AMERICAN HUMAN RIGHTS SYSTEM (IAHRS)
BODIES**

May 31, 2023

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I. Introduction

The Independent Panel of Experts to evaluate candidates to the Bodies of the Inter-American Human Rights System (the Panel, the IAHR Panel, or the Independent Panel) presents its final report to strengthen the nomination and selection process of the Inter-American Human Rights System (IAHR). On this occasion, the Panel evaluated the nominations to the Inter-American Commission on Human Rights (IACHR, IA Commission or Commission), the only body of the IAHR with vacancies to be filled in 2023.

The candidates nominated by the States to be elected by the General Assembly of the Organization of American States (OAS) to the IA Commission for the period 2024-2027 are the following: Andrea Pochak (nominated by Argentina), Christopher Arif Bulkan (nominated by Guyana), Edgar Stuardo Ralón Orellana (nominated by Guatemala for re-election), Gloria Monique de Mees (nominated by Suriname), Lidia Casas Becerra (nominated by Chile) and Pier Paolo Pigozzi (nominated by Ecuador). The United States of America, Peru, Honduras, and Brazil withdrew their candidates: James Cavallaro, Julissa Mantilla, Joaquín Mejía, and Fábio Balestro, respectively. This will be analyzed in a specific section of this report.

The 2023 Independent Panel is composed of five internationally-recognized experts on human rights: Carlos Ayala, Mariclaire Acosta, Sergia Galván, Ariela Peralta, and Edison Lanza. Their biographies can be found in Annex A of this Report. This is the fourth consecutive process where the American University Washington College of Law (AUWCL) serves as the Secretariat of the Panel. Luis Eliud Tapia Olivares coordinated the Secretariat under the supervision of Professor Claudia Martin. The Secretariat team included Nicole Arellano, Álvaro Montenegro, and Omar Gómez Trejo.

The Panel prepared its evaluations based on the *curricula vitae* and the information submitted by the candidates; the responses that the candidates provided to the questionnaires sent to them by the Panel; the interviews conducted with each of them; and the information received from civil society, which was duly contrasted during the interviews. The Panel also accessed information from open sources and requested additional information from the IA Commission on the dissenting votes of Commissioner Ralón Orellana as part of evaluating his candidacy for reelection. The Panel also considered information submitted by the Permanent Missions to the OAS.

Section I of this report contains an executive summary. Section II describes the work methodology. Section III presents each nominee's informed, objective, and independent evaluation. Section IV includes a section on the withdrawal of nominations. Section V presents the Panel's recommendations based on international standards and from a comparative perspective with other models of international bodies, courts, and tribunals. The report presents the annexes with relevant information on the evaluation process in its final section.

The Panel hopes that its evaluation will be helpful to OAS Member States to have an objective analysis of the suitability of the persons nominated to serve on the IACHR based on the requirements established in the American Convention on Human Rights (ACHR) and the Statute of the IACHR. It also reiterates the recommendation to the States to implement practices and measures to make national nomination procedures more transparent,

participatory, and merit-based, as well as to institutionalize an independent evaluation of candidates to international bodies.

I. Executive summary

The Independent Panel to evaluate candidates to the Inter-American Human Rights System (IAHRS) bodies issues its Sixth (6th) Final Report, presenting its conclusions after evaluating the six persons nominated by the Member States of the Organization of American States (OAS) to the Inter-American Commission on Human Rights (IACHR or Commission). The persons selected by the States will serve for the period 2024-2027.

a. Background

The IAHRS Panel was established in 2015 in response to a call from civil society to strengthen transparency and participation in the nomination and election processes of Inter-American authorities. Since then, it has evaluated five (5) election periods for members of the Inter-American Court of Human Rights (IACtHR) and the IACHR, in addition to the 2023 election process. As of 2018, the American University Washington College of Law (AUWCL) has served as the Secretariat of the Panel, strengthening its independence and impartiality.

The American Convention on Human Rights (ACHR) and the Statute of the IACHR contain the criteria that candidates must meet to hold the position of Commissioner.¹ These criteria demand high moral authority, recognized competence in human rights, and other aspects related to the regime of incompatibilities.² However, these legal instruments do not regulate the national mechanisms for the nomination of candidates. Thus, the nomination processes at the national level and the subsequent election before the OAS General Assembly have lacked transparent procedures and criteria.

In light of the above, the first Independent Panel was convened in 2015 by the *Open Society Justice Initiative* (OSJI), the *Center for Justice and International Law* (CEJIL), and the *Due Process of Law Foundation* (DPLF) at the request of civil society. The Panel's objective is to review the nomination and election processes, evaluate nominees' qualifications, and recommend how to improve future nominations and elections.

The report prepared by the first Panel contributed to the OAS General Assembly subsequently instructing its Permanent Council to invite the candidates to present their vision of the IAHRS, their proposals, and initiatives in a public session before the Council. In addition, the General Assembly urged the States to “*nominate and elect persons to ensure a gender-balanced composition, with representation from the different regions, population groups and legal systems of the Hemisphere, guaranteeing that they meet the requirements of independence, impartiality and recognized competence in the field of human rights*”.³

Before the current period, the Panel had evaluated the election periods in 2017, 2018, 2019, and 2021. Parallel to the exercise of the Panels, the OAS General Assembly published resolutions reiterating the objective of achieving diverse and representative compositions and highlighting the importance that both the IACtHR and the IACHR “*be composed of*

¹ See, American Convention on Human Rights, Article 34 and IACHR Statute, Article 2.1.

² The incompatibility regime for commissioners can be found in Article 8.1 of the IACHR Statute.

³ OAS, AG/RES.2887 (XL VI-O/16), June 14, 2016. Available at: http://www.oas.org/es/sla/ddi/docs/AG-RES_2887_XLVI-O-16.pdf

impartial, independent persons of recognized competence in human rights".⁴ In June 2019, the General Assembly mandated the Committee on Juridical and Political Affairs to "*deepen its work on this issue, including in its 2019-2020 work program a follow-up session in which Member States, experts and civil society share best practices in the nomination and selection of candidates*".⁵ Likewise, General Assembly Resolution AG/doc.5790/2022 encouraged the States to consolidate "*balanced gender representation and equitable regional geographic representation and an appropriate balance of population groups, particularly those in situations of vulnerability, and legal systems of the Hemisphere, while guaranteeing the requirements of independence, impartiality, and recognized competence in the field of human rights*".⁶ The General Assembly also insisted on the responsibility of the member states to "*create conditions and promote opportunities for the nomination and/or appointment of women candidates to the IACHR and Inter-American Court of Human Rights, as well as to widely publicize available positions, with the purpose of maintaining gender parity*".⁷

The Panel's reports have progressively gained legitimacy and have continued to refine their methodology. Thus, the Panel's reports based on objective criteria have been well received by both government representatives and civil society.

The suitability of the persons nominated is essential to ensure the quality and relevance of the functioning of the IAHR bodies, the adequate development of Inter-American human rights standards, and the effective protection of persons who have suffered human rights violations and have not received a timely and effective response at their countries' domestic courts.

This year's elections are of utmost importance for the IAHR since more than half of the members of the IACHR (four out of seven) will be renewed.

b. Composition of the IAHR 2023 Panel

The IAHR 2023 Panel is composed of experts Mariclaire Acosta, Ariela Peralta, Sergia Galván, Carlos Ayala, and Edison Lanza. The Secretariat of the Panel, supported by AUWCL, was coordinated by Luis Tapia Olivares. The Secretariat team consisted of Nicole Arellano and Álvaro Montenegro, research assistants, and Omar Gómez Trejo, Visiting Scholar. AUWCL's Professor Claudia Martin supervised the Secretariat.

c. Work methodology, participation, and dissemination of activities

The IAHR Panel received a total of sixty-two (62) communications from civil society organizations, social movements, universities, and other interested members of the public, through a form provided for that purpose and through the Secretariat's e-mail. In addition, in order to evaluate the candidate who was nominated for reelection, the Secretariat of the Panel

⁴ See, OAS, AG/RES. 2908 (XLVII-O/17), June 21, 2017. Available at: https://www.oas.org/es/sedi/ddse/paginas/documentos/discapacidad/RESOLUCIONES-AG/Espanol/AG_2908_ESP.doc and AG/RES. 2928 (XLVIII-O/18), June 5, 2018. Available at: https://www.oas.org/es/sla/ddi/docs/AG-RES_2928_XLVIII-O-18.pdf

⁵ OAS, AG/RES. 2941 (XLIX-O/19), 28 June 2019. Available at: <http://www.oas.org/es/council/ag/resdec/Default.asp?q=&e=&evento=>

⁶OAS, AG/RES. 2991 (LII-O/22), October 7, 2022. Available at: https://scm.oas.org/doc_public/ENGLISH/HIST_23/AG08745E03.docx

⁷ *Id.*

requested and received from the Executive Secretariat of the IACHR the candidate's separate reasoned votes.

The Panel also held in-person and online meetings to explain the importance of evaluating the candidates nominated by the States and introduce its work methodology. The Panel met with Member States and civil society organizations and held two academic events: one with universities from the Caribbean and one with universities from Latin America.

It should be noted that the Secretariat of the Panel held an online meeting with civil society organizations for the first time in which it heard an extension of comments it received regarding one of the candidates.

The Panel, also for the first time, disseminated its activities through its social media accounts on Twitter and Instagram, issuing five (5) press releases. At the time of publication of this report, the Panel's tweets had garnered over 330,000 views and were followed by 386 accounts. The Panel disseminated on its YouTube Channel the video of the Academic Meeting in Spanish.

The Panel prepared and sent a differentiated questionnaire to the candidates depending on whether the candidate was new or nominated for reelection. All candidates completed the questionnaire. The Panel also interviewed all candidates in online meetings, which took place between the end of April and the first weeks of May. The Panel appreciates the nominees' willingness to participate in all phases of the evaluation process. The unanimous participation of the nominees reaffirms the importance and recognition that this independent exercise has earned over successive of this evaluation process.

d. Selection and evaluation criteria

The Panel reiterates and consolidates the selection criteria it constructed from its first independent evaluation exercise. Each of the criteria is outlined below.

i. High moral authority

Under this criterion, the Panel reviewed:

- The record of sanctions, misconduct, or complaints in professional practice, which may affect the ethics of the candidate's functions;
- Special mentions, recognitions, distinctions, or awards, which accredit the candidate's high moral authority.

In cases where there is information linking a candidate to unethical practices, the Panel evaluates the sources of information, analyzes whether the allegations are serious and substantiated, and then issues a conclusion.

ii. Recognized competence in human rights

The recognized competence implies that the candidate has demonstrated knowledge and experience in:

- Human rights issues;

- Management of the main standards of the IAHRs;
- Understanding of internal procedures and relations of the IAHRs with external actors and other operational dynamics.

The Panel evaluated the candidate's record of professional achievements, the record of academic publications, and/or substantial experience working or litigating before the IAHRs. It also considered the candidate's knowledge of the main challenges faced by the IAHRs, as well as his or her commitment to the object and purpose of the ACHR, and the mandate of the IACHR.

iii. Independence, impartiality, and absence of conflicts of interest

The Panel evaluated the candidate's independence and impartiality, not only in terms of his or her duty to avoid bias and being influenced by other actors but also to avoid the appearance of a lack of independence in the eyes of a reasonable observer. For example, in order to protect the independence and impartiality of the IACHR and prevent conflicts of interest from arising, the nomination of candidates employed by the executive branch agencies should be avoided.

In addition, the position in the IACHR is incompatible with the exercise of activities that prevent the candidate from fulfilling his/her duties or affect his/her independence, impartiality, dignity, or prestige.

iv. Contribution to the balanced and representative integration of the organization

The Panel took into account the OAS resolutions that have consistently highlighted the commitment of the Member States to seek balanced integration of the IAHRs bodies in terms of gender and representation of the different geographic regions, population groups, and legal systems of the hemisphere.

v. National nomination processes

For the Panel, developing national nomination processes that are transparent, participatory, based on merit and the candidates' competencies contributes to guaranteeing the independence, impartiality, and suitability of the future members of the IACHR.

The Panel consulted the nominees about the national nomination process by which they were chosen and their position on the matter. It also consulted the Member States that nominated candidates.

Finally, with respect to the Commissioner nominated for re-election, the Panel also evaluated his performance in his first term in office.

e. Evaluation of candidates

Based on all the information gathered, the Panel carefully evaluated each candidate and concluded the following:

i. Andrea Pochak, nominated by Argentina

The Panel concludes that the candidate Andrea Pochak meets the evaluation criteria contained in the Inter-American instruments to be elected as Commissioner.

The Panel considers that she has a solid professional background in international human rights law, demonstrated knowledge of the challenges faced by the Inter-American System, and has the experience to generate channels of communication between the IACHR, civil society organizations, victims, and States.

The candidate is a qualified jurist and would also contribute to gender parity in the composition of the IACHR.

The Panel took note that at the time of her nomination and during part of the campaign for her candidacy, she served as Undersecretary of Protection and International Human Rights Liaison of the Human Rights Secretary of the National Ministry of Justice and Human Rights of Argentina and represented the State before the IACHR. The Panel considers that the situation described above is a negative precedent that could compromise her independence and impartiality and could raise reasonable doubts about her impartiality and possible conflicts of interest. However, it should be noted that the candidate stated in her interview with the Panel that she would resign from the position in May, as indeed she did.

ii. Christopher Arif Bulkan, nominated by Guyana

The Panel concludes that the candidate Christopher Arif Bulkan meets the evaluation criteria contained in the Inter-American instruments to be elected as Commissioner.

The candidate meets the criterion of high moral authority. Although he has not carried out his professional activities within the IAHR, he has a solid and outstanding experience in the field of international human rights law as an academic, judge, and member of the UN Human Rights Committee. He demonstrated knowledge of the current challenges facing the IAHR and the problems afflicting the region, and offered some proposals to address them.

The Panel considers that the candidate's previous experience in the Human Rights Committee would allow him to adapt to the work of the IACHR in a capable manner.

The Panel did not identify any impediment that would affect the candidate's independence or impartiality, and that would disqualify him from being elected Commissioner.

iii. Edgar Stuardo Ralón Orellana, nominated for reelection by Guatemala

The Panel concludes that the candidate Edgar Stuardo Ralón Orellana meets some of the evaluation criteria contained in the Inter-American instruments to be elected as Commissioner. The candidate Ralón Orellana has experience within the IAHR having served as a Commissioner during the current period; and is the only candidate presented by a Central American country.

In addition, the candidate is knowledgeable about the challenges of the IAHR, its strategic plan, and the areas of work that require improvement. With regard to moral authority, the Panel did not identify any trade union, academic or professional sanctions against the candidate, but took note of the observations made by civil society representatives on some of his activities and public interventions, which are discussed in this report.

The Panel recognizes that candidate Ralón Orellana possesses the legal knowledge of the continental law of his country of origin and comparative law, to which he adds his experience

as Commissioner. However, upon reviewing his reasoned separate votes and those known during the evaluation process, the Panel is not convinced that candidate Ralón Orellana meets the requirement of recognized expertise in the human rights standards of the IAHR.

The Panel identified some inconsistencies between the legal positions taken by Commissioner Ralón Orellana in the separate opinions before the IACHR and the positions he maintained before the Panel. The positions reflected in the Commissioner's reasoned separate opinions, analyzed in this report, denote a regression with respect to the minimum standards of protection of rights of the IAHR, especially those relating to the rights of indigenous peoples, non-discrimination on the basis of race or sexual orientation, and same sex marriage. The Panel also analyzed in depth his dissenting vote in the Case of *Beatriz v. El Salvador*, where he departs from the majority of the Commissioners regarding the right to terminate a pregnancy when there is a risk to the mother's life.

The Panel's attention was drawn to the consequences that may arise from Commissioner Ralón Orellana's particular interpretation of the "fourth instance formula." In this regard, he presented an argument with serious implications that could lead to exempt States from international responsibility in cases of human rights violations that materialize through judicial decisions and where the IACHR has played an important role in recognizing grievances of internationally recognized groups.

On the other hand, Commissioner Ralón Orellana's statements in his country, contrary to Inter-American human rights standards and in matters that have reached or may reach the IACHR, affect his independence and may evidence a conflict of interest in the eyes of a reasonable observer.

iv. Gloria Monique de Mees, nominated by Suriname

The Panel concludes that the candidate Gloria Monique de Mees meets some of the evaluation criteria contained in the Inter-American instruments to be elected as Commissioner.

The candidate has experience as an academic in various fields related to treaty law, diplomacy, and human rights, and meets the requirement of high moral authority. While the Panel considers her academic dedication to human rights, treaty law, and diplomacy to be positive, as well as her potential to contribute to gender parity and geographic representation at the IACHR, it is not convinced that she has specialized knowledge in Inter-American and international human rights standards. Therefore, the Panel concludes that the candidate does not meet the requirement of recognized expertise in human rights.

In addition, the Panel took note that during her nomination and campaign for her candidacy, the candidate was part of the State's agency before the IAHR. The Panel considers that the situation described above is a negative precedent that could compromise her independence and impartiality and could raise reasonable doubts about possible conflicts of interest. The candidate stated that if elected to the IACHR she would resign from that position.

v. Lidia Casas Becerra, nominated by Chile

The Panel concludes that the candidate Lidia Casas Becerra meets the evaluation criteria contained in the Inter-American instruments to be elected as Commissioner.

She has extensive experience working in the field of human rights, especially in relation to the IAHRs. The candidate is knowledgeable about the main challenges facing the IAHRs, and identified the problems and challenges facing the region including CARICOM countries. The candidate also met the requirement of high moral authority.

The Panel did not identify any impediment that would affect the candidate's independence or impartiality to be elected as Commissioner. In addition, the candidate is a qualified jurist, which would contribute to parity at the IACHR.

vi. Pier Paolo Pigozzi, nominated by Ecuador

The Panel concludes that the candidate Pier Paolo Pigozzi meets some of the evaluation criteria contained in the Inter-American instruments to be elected as Commissioner. The candidate meets the requirements of moral authority, independence, and absence of conflicts of interest.

In relation to the requirement of recognized expertise in human rights, although the candidate has knowledge and postgraduate studies in the field and has significant and recognized academic experience, he maintains positions that denote regression in relation to consolidated international standards for the protection of human rights, relying on what he calls a "criterion of textual interpretation of the Inter-American instruments" and his interpretation of the doctrine of "margin of appreciation" and "legal pluralism." In this regard, while the candidate indicated that he is sensitive to the realities of the Hemisphere, the Panel identified clear inconsistencies between his previous public positions and answers given in his interview. In particular, there were inconsistencies with respect to the authoritative interpretation of the Inter-American instruments by IAHRs bodies versus his version of the "margin of appreciation," same sex marriage and the right of same-sex couples to adopt, sexual and reproductive rights, and the use of criminal law to resolve conflicts between freedom of expression and the honor of individuals or public officials.

f. Withdrawal of candidates

In this nomination process, the Member States withdrew four nominations, without offering a public explanation of the reasons, except in the case of the Government of the United States of America.⁸

The Panel notes that these events have not occurred on this scale before. The Panel issued a press release expressing its concern regarding the unmotivated withdrawal of candidacies and its impact on the transparency of the process.

The Panel considers that national selection processes should lead to the nomination in a transparent manner of suitable persons with a previous record consistent with human rights values that guarantee the criteria established in the ACHR. Once nominations have been announced, States should not withdraw them without sufficient reason to justify it; otherwise, they may affect the transparency, participation, and credibility of the election process.

⁸ Press release, *U.S. Department of State Response to February 22 Open Letter from Human Rights Activists*, March 3, 2023. Available at: <https://usoas.usmission.gov/u-s-department-of-state-response-to-february-22-open-letter-from-human-rights-activists/>

In addition, the reduction in the number of candidates implies a decreased possibility of achieving an open, pluralistic, and competitive process, which is conducive for States to vote based on the merit and suitability of the various candidates. States should be guided by the criteria contained in the Inter-American instruments, both for nominating and withdrawing candidates.

g. Reasoned votes and transparency

In evaluating Commissioner Ralón's tenure at the IACHR, as he was nominated by Guatemala for reelection, the Panel noted that some of the Commissioner's separate reasoned votes were not incorporated into the IACHR's published decisions. Therefore, the Panel requested the Commissioner's votes from the IACHR Executive Secretariat. In this regard, the Panel considers that the content of Resolution 2/22 Reasoned Vote regarding the publicity of reasoned votes limits access to information and public scrutiny of the decisions of the plenary of the IACHR.

In the Panel's opinion, the practice of not incorporating separate reasoned opinions is incompatible with the consolidated standards in international law regarding transparency and access to information. Therefore, it encourages the IACHR to publish the reasoned opinions according to what is established in its Rules of Procedure. In turn, the Panel makes public the opinions it received from the IACHR that were not generally accessible.

- Reasoned vote Report on Trans and Gender Diverse People and their economic, social, cultural, and environmental rights.
- Reasoned vote IACHR Annual Report 2022. Chapter IV.B - Cuba.

h. Recommendations

As in its previous reports, the Panel made recommendations addressed to the States with the objective of bringing national nomination processes and the selection process at the OAS into line with international standards. The Panel drew on the experiences of other comparable bodies, such as the International Criminal Court (ICC) and the European Court of Human Rights (ECHR). The selection processes could be substantially improved, for example, by the creation of an independent "advisory committee" capable of providing competent, fair, and independent evaluations of nominees, such as those that exist to oversee the selection processes at the ECHR and the ICC. This and other recommendations can be found in this Panel's previous reports from 2015, 2017, 2018, 2019 and 2021; in the report "Strengthening from Within"⁹ produced by the International Commission of Jurists and *Open Society Justice Initiative*; and in the report "Dialogues for Transparency. The Nomination and Election Systems for Commissioners and Judges to the Inter-American Court and Commission on Human Rights and the Experience of the Panels of Independent Experts,"¹⁰ prepared by the American University Washington College of Law.

⁹ Open Society Justice Initiative and International Commission of Jurists, *Strengthening from Within: Legal Framework and Practice in the Selection of Human Rights Judges and Commissioners*, 2017. Available at <https://www.opensocietyfoundations.org/sites/default/files/fortaleciendo-dentro.pdf>;

¹⁰ American University, WCL, *Dialogues for Transparency, The Nomination and Election processes for Commissioners and Judges to the Inter-American Court and Commission on Human Rights and the*

The Panel issues the following recommendations to the OAS Member States regarding the nomination and selection processes for members of the IAHR bodies.

i. Recommendations for national nomination processes:

- i) Each State should have a formal, diverse, and independent body to select nominations.
- ii) States should publicize a call for nominations, explaining the criteria and process for nominating and electing candidates.
- iii) Applicants should present evidence of compliance with the criteria set forth in the ACHR and the Statute of the IACHR.
- iv) Applicants should be asked to provide information on the activities they plan to carry out simultaneously with their work as Commissioners.
- v) A broad range of language skills and bilingualism would be desirable.
- vi) Interviews should be an essential part of the selection process.
- vii) States should nominate at least two candidates for each election, at least one of whom shall be a woman.
- viii) States should seek to nominate individuals who, in addition to meeting the conditions of recognized competence in human rights and independence and impartiality, contribute to a diverse and representative composition of the body.
- ix) The Panel encourages the OAS General Assembly to create a framework law containing minimum criteria for Member States to select and nominate candidates to the IAHR bodies.

ii. Recommendations for the selection process in the OAS

- i) The OAS should establish a Consultative Committee without State representation, responsible for ensuring the suitability of persons nominated to be IACHR Commissioners or IACtHR judges.
- ii) The Advisory Committee's terms of reference would include evaluating and assessing nominees with respect to their suitability for their term as Commissioner or Judge.
- iii) The OAS should publish and widely disseminate the names and *curricula vitae* of the candidates well in advance.
- iv) The Panel affirms the value of the continued use of an interview process before the Permanent Council as an integral part of the Committee's work.

experience of the Independent Expert Panels. Available at: <https://www.wcl.american.edu/impact/initiatives-programs/center/publications/documents/dialogos-por-la-transparencia-2020/>

- v) The Panel recommends that the Consultative Committee make a final written report to the OAS regarding the evaluation of the applicants and that the States consider this report when casting their votes.
- vi) The Panel encourages that the election process considers both the need for diversity on the basis of gender, ethnicity, sexual orientation, disability status, professional specialty, gender identity, or other considerations, as well as the need for balanced integration in the Commission and the Court, based on the individual's professional background.

iii. Recommendations to the IACHR

- i) The Panel encourages the IACHR to publish all separate reasoned or dissenting votes of the Commissioners as an exercise of transparency and guarantee access to public information.

II. Work methodology

Once the Panel was constituted on February 14, 2023, it held its first meetings to define its work methodology. In this context, it decided that the process of preparing the report and evaluating the nominations would be guided by criteria of publicity, transparency, and participation. The Panel established both general and specific channels of communication with the nominees, the permanent State Missions to the OAS, civil society, academia, and interested institutions and groups. When the Panel received negative information about a candidate, it contrasted it to information gathered during the interview with the given nominee.

The Panel held regular weekly meetings during the process of receiving inputs and conducting interviews¹¹. Once the process concluded and the questionnaires were received, the candidates were interviewed, and the information provided was analyzed. The Panel then held continuous sessions to process and analyze all the information received. The results of this process are reflected in this report. All the Panel's decisions were adopted by consensus.

a. Dissemination of the Panel's advocacy activities

Once the Panel was installed, the first action was to issue a press release to communicate its mission and membership. Likewise, the Panel communicated its actions through social media accounts managed by the Secretariat. Upon completion of this report, the Panel will present it at a private event – exclusively for the Permanent Missions of the States to the OAS – and at a public event.

i. Communication

In addition to press releases, for the first time, the Independent Panel ventured into social media with accounts on Twitter and Instagram to publicize the events that occurred during the nomination process. At the time of writing this report, the Panel had 386 followers on Twitter and 85 on Instagram. Both social media accounts were used to publish information about the nominations, the withdrawal of candidacies, the requirements for each candidate, and images of the interviews held with each candidate. Likewise, through these accounts, the Panel published communications regarding parts of the process that required the public's attention.

A total of 6 press releases were issued:

1. February 16: "Independent panel of experts will evaluate applicants to the Inter-American Commission on Human Rights."

¹¹ The Panel met in person on February 13 and 14, 2023. Subsequently, it held weekly meetings in which it discussed and approved its work methodology, including review of evaluation criteria, preparation of the questionnaires sent to the candidates, drafting of communications sent to the Permanent Missions, planning of advocacy and communication strategies, preparation of press releases, review of information provided by different sources, interview preparation, and candidate evaluations, among others.

2. March 8: “On International Women’s Day, the IAHRIS Independent Panel calls on States to observe gender parity in the nomination and selection of Commissioners to the IACHR.”
3. March 27: “The list of candidates for the IAHRIS Plenary is now complete.”
4. March 28: “IAHRIS Panel invites information on candidacies to the IACHR.”
5. April 7: The Panel extended the deadline until April 21 to receive information from each applicant.
6. April 30: “The IAHRIS Panel expresses concern about the unwarranted withdrawal of candidacies to the IACHR.”

The Panel’s pronouncements generated various news in different countries of the Hemisphere. The issue that generated the most press coverage was the statement in which the Panel expressed concern regarding the withdrawal of four candidates. Professor Carlos Ayala participated in an interview on May 2, 2023, with the radio station Emisoras Unidas de Guatemala, where he announced the Panel’s motivation for making the statement and its concern for the possible exchange of votes that could have been taking place. Professor Ayala spoke about the necessary criteria that each Commissioner must meet, as well as the importance of the IACHR. He also gave some examples of relevant cases and highlighted the importance of the current election process to the audience.

The tweet with the most significant impact was published on April 30, 2023, and was titled: “The IAHRIS Panel expresses concern regarding the unwarranted withdrawal of candidacies to the IACHR,” with 98 thousand views, 152 retweets, and 190 likes.

The following are some of the press releases related to the selection process of IACHR Commissioners in which the Panel was mentioned:

- Accent. February 18, 2023. Independent panel will evaluate candidates for the Inter-American Commission on Human Rights.
- Community Press. March 15, 2023. OAS to elect four IACHR Commissioners; Giammattei nominates Stuardo Ralón for re-election.
- Let’s talk. March 22, 2023. Academic meeting with the Independent IAHRIS Panel.
- elPeriódico. March 27, 2023. Independent Panel will evaluate candidacies to integrate the IACHR plenary.
- Community Press. May 1, 2023. Withdrawal of four candidacies to the IACHR generates concern.
- The Republic. May 2, 2023. IACHR: Government’s decision to withdraw Julissa Mantilla’s candidacy was criticized.
- Infobae. May 3, 2023. IACHR: Panel of experts expressed concern over the withdrawal of Julissa Mantilla as a candidate for Peru.

- Criteria. May 8, 2023. Withdrawal of candidacies to the IACHR by Honduras, Brazil, and Peru cause concerns about the integrity of the process.

ii. Meeting with Permanent Missions of States to the OAS

On February 14, 2023, the Panel organized a face-to-face meeting with Permanent Representatives of the States to the OAS. The meeting was held at the headquarters of the Permanent Mission of Colombia to the OAS. The meeting was attended by Panel members and representatives of 14 Missions.

At the meeting, the Panel presented its current membership, background, and work methodology. It also mentioned past recommendations to the OAS Member States and the OAS in general. The States welcomed the work of the IAHR Panel and stressed the importance of the support provided by the AUWCL. They also proposed the development of a framework, or “model law,” that States could adopt to nominate and select candidates to IAHR bodies.

Finally, at that meeting, the Missions of Guatemala and Peru announced they would present candidates from their respective countries.

iii. Meetings with civil society

On February 13, 2023, the Panel met with members of civil society. At this meeting, the Panel received comments related to the process of evaluating nominations to IAHR bodies. Individuals from various civil society organizations stressed the importance of widely disseminating the Panel’s activities to all stakeholders to have an impact on the candidates’ selection process.

iv. Events with universities

The Panel held two online academic meetings to disseminate the importance of monitoring the internal nomination and selection processes of candidates for IAHR bodies. Specifically, the events addressed the challenges presented by these processes in the IACHR.

The first academic meeting with the Panel took place on Wednesday, March 22, 2023. It was convened by AUWCL, the Observatory of the Inter-American Human Rights System of the Institute of Legal Research of the National Autonomous University of Mexico (OSIDH), the Human Rights Center of the University of Buenos Aires (CDH), the Institute of Democracy and Human Rights of the Pontifical Catholic University of Peru (IDEHPUCP) and the College of Jurisprudence of the University San Francisco de Quito (USFQ). More than 70 people attended the event. The video of the meeting is available [online](#).

The second academic meeting was held on April 14, 2023. It was convened by AUWCL, the Faculties of Law of the Trinidad and Tobago and Barbados Campuses of the University of the West Indies, and the Anton de Kom University of Suriname. About 30 people attended the event.

b. Panel Independence

The members of the Panel have acted independently from civil society organizations, States, and other entities. Panel members have not received any financial contribution for their work.

Further, they do not have dependent relationships with the convening organizations or their respective State of nationality.

The Panel designed its work methodology and agreed on the evaluation criteria autonomously and based on the ACHR, the Statute and Rules of Procedure of the IACHR, relevant OAS resolutions,¹² and international standards established by the most important instruments on judicial independence and conduct described in this section, under the heading “Evaluation Criteria.” In addition, the Panel developed transparent, participatory, and autonomous procedures and established communication channels for receiving information from civil society, academic institutions, and States. As Secretariat, AUWCL contributed to the Panel’s work and safeguarded its independence.

c. Evaluation criteria

The evaluation of candidates is divided into five pillars:

- High moral authority
- Recognized expertise in human rights
- Independence, impartiality, and absence of conflicts of interest
- Contribution to the representative and balanced integration of the organization
- National nomination processes

The Panel’s evaluation maintains the criteria used by previous panels, which emanate from the ACHR, the statutes and regulations of the IA Commission and the Inter-American Court of Human Rights (IACtHR), and relevant OAS resolutions.

According to Article 34 of the ACHR, 2.1 of the IACHR Statute, and 1.3 of the IACHR Rules of Procedure, the criteria for a person to be elected as Commissioner are high moral authority and recognized expertise in the field of human rights.

In addition to these criteria, the Panel has considered international standards on judicial independence and conduct that provide valuable guidelines for appointing members to quasi-judicial bodies such as the IACHR. Among the instruments that guide the Panel’s work are the *2002 Bangalore Principles of Judicial Conduct*, which establish standards for ethical conduct. The standards are grouped into six core values of judicial conduct that can be applied to the work of Commissioners since they hear individual petitions and engage in other quasi-judicial work.

¹² See, AG/RES. 2120 (XXXV-O/05) of June 7, 2005, available at <http://www.oas.org/en/sla/docs/ag02863e06.pdf>; AG/RES. 2166 (XXXVI-O/06) of June 6, 2006, available at <http://www.oas.org/en/sla/docs/ag03341e09.pdf>; AG/RES. 2887 (XLVI-O/16) of June 14, 2016, available at https://www.oas.org/en/sla/dil/docs/AG-RES_2887_XLVI-O-16.pdf; AG/RES. 2908 (XLVII-O/17) of June 21, 2017, available at http://www.oas.org/en/sla/dil/docs/AG-RES_2908_XLVII-O-17.pdf; AG/RES. 2928 (XLVIII-O/18), June 5, 2018, available at https://www.oas.org/en/sla/dil/docs/AG-RES_2928_XLVIII-O-18.pdf; AG/RES. 2941 (XLIX-O/19) of June 28, 2019, available at <https://www.oas.org/en/council/ag/resdec/>; and AG/RES. 2991 (LII-O/22), of October 7, 2022, available at <https://www.oas.org/en/council/ag/resdec/>

The Panel has also used the *Guidelines on the Independence and Impartiality of Members of the Human Rights Treaty Bodies (the Addis Ababa Guidelines)*, which apply to expert staff of the UN human rights treaty bodies.

The Panel also analyzed the potential contribution of nominees to the composition of IAHR bodies, given that it reaffirms the importance of promoting diverse, pluralistic, and representative membership in following with the continuous recommendations of the OAS General Assembly to the Member States. Finally, the Panel has examined national nomination processes according to transparency and participation standards.

i. High moral authority

Concerning high moral authority, the Bangalore Principles elaborate on the values of integrity and propriety. Acting with integrity means ensuring that one's own conduct is above reproach under the judgment of a reasonable observer.¹³ The Principles link this value to public trust and the importance of fair decision-making through transparent processes.¹⁴ In this regard, impropriety and the appearance of impropriety should always be avoided.¹⁵ Following these parameters, the Panel not only examines outstanding aspects of the nominees trajectory (for example, if they have received special mentions, distinctions, or awards), but also, whether they have sanctions, faults, and complaints regarding their professional lives.

ii. Recognized human rights expertise

The requirement of recognized expertise in human rights implies having both knowledge and demonstrated experience in the field of human rights. Knowledge of the various Inter-American human rights instruments and the main standards emanating from IAHR bodies, as well as understanding internal procedures, relationships of the IAHR with external actors, and its functioning dynamics, are some criteria used by the Panel to evaluate this point. The Panel followed the criteria developed by previous panels, which considered essential for the position candidates' knowledge and experience regarding Inter-American human rights instruments and the IAHR, assessed through their professional achievements, academic publications, and experience working or litigating in the System. In addition, the Panel analyzed candidates' awareness on the main challenges facing the IAHR, as well as their proposals and priorities regarding those challenges. The Panel also assessed candidates' commitment to the object and purpose of the ACHR, specifically to the mandate of IAHR bodies.

Members of the IA Commission must also be able to comply with their duties, which 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; 3. To maintain absolute secrecy about all matters which the Commission deems confidential; 4. To conduct themselves in their public and private life as

¹³ Bangalore Principles, Value 3, para. 3.1.

¹⁴ *Id.*, Value 3, para. 3.2.

¹⁵ *Id.*, Value 4, para. 4.1.

befits the high moral authority of the office and the importance of the mission entrusted to the Commission.”¹⁶

The capacity to fulfill these duties has been analyzed according to the notion of diligence – the capacity of a candidate to carry out their responsibilities notwithstanding other obligations and commitments. The Bangalore Principles include competence and diligence as criteria.¹⁷

The Panel reiterates the relevance of observing and valuing complementary qualities, such as a candidate’s ability to work as part of a collegial body; the ability to work in more than one of the official languages of the IAHR; knowledge of the various legal systems that exist in the region; and broad exposure to and understanding of the political, social, and cultural environment of the region and its subregions, as other criteria to consider as part of the overall assessment.

Regarding the individuals running for re-election as Commissioners, the Panel also evaluated their performance and achievements during their first term in office.

iii. Independence, impartiality and absence of conflicts of interest

Commissioners are elected in their personal capacity by the OAS General Assembly¹⁸ and, as a consequence, must be independent and impartial in the exercise of their office. Both Article 8.1 of the Statute and Article 4.1 of the Rules of Procedure of the IACHR establish 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.”¹⁹ Article 4.1 of the Rules of Procedure of the IACHR adds that “[u]pon taking office, members shall undertake not to represent victims or their relatives, or States, in precautionary measures, petitions and individual cases before the IACHR for a period of two years, counted from the date of the end of their term as members of the Commission.”

The Bangalore Principles provide that being independent implies being “free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.”²⁰ Independence implies not only being free from inappropriate connections or pressures “but must also appear to a reasonable observer to be free therefrom.”²¹ To be impartial, on the other hand, is to perform one’s duties “without favoritism, bias, or prejudice” and has to do not only with decisions themselves but also with the process by which they are made.²²

The Addis Ababa Guidelines indicate that both conflicts of interest and non-compliance with the requirements of independence and suitability may result from “many factors, such as a member’s nationality, place of residence, current and past employment, membership of or

¹⁶ Article 9, Statute of the IACHR.

¹⁷ Bangalore Principles, Value 6.

¹⁸ Statute of the IACHR, Article 3, paragraph 1.

¹⁹ See, Articles 8.1. of the Statute of the IACHR and 4.1. of its Rules of Procedure.

²⁰ Bangalore Principles, Value 1, para. 1.1.

²¹ Bangalore Principles, Value 1, para. 1.3 and Addis Ababa Guidelines para.2.

²² Bangalore Principles, Value 2, para. 2.2.

affiliation with an organization, or family and social relations.”²³ These Guidelines add that independence and impartiality are compromised “by the political nature of their affiliation with the executive branch of the State.”²⁴ Accordingly, members of international bodies should refrain from performing any “functions or activities which are, or are seen by a reasonable observer to be, incompatible with the obligations and responsibilities of independent experts under the relevant treaties.”²⁵ Similarly, assuming decision-making positions in civil society organizations, academic institutions, private companies or entities, and State-related organizations may also give rise to conflicts of interest.²⁶

To assess the independence and impartiality of nominees, the Panel analyzed their responses to the questionnaire and during the interview and supplemented and compared it to information provided by civil society and reliable information available online.

iv. Contribution to the balanced and representative integration of the organization.

The contribution of candidates to the balanced composition of the organization in terms of gender, geographic representation, population groups, and legal systems is a criterion that has been established and maintained by OAS General Assembly resolutions in recent years.²⁷

Since 2015, the Panel noted that it would consider whether the nominated candidate would contribute to a balance composition of the Commission in regards to their area of expertise, gender, and other forms of diversity. Likewise, the 2017 and 2018 Panels referred to the OAS General Assembly resolution regarding the need to promote “balance in terms of gender, representation of the different regions, population groups, and legal systems of the Hemisphere” within the bodies of the IAHRs.²⁸ In 2018 and 2019, the OAS General Assembly approved new resolutions along the same lines.²⁹ In October 2020, the OAS General Assembly issued a resolution on “Promotion and Protection of Human Rights,”³⁰ by which it resolved “[t]o urge member states, when selecting and nominating judges for the Inter-American Court of Human Rights, to strive for parity in the composition of the Court by ensuring that more female candidates are nominated, and also to consolidate regional geographic representation and an appropriate balance of the legal systems of the Hemisphere, while guaranteeing that the requirements of independence, impartiality, and recognized competence in the field of human rights are met.”³¹ Likewise, in 2022 the OAS General Assembly encouraged States “to consolidate balanced gender representation and equitable regional geographic representation and an appropriate balance of population groups, particularly those in situations of vulnerability, and legal systems of the Hemisphere, while

²³ Addis Ababa Guidelines para. 3.

²⁴ *Id.*, para. 12.

²⁵ *Id.*, para. 12.

²⁶ *Id.*, para. 14.

²⁷ See AG/RES. 2120 (XXXV-O/05) of June 7, 2005, *supra*; AG/RES. 2166 (XXXVI-O/06) of June 6, 2006, *supra*; AG/RES. 2887 (XLVI-O/16) of June 14, 2016, *supra*; AG/RES. 2908 (XLVII-O/17) of June 21, 2017, *supra*; AG/RES. 2928 (XLVIII-O/18), June 5, 2018, *supra*; 2941 (XLIX-O/19) of June 28, 2019, *supra*, and AG/RES. 2921 (LII-O/22), *supra*.

²⁸ AG/RES.2887 (XL VI-O/16), of June 14, 2016, *supra*.

²⁹ AG/RES. 2928 (XLVIII-O/18), of June 5, 2018, *supra*; and AG/RES. 2941 (XLIX-O/19), of June 28, 2019, *supra*.

³⁰ AG/RES. 2961 (L-O/20), of October 21, 2020, available at: <http://www.oas.org/es/50ag/>

³¹ *Id.*

guaranteeing the requirements of independence, impartiality, and recognized competence in the field of human rights.”³² The General Assembly also insisted on the responsibility of Member States “to create conditions and promote opportunities for the nomination and/or appointment of women candidates to the IACHR and Inter-American Court of Human Rights, as well as to widely publicize available positions, with the purpose of maintaining gender parity...”³³

The progress made concerning gender parity within the Inter-American human rights bodies is extremely important, considering the structural discrimination that exists against women in the region. These resolutions sustained over time allow the Panel to affirm that the balanced and representative integration of the Commission is a key criterion for its composition, which must be taken into account by the States at the time of elections.

The aforementioned resolutions clearly show the States’ commitment for IAHR bodies to reflect the diversity of the region in a representative manner.

v. National Nomination Processes

The Panel maintains that developing transparent, participatory, and independent national nomination processes, based on the merits and competencies of the candidates contributes to guaranteeing the independence, impartiality, and suitability of future members of IAHR bodies. This, in turn, democratizes the power of States over the selection processes by allowing the participation of civil society, academia, and other interested actors.³⁴ Although this does not prevent the existence of reciprocal political agreements (i.e., vote exchanges),³⁵ which the past panels have strongly opposed, it promotes the nomination of candidates with greater guarantees of independence, impartiality, knowledge, and experience.

In this regard, the Panel notes that affirmation of and compliance with the principles of competence, independence, and impartiality in the IAHR are intimately related to the process of electing the appropriate members to its organs. After the nomination of candidates at the national level, the election process at the OAS General Assembly is the second and final stage where these values can be firmly and resolutely endorsed.

For this reason, the Panel is concerned about the withdrawal of candidates by some States without an explanation of the reasons for doing so. The following section develops the arguments in this regard, which were initially addressed by the Panel in a press release.

The Panel notes that, despite the withdrawal of some nominations, parity was maintained among the pool of candidates, and two CARICOM nominations were presented. However, diversity and representativeness in the composition of IAHR bodies still present challenges. Efforts must be made to include persons belonging to all historically disadvantaged groups.

³²AG/RES. 2991 (LII-O/22), of October 7, 2022, *supra*.

³³ *Id.*

³⁴ See, in this regard, Judith Schönsteiner, *Alternative appointment procedures for the commissioners and judges in the Inter-American System of Human Rights*, in *Revista IIDH*, p. 203. Available at: <http://www.corteidh.or.cr/tablas/R22023.pdf> [internal citations omitted].

³⁵ See Panel Report 2015, *supra*, p. 37; Panel Report 2018, *supra*, p. 34; and Panel Report 2019, *supra*, p.15.

d. Sources of information

The Panel mainly considered the *curricula vitae* of the candidates, their responses to the questionnaires sent to them by the Panel, their written statements (i.e., academic publications, presentations in forums, provisions or decisions issued as officials, *blogs*, and social media accounts) and the interviews held with them. In addition, it considered substantiated information sent in a timely manner by organizations and other stakeholders through the form indicated above. Likewise, when it was necessary to complement or cross-check the information received, the Panel consulted reliable information available on public sites and in the media. The Panel did not rely on information received that could not be corroborated in public media and cross-checked. All sources used are duly cited in footnotes.

i. Participation of candidates

On Friday, March 24, 2023, the Panel sent a questionnaire to all candidates (see Annex B) that was key in the evaluation process. At that time, there were 9 candidates. The Panel even received a completed questionnaire from the candidate (for re-election) Julissa Mantilla, who was withdrawn by the Peruvian State on April 28, 2023 – more than a month after the deadline for OAS States to submit nominations to the IACHR.

After each candidate responded to the questionnaire, he/she was invited by the Secretariat to participate in a virtual interview with the Panel. The interviews were conducted only with the participation of the interviewees and Panel members (and the Secretariat).

All candidates completed the questionnaires and participated in an interview with the Panel, in which they responded to follow-up and clarifying questions, and were given the opportunity to respond to society's concerns when they arose. At the end of each interview, the Panel offered the candidates an opportunity to express any additional thoughts they wished. All interviews involved several Panel members (at least two) and one person from the Secretariat. The interviews were recorded (with the permission of the interviewees) and shared with the panelists who did not participate in them. The recordings were deleted at the end of the evaluation process according to a commitment made by the Panel to the interviewees to do so.

The Panel reiterates that all candidates were willing and available to participate in the evaluation process. This unanimous participation reaffirms the recognition that the Panel has earned over the years.

ii. Participation of the Permanent Missions to the OAS

On February 6, 2023, a communication was sent (via email) to all Permanent Missions to the OAS, inviting them to a face-to-face meeting to discuss the challenges related to the IACHR membership nomination process. The meeting was held on February 14, 2023, with the presence of 22 representatives from 14 Missions. During the evaluation process, the Secretariat of the Panel maintained contact with the Missions to keep them informed of the process.

The Secretariat of the Panel sent a communication to the Missions that nominated candidates to the IACHR requesting information related to their respective internal selection processes, as part of the Panel's evaluation.

At the end of the interview process with the candidates, the Secretariat invited the Missions to participate in a private meeting with the Panel in order to provide them with the Final Report before its public release. The meeting was scheduled for May 31, 2023.

iii. Participation of civil society, academia and interested public

On March 28, 2023, the Secretariat of the Panel made available a form in Spanish, English and Portuguese (since Brazil had initially nominated a candidate to the IACHR), to ensure the participation of civil society, academia, and the public interested in the IAHRs. The form requested information on the candidates presented by the OAS Member States. It also made available the e-mail address of the Secretariat. Annex C contains the questions included in the form.

On April 7, 2023, the Panel extended the deadline for sending information on the nominations to April 21. However, the Secretariat remained alert to any communication sent by e-mail as well.

The Secretariat received a total of 62 communications. The Spanish version of the form received 42 communications. The English version of the form received ten communications. A total of 10 communications were received by e-mail.

III. Individual evaluations

The Panel has analyzed whether or not each nominee meets the requirements to be a member of the IACHR.

In the Panel's view, independence and impartiality, high moral authority, and recognized expertise in human rights, to the extent set out above, are the fundamental criteria of assessment. The Panel considers that States should ensure that persons when nominated and elected, meet high standards of both independence and suitability. Thus, for example, if a candidate meets the necessary suitability requirements, but does not present themselves as sufficiently independent and impartial, then that person would not be eligible for election as a member of the IAHR bodies. The same should be considered in the case of persons who present themselves as independent and impartial but do not demonstrate recognized expertise in human rights as required by the instruments.

The individual's contribution to the balanced and representative composition of the body is a crucial criterion that the Panel analyzes in each case and must be taken into account by the States at the time of nomination and election, in compliance with the mandate of the OAS General Assembly. In this regard, the Panel considers that if two persons meet equally high standards of independence and suitability, States should choose the one who contributes to the diversity of the body. Promoting the creation of more representative and pluralistic bodies should not be an obstacle to them being composed of suitable persons who are and are perceived as independent and impartial in the eyes of a reasonable observer.

With respect to the nomination processes at the national level, the Panel considers that the existence of internal selection processes in the States is crucial to improve the suitability, independence, and impartiality of the nominations and the election at the OAS level. However, the absence of such processes does not invalidate a nominee, nor does having gone through them automatically establish them as a suitable candidate.

Therefore, as it has done in prior election cycles, the Panel consulted with States and candidates regarding the characteristics of the nomination processes developed at the national level. The Panel has learned about positive practices implemented by some States that, in developing a national nomination process, have implemented prior selection criteria and consulted civil society.

For example, in the case of Argentina, the vacancy was advertised on a website. The selection process included a validation stage and public hearings with the participation of civil society. The Selection Committee, composed of different areas of the Ministry of Foreign Affairs, prepared a technical analysis report. Argentina informed the Panel that in its evaluation, the Selection Committee took into account, among other grounds, the following criteria: recognized competence and experience in the field of human rights, commitment to international and regional human rights standards, knowledge of the Inter-American Human Rights System, equal participation of women, federal representation, and knowledge of languages. This process was institutionalized through Resolution 20/2023 of February 6, 2023.

In the case of Chile, the process was initiated through a search conducted by the Ministry of Foreign Affairs. Four pre-candidates were selected who maintained a balance of gender and

geographic representation within the country. According to the Chilean government, all of them met the requirements of having high moral authority and recognized expertise in human rights. The four pre-candidates were then interviewed by a Commission. The Commission was composed by the Director of Human Rights of the Ministry of Foreign Affairs, the Director of Multilateral Affairs of the Ministry of Foreign Affairs, the Chilean Ambassador to the OAS and the Head of the Protection Department of the Undersecretariat of Human Rights of the Ministry of Justice and Human Rights. The Ombudswoman for Children's Rights and a representative of the Director of the National Human Rights Institute also participated as observers in the process. An official of the Human Rights Division acted as Secretary of the Commission. Both the members of the Commission and the observers received the academic and professional background of the candidates in advance to conduct their evaluation. In the interview, the pre-candidates answered questions regarding high moral authority, recognized competence in human rights, independence and impartiality, and contribution to the IAHR. For each of the questions, Commission members and observers were asked to give a score from 1 (minimum) to 7 (maximum), and to leave general comments about each pre-candidate. After the interviews, the Secretariat of the Commission prepared a report that was sent to the Minister of Foreign Affairs, detailing the marks given to each of the pre-candidates and comments by the evaluators. Following this, the Minister of Foreign Affairs, in agreement with the President of the Republic, designated the Chilean candidate.

With regard to the nomination process conducted by the United States of America, the Panel received information that the U.S. government solicited feedback from civil society and academics to help identify individuals to nominate to the IACHR. The State Department uses the following guidelines: 1) knowledge of public international law, international human rights law, and the IAHR; 2) political and social knowledge on the political and social context of Latin America and the Caribbean; 3) proficiency in Spanish and ideally Portuguese or French; 4) adequate understanding of the U.S. legal system, including addressing international law in domestic law and U.S. positions regarding international human rights obligations; 5) diplomatic and interpersonal skills; 6) ability to devote sufficient time and energy to the IACHR; 7) ability to serve independently and impartially without affecting the dignity or prestige as a Commissioner; 8) ability to approach OAS Member States; and 9) strong management skills. According to the information received, the criteria described above do not include diversity, equity, inclusion, and accessibility (DEIA). Also, in the last selection process, the Department of State allowed only 2 weeks for civil society to send information or feedback regarding the selection process.

The Panel highlights the progress made on the processes for nominating candidates and urges States to replicate similar experiences in future elections. It also encourages all States to continue making progress in implementing candidate selection procedures that are governed by the principles of independence, impartiality, professionalism, transparency, and participation. In this regard, the Panel encourages States to rely on a committee of independent experts and open, public, and participatory procedures to carry out the initial evaluation of candidates in internal selection processes, regardless of the final decision made by the competent authorities.

a. Andrea Pochak

Procedure before the Panel: Candidate Andrea Pochak, nominated by Argentina, answered the questionnaire sent by the Secretariat of the Panel on April 7, 2023, and participated in the interview with the Panel on April 27, 2023. The Secretariat received two communications criticizing the nominee’s work.

i. High moral authority

Pochak stated that she has never received any disciplinary sanctions for professional misconduct, and has demonstrated throughout her professional career a clear commitment to human rights and the duty of States to comply with international obligations. There is no record of any type indicating ethical misconduct or lack of professionalism in the performance of the various positions she has held in the State of Argentina, academia, and civil society.

ii. Recognized expertise in human rights

● *Academic background and professional experience*

Andrea Pochak is a lawyer who specializes in Criminal Law and International Public Law. She graduated from the University of Buenos Aires with Honors and is currently a Doctoral Candidate in Human Rights at the University of Lanús.

Since 2002, she has been a lecturer and guest professor at several universities in Argentina. Most recently, she was a guest professor on “Human Rights and Crimes against Humanity” at the Universidad Atlántida Argentina. She also teaches at the School of the State Lawyers Corps (ECAE) in the course “The State in supranational instances,” in the specialization on Judicial Management of the State’s Interests. She is also a professor of the seminar on “State Terrorism and Crimes against Humanity,” organized by the Extension Secretariat and the Institute of Human Rights Studies of Universidad Atlántida. On the other hand, she was also a guest lecturer at the National University of Santiago del Estero (UNSE) and the National University of Buenos Aires (UBA) in the course “Jurisprudence of the Inter-American System,” as part of the Postgraduate Specialization in International Human Rights Law.

As to her work experience, she has served as Undersecretary of Protection and International Liaison in Human Rights at the Human Rights Secretary of the National Ministry of Justice and Human Rights (appointed by Decree No. 82/2019) from December 2019 until May 2023. She was also a member of the National Commission for Refugees (CONARE), representing the National Ministry of Justice and Human Rights (appointed by Resolution MJ No. 175/2020), from June 2020 to May 2023.

Likewise, she served as Legal Secretary, in the area of opinions, before the Supreme Court of Justice at the Attorney General’s Office of Argentina (2019). She took a leave of absence from this position when she was appointed as Undersecretary. She will return to this position in June 2023. Prior to this job, she was head of the General Directorate of Human Rights of the Public Prosecutor’s Office (Resolution PGN No. 3468/15 and PER 3479/15) of the Attorney General’s Office (2015-2019).

As to civil society spaces, Pochak has been responsible for Technical Cooperation Projects at the MERCOSUR Institute for Public Policy on Human Rights (IPPDH) (2011-2012); has served as Deputy Director of the Center for Legal and Social Studies (CELS) (2002-2011); consultant for the OAS Office of the Special Rapporteur for Freedom of Expression (2009); Representative for Argentina of the Center for Justice and International Law (CEJIL) (2001-2005); and lawyer member of the legal teams on institutional violence and citizen security and international human rights law of the Center for Legal and Social Studies (CELS) (1996-2002).

- ***Knowledge about the challenges of the IAHRs***

In her response to the questionnaire, Pochak points out three structural human rights problems affecting the region: the arbitrary use of force; inequality; and structural weaknesses in the electoral, political, and judicial systems that condition democracies.

Faced with these structural problems, the candidate stated that the Inter-American System faces different challenges. These include, on one hand, preserving its autonomy and independence from States and the OAS, and on the other hand, strengthening, with constructive proposals and reforms, its legitimacy and effectiveness in the protection and promotion of human rights throughout the region.

The candidate pointed out that the System must adapt its intervention tools and strategies to the most pressing structural human rights problems in the Hemisphere. Likewise, it must reinforce its advocacy capacity with the States to strengthen domestic human rights protection mechanisms, ensuring the complementarity of the Inter-American System.

Pochak said that in order to strengthen the IAHRs, it is important to guarantee transparency in the sources and administration of its funding, and above all, to address the procedural backlog. The candidate also stressed the importance of not repeating cases and seeking new ones to prevent the System from becoming overloaded with the same issues and losing effectiveness.

Regarding the issue of precautionary measures, the candidate pointed out that these are an essential tool and it is key to take care of their legitimacy, especially in urgent situations demanded by the victims. Pochak believes it is crucial that precautionary measures are issued in actual exceptional and urgent cases and “with substantial recommendations, because we cannot continue to give ourselves the luxury of generic recommendations.”

Regarding the new heterodox working mechanisms of the IACHR, Pochak celebrated the IACHR’s flexibility and the fact that they have the approval of the countries. She also pointed out that these mechanisms must be strategic, and that people chosen must have the capacity to do technical work and represent the IACHR. The candidate also stated that, like other functions of the IACHR, these mechanisms should not be prolific because they would lose impact and value.

- ***Diligence and other relevant skills***

Regarding her dedication as Commissioner, candidate Pochak noted that she resigned in May 2023 from her political position as Undersecretary of Protection and International Liaison in

Human Rights. As of June 2023, she will resume her position as Legal Secretary in the area of opinions before the Supreme Court of Justice of the Nation at the Attorney General's Office, which is part of the Public Prosecutor's Office of Argentina.

Pochak pointed out that she has held the judicial position for more than 10 years and requested a leave of absence to occupy the position of Undersecretary. She emphasized that the Public Prosecutor's Office is independent from any other branch of the State, and pointed out that she will prioritize the work of the IACHR and will request the necessary leaves of absence given that her hiring regime allows it.

In terms of languages, candidate Pochak speaks Spanish and understands enough English and Portuguese to be able to participate in informal meetings and read documents for which no official translation is available. Pochak is confident that she will regain fluency in her written and oral skills with practice and when required.

iii. Independence, impartiality, and absence of conflicts of interest

The candidate has developed her professional life in three areas: academia, politics in her country's government, and civil society organizations. She expressed that she shares the restrictions imposed by the ACHR and the Rules of Procedure of the IACHR regarding not participating in situations, cases, and protection measures with respect to Argentina, so she will refrain from participating directly or indirectly in the deliberation of situations or cases related to her country. She assured that this will avoid any conflict of interest with respect to matters in which she may have intervened as a petitioning party or as a representative of the State.

The Secretariat of the Panel received a communication in which the candidate was singled out for her statements regarding events in Bolivia and Argentina made through her Twitter account. Similarly, the Panel received another communication stating that in 2022, Pochak, as an agent of the Argentine State, responded to a communication sent to the Special Rapporteur on the independence of judges and lawyers of the United Nations in relation to the dismissal of prosecutors responsible for the prosecution of acts of government corruption. This communication stated that "their will was subjugated to political control."

As to the first communication, the Panel pointed it out in the interview and the candidate responded, "I do not believe that by being a political official one forgets human rights standards; I continue to be a human rights defender as I [was] when I worked for CELS for 15 years and for CEJIL."

The second communication was received after the deadline, so the Panel was unable to ask the candidate about it during her interview. However, the Panel had access to the source and did not find that Pochak took a position that undermined the independence of the prosecutors and the fight against corruption in Argentina. Therefore, the complaint has no impact on the present assessment.³⁶

³⁶ Response of the State of Argentina to the United Nations Rapporteur on the Independence of Judges and Lawyers, available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=36996>

iv. Contribution to the balanced and representative integration of the organization

The candidate indicated in her responses to the questionnaire that she would bring to the IACHR a clear commitment to human rights and the duty of States to comply with international obligations. Her extensive experience coordinating between state agencies and civil society actors is relevant, and she demonstrates a commitment to respect the work of human rights organizations and human rights defenders in general.

She also has ample experience in direct accompaniment of victims and their families. The candidate expressed that after 25 years of experience, she deeply believes that the diversity of views and strategies enriches the solutions. Pochak feels capable of integrating a collegiate body, prioritizing the institution over individual protagonism.

The candidate emphasized that her extensive experience both as a petitioning party and as a representative of the State before the IAHR places her in a privileged position to bring better perspectives to the plenary session of the IA Commission, especially when it comes to its relationship with the States and human rights organizations in the region.

As to the issue of sexual and reproductive rights, candidate Pochak is concerned by the alarming numbers on female mortality and violence suffered by women, adolescents, and girls due to the lack of comprehensive access to sexual and reproductive rights. She also noted that some conservative sectors resist this serious situation in most of our countries. She also stated that the Inter-American System must continue to show its leadership and help make the issue visible as a human rights problem, and “raise its voice in defense of the feminist movement that is being attacked by these conservative sectors.”

Finally, Pochak points out that the fact she is a woman and is committed to incorporating a gender perspective in the defense of human rights should also be positively valued in this election, especially when taking into account that by 2024, 3 of the 4 women Commissioners will complete their mandates. “In this sense, I support GQUAL’s campaign, which promotes gender parity in international human rights protection bodies and overcoming the underrepresentation of women.”

Regarding her experience working with legal systems different from the one in her country, the candidate answered in her questionnaire that in her 25 years as a professional, she has been able to learn about other legal systems. However, she clarified that she has never practiced in a legal system different from the one in Argentina.

v. National nomination process

Argentina has an institutionalized mechanism recently formalized by Resolution No. 167 20/2023 of the Ministry of Foreign Affairs, International Trade, and Worship of the Argentine Republic.³⁷

³⁷ See text of the Resolution, available at: <https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-20-2023-379394/texto>

The mechanism seeks to guarantee greater transparency and ensure the technical suitability, independence, gender equity, and diversity of the candidates who will ultimately be presented by Argentina before international and regional human rights protection bodies.

The nomination procedure was designed at the behest of the Ministry of Foreign Affairs and the Human Rights Secretary of the National Ministry of Justice and Human Rights, taking as a basis the recommendation issued to Argentina by the UN Human Rights Council during the 28th session (in November 2017). Specifically, it was recommended that Argentina “adopt a system of open, merit-based competition for the selection of national candidates for United Nations treaty body elections” (recommendation 107.7). This mechanism was extended to the bodies of the Inter-American System as well.

It is worth clarifying that, although the procedure had already been implemented on previous occasions (for example, in 2021 for the nomination of Verónica Gómez as an Argentine candidate for the IACtHR), this was the first time it was applied in a complete and formal manner.

The procedure for nominating the Argentine candidate to the IACHR was formally launched on December 21, 2022, and included different stages that were duly publicized by the Argentine Foreign Ministry.³⁸ These stages included: opening the process to receive nominations; the receipt of comments and observations on the nominations and new nominations from civil society; the validation stage of the nominations; the public hearings in which each nominee had to make a presentation and answer questions from the Selection Committee and interested parties; and the preparation of a technical analysis report by the Selection Committee, based on previously established criteria, to facilitate the decision of the authorities regarding the selection of the person to be nominated by Argentina as a candidate for membership to the IACHR.

This Panel applauds the fact that Argentina has adopted a participatory, transparent, and merit-based selection process, which reflects good practices that have been recommended in successive reports made by the Panel itself, including the observance of gender parity. It also encourages Argentina to establish a diverse and independent committee, comprised of representatives of civil society and not only public officials, especially considering that the candidate was nominated by the State when she was still a political official.

● **Conclusion**

The Panel concludes that the candidate Andrea Pochak meets the evaluation criteria contained in the Inter-American instruments to be elected as a Commissioner.

The Panel considers that she has a solid professional background in international human rights law, demonstrated knowledge of the challenges faced by the Inter-American System, and has the experience to generate channels of communication between the IACHR, civil society organizations, victims, and States.

³⁸ See press release, December 21, 2022, available at: <https://www.cancilleria.gob.ar/es/actualidad/noticias/mecanismo-de-seleccion-de-candidatas-para-integrar-la-comision-interamericana>

The candidate is a qualified jurist and would also contribute to gender parity in the composition of the IACHR.

The Panel took note that at the time of her nomination and during part of the campaign for her candidacy, she served as Undersecretary of Protection and International Human Rights Liaison of the Human Rights Secretary of the National Ministry of Justice and Human Rights of Argentina and represented the State before the IACHR. The Panel considers that the situation described above is a negative precedent that could compromise her independence and impartiality and could raise reasonable doubts about her impartiality and possible conflicts of interest. However, it should be noted that the candidate stated in her interview with the Panel that she would resign from the position in May, as indeed she did.

b. Christopher Arif Bulkan

Procedure before the Panel: The candidate Christopher Arif Bulkan, nominated by Guyana, answered the questionnaire sent by the Secretariat of the Panel on April 11, 2023, and participated in the interview with the Panel on May 15, 2023. The Secretariat received a communication in support of the candidate's nomination.

i. High moral authority

The candidate answered in his questionnaire that he has never been disciplined for professional misconduct. The candidate was honored with the “Anthony N Sabga Award for Excellence” for his contributions to public service.³⁹ He also received the CARICOM/PANCAP Champion for Change Award for his leadership in the University Advocacy Project and for creating a safe space for LGBT students at the University of the West Indies.⁴⁰

ii. Recognized expertise in human rights

- *Academic background and professional experience*

Arif Bulkan is a lawyer who graduated from the University of the West Indies. He obtained a Master of Laws (LLM) at University College London in the United Kingdom. He also holds a Doctor of Philosophy in Law from Osgoode Hall Law School at York University, located in Toronto, Canada.

Early in his career, he served as a prosecutor and later as a criminal lawyer in Guyana. Between 2008 and 2022, he held various positions as Professor, Vice Chancellor, and Vice-Chancellor at the law schools of the Barbados and Trinidad and Tobago campuses of the University of the West Indies. In his interview with the Panel, he added that he has taught International Human Rights Law, among other courses.

Between 2019 and 2022, he was Independent Expert (Member) of the Human Rights Committee of the United Nations Covenant on Civil and Political Rights. From 2021 to 2022, he served as Vice-Chair of the Committee.

³⁹ See information on the award, available at: <http://www.ansacaribbeanawards.com/laureates/dr-christopher-arif-bulkan/>

⁴⁰ See press release, available at: <https://pancap.org/pancap-releases/who-are-the-pancap-champions-for-change/>

Arif Bulkan has held various positions in the Judiciary of Guyana and Belize. He currently serves as an Appellate Magistrate in the Belize Judiciary.

Arif Bulkan has a prolific career as an academic and a consultant. He has participated in training sessions for judicial authorities in several Caribbean countries. He has been a consultant on issues related to indigenous peoples' rights, environmental law and natural resource management, and HIV and human rights for various governmental and non-governmental institutions, including the World Bank, the Pan Caribbean Partnership against HIV/AIDS (PANCAP), and the government of Guyana.

As a consultant to PANCAP, Arif Bulkan produced a national assessment of laws and policies impacting HIV in Guyana. He is a co-founder of the University of the West Indies Advocacy Project (U-RAP), which aims to promote human rights, equality, and social justice in the Caribbean through litigation and advocacy.

He has written several books, book chapters, and specialized articles. Among them, he co-authored the book *Fundamentals of Caribbean Constitutional Law*, which he described as a fundamental textbook for the teaching of law in Caribbean countries. He was a member of the Editorial Board of *The Caribbean Law Review* and Editor of the *Guyana Law Review*.

- ***Knowledge about the challenges of the IAHRs***

Arif Bulkan indicated in his questionnaire that he had applied IAHRs standards in his profession. For example, he cited the IACHR's case *Da Penha Maia v. Brazil* in a decision he adopted while serving as a judge on the Guyana Court of Appeals. In that judgment, a law that prevented victims of sexual violence from being cross-examined multiple times in order not to re-victimize them was held as constitutional.

In answering the questionnaire, the candidate stated that the greatest challenge of the IAHRs is the procedural delay in the system of cases before the IACHR. For the candidate, this situation is not the result of inefficiency, but rather is due to the IACHR's success and its limited resources. Bulkan believes that because he has had to deal with similar situations in his professional career, he could contribute to the IACHR in seeking appropriate solutions to the problem.

In his interview with the Panel, the candidate proposed some ideas to address the procedural backlog at the IACHR. Among them, he pointed out that it is necessary to: 1) implement a stricter management of deadlines in order to avoid excessive extensions; 2) combine cases that have common or repetitive problems; 3) treat as a priority emblematic cases with the potential of generating new standards or norms; and 4) accept that it is not possible to solve this fundamental problem if the lack of resources is not addressed, which is definitely a political issue.

Bulkan also referred to the dissatisfaction of some States with the IAHRs, which is reflected by their low contribution of resources to the System, low commitment to its processes, non-compliance with recommendations, and even withdrawal from the System in extreme cases. For the candidate, the rise of populism and authoritarianism could aggravate these problems in the future.

The candidate said that, if elected, he would encourage the countries of the English-speaking region [that have yet not done so] to ratify IAHRs treaties. In this regard, he mentioned that he is currently participating in a project to encourage Trinidad and Tobago to ratify the ACHR once again.

He considered that as someone who has not worked at the IACHR, it would be difficult for him to offer *a priori* reforms to improve the system of precautionary measures. However, he considered that the rigorous initial review of requests should be maintained, applying the existing criteria. In his interview with the Panel, the candidate added that the IACHR should consider adopting an additional procedure, similar to the one that exists in domestic law and in the universal human rights system, whereby precautionary measures are granted immediately in cases where a *prima facie* situation of serious risk is observed, such as threats to life or personal liberty.

Arif Bulkan stated that the IACHR needs to increase its visibility in the Caribbean region. He considered that the IACHR must deepen its relationship with relevant actors and increase its focus on the region beyond the death penalty to cover other human rights violations.

In his interview with the Panel, the candidate added that citizen security is a challenge to human rights in the Caribbean. He also added that gender-based violence is one of the main problems in the Caribbean. Finally, he referred to the situation of indigenous peoples in Guyana, Belize, Latin American countries, the United States, and Canada.

Bulkan also referred to the problem of companies in extractive industries and human rights, especially with regard to the rights of indigenous peoples. In his opinion, the IACHR can aim to strengthen regulatory agencies, for example, by training them in international standards. He added that it is necessary to strengthen the judiciary with training on international human rights standards.

On the other hand, the candidate mentioned that one of the strategies that feminists have used regarding sexual and reproductive rights is to link them to the right to health. This also makes more sense in the Americas, where there is high maternal mortality.

Finally, in the interview with the Panel, Arif Bulkan argued that the experience of the interdisciplinary groups of independent experts (GIEI) that the IACHR has set up is positive, but one must be aware of the limited resources available. In this regard, he brought to the discussion the experience of the universal human rights system, in which mechanisms and procedures have proliferated and still States tend to show resistance. Despite this, he considered that the IAHRs is not yet close to something similar.

The candidate added that these groups of experts can be positive, given the enormous workload that the IACHR faces. In this regard, he gave the example of the GIEI of the Ayotzinapa Case.

- ***Diligence and other relevant skills***

Arif Bulkan expressed in his interview with the Panel that if elected, he could contribute his experience of more than 30 years in human rights. He also highlighted his professional experience in different roles as a lawyer, prosecutor, and human rights advocate with

different governments. He highlighted his work on issues such as HIV and human rights, indigenous peoples' rights, and the decriminalization of rights of the LGBT community.

The candidate mentioned that his experience in the Human Rights Committee allowed him to work in different areas in relation to the implementation of human rights. He also has experience working with a body of 17 or 18 people in search of consensus.

iii. Independence, impartiality, and absence of conflicts of interest

Arif Bulkan answered in his questionnaire that throughout his career he has served in various capacities as a public servant but has mostly worked in private practice. He stated that he had no commitments that would prevent him from working impartially.

iv. Contribution to the balanced and representative integration of the organization

Arif Bulkan's candidacy favors the representative composition of the IACHR given that he was nominated by Guyana, a CARICOM Caricom country.

In addition to his professional experience in common law jurisdictions, the candidate mentioned in his questionnaire that as a member of the UN Human Rights Committee, he frequently participated in the deliberation on individual petitions regarding civil law countries. He added that although there are procedural differences in the various legal systems, the substantive issues relating to human rights are invariably similar.

v. National nomination process

In answering the questionnaire, the candidate stated that he was contacted by the government of Guyana to inquire about his interest in being nominated to the IACHR. However, he said that he was not aware of the details of the internal selection process beyond his government's interest in increasing its engagement with the IAHRs. He further stated that his selection was based on his experience and background in the field of human rights and that he had recently completed his term on the UN Human Rights Committee.

● **Conclusion**

The Panel concludes that the candidate Christopher Arif Bulkan meets the evaluation criteria contained in the Inter-American instruments to be elected as Commissioner.

The candidate meets the criterion of high moral authority. Although he has not carried out his professional activities within the IAHRs, he has a solid and outstanding experience in the field of international human rights law as an academic, judge, and member of the UN Human Rights Committee. He demonstrated knowledge of the current challenges facing the IAHRs and the problems afflicting the region, and offered some proposals to address them.

The Panel considers that the candidate's previous experience in the Human Rights Committee would allow him to adapt to the work of the IACHR in a capable manner.

The Panel did not identify any impediment that would affect the candidate's independence or impartiality, and that would disqualify him from being elected Commissioner.

c. Edgar Stuardo Ralón Orellana

Procedure before the Panel: The current Commissioner, Edgar Stuardo Ralón Orellana, was nominated by Guatemala for re-election.⁴¹ He answered the questionnaire sent by the Secretariat of the Panel on March 24, 2023, and participated in the interview with the Panel on May 4, 2023. The Secretariat received six communications – all critical of his nomination. The Panel Secretariat had a video call with representatives of the Asamblea Social y Popular Coordinación and the Convergencia Nacional Maya Waqib' Kej of Guatemala, who requested the meeting to expand on the information they sent regarding candidate Ralón Orellana.

The information received by the Panel included the candidate's curriculum vitae, legal actions he filed in Guatemala, representations he made concerning companies, information on the selection process, and links to newspaper articles with statements he provided before and during his term as Commissioner, among others. Some of the information that had already been submitted to the Panel during the 2019 evaluation process, when Commissioner Ralón Orellana was a candidate for the first time for this position, was also received. The Panel requested five reasoned votes from Ralón Orellana from the IACHR Secretariat and examined his participation as Commissioner over the past four years.

i. High moral authority

There is no information stating that candidate Ralón Orellana has been sanctioned by the Guatemalan Bar Association or its Honor Tribunal, and the Panel has not received any information to the contrary. There is no record indicating any sanction. Some of the civil society organizations, such as Convergencia por los Derechos Humanos, which sent information to the Panel, questioned again, as they did in 2019, the link of Commissioner Ralón Orellana and his private law firm connecting them to the Panama Papers.⁴² According to these organizations, this “would leave serious doubts about his moral authority and ability to hold a position in the IA Commission.”⁴³

ii. Recognized expertise in human rights

- ***Academic background and professional experience***

Edgar Stuardo Ralón Orellana is a well-known constitutional lawyer in Guatemala with a professional career spanning over 20 years. He obtained with honors the degrees of Bachelor in Juridical and Social Sciences, Lawyer and Notary from the Universidad Francisco Marroquín. He holds a postgraduate and master's degree in Tax Law from the University of Salamanca and a master's degree in law from the Catholic University of Chile. He has been a professor at Universidad Francisco Marroquín, Universidad del Istmo, and Universidad

⁴¹ Commissioner Ralón Orellana was evaluated once before in 2019 by the Independent Panel, June 5, 2019, available at: <https://www.wcl.american.edu/impact/initiatives-programs/center/documents/2019-informe-del-panel-independiente-de-expertos/>.

⁴² ICJI, Offshore Leaks, <https://offshoreleaks.icij.org/nodes/12120694>; Information sent to the Panel on April 21, 2023; Report of the Independent Panel of Experts for the Evaluation of Candidates to the Inter-American Commission on Human Rights, June 5, 2019, available at: <https://www.wcl.american.edu/impact/initiatives-programs/center/documents/2019-informe-del-panel-independiente-de-expertos/>

⁴³ Information sent to the Panel on April 21, 2023.

Rafael Landívar.⁴⁴ He has had a career as a lawyer in private practice, where he has worked mainly with companies and as an advisor to foundations. He is an independent lawyer and founding partner of the law firm Ralón Orellana y Asociados. He stated that he has stood out as a trial lawyer “in the main issues of constitutional transcendence, always in defense of human rights and the main individual guarantees recognized in the Constitution,” and that his professional trajectory shows his identification with the school of Constitutional Interpretation of Originalism.⁴⁵

He became an opinion leader in his country, where he is consulted by the media on matters of public interest in his personal capacity and in representation of trade associations, such as the Center for the Defense of the Constitution (Cedecón),⁴⁶ having been its president. He was a candidate for the Bar Association of Lawyers and Notaries of Guatemala (CANG) in 2019,⁴⁷ and has represented entities such as the Association for Family Matters, the Chamber of Agriculture in the discussion of Constitutional Reforms,⁴⁸ and the Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations (CACIF),⁴⁹ among others.

In his interview, candidate Ralón Orellana said that he gave talks in law schools when invited by university deans. In his CV, he presents himself as an “active defender of the Guatemalan constitutional order,”⁵⁰ as well as an “opinion leader in the defense of human rights, such as the defense of life, civil liberties, civic and political rights, and institutional order.” According to information received from civil society, he filed an injunction⁵¹ to order the departure of the “abortion ship” from the Guatemalan coast. The ship, operated by the Dutch NGO *Woman on Waves*, offered services to women in international waters, including ending pregnancies up to ten weeks. The candidate also filed an injunction (Amparo 1434-2017)⁵² on behalf of Asociación La Familia Importa against the Human Rights Ombudsman (PDH) for the elaborating a manual on Human Rights, Sexual and Reproductive Rights and Attention to Pregnancies in Girls and Adolescents. This Panel also received information on the participation of Ralón Orellana in meetings with the Supreme Court of Justice of his country in 2017 to express concern about the approval of legal pluralism in a constitutional reform

⁴⁴ Jutistec, Edgar Stuardo Ralón Orellana, CV, available at https://iuristec.com.gt/index.php?title=Edgar_Stuardo_Ral%C3%B3n_Orellana

⁴⁵ OAS, Information Documents, CV Stuardo Ralón, available at <http://scm.oas.org/pdfs/2023/AG08684CV.pdf>

⁴⁶ Jutistec, Edgar Stuardo Ralón Orellana, CV, available at https://iuristec.com.gt/index.php?title=Edgar_Stuardo_Ral%C3%B3n_Orellana; Facebook de República Gt, Elección de magistrados en la Corte de Constitucionalidad, ¿Una elección ideológica?, 14 de enero de 2021, <https://www.facebook.com/republicaguatemala/videos/700906713912275>

⁴⁷ Guatevisión, February 8, 2019, available at: <https://www.guatevision.com/noticias/nacional/estos-son-los-3-candidatos-que-buscan-dirigir-el-colegio-de-abogados-y-notarios-de-guatemala>

⁴⁸ Information sent to the Panel on April 27, 2023.

⁴⁹ Jutistec, Edgar Stuardo Ralón Orellana, CV, available at https://iuristec.com.gt/index.php?title=Edgar_Stuardo_Ral%C3%B3n_Orellana;

⁵⁰ OAS, Informative Documents, CV Stuardo Ralón, available at <http://scm.oas.org/pdfs/2023/AG08684CV.pdf>

⁵¹ Expulsion of 'abortion boat' deepens division over abortion in Guatemala, February 27, 2017, available at https://www.elespanol.com/mundo/america/20170227/196980533_0.html

⁵² Family Matters Association, Amparo 1434-2017, available at <https://afiguatemala.com/wp-content/uploads/2021/09/Sentencia-Manual-del-Aborto-2-28.pdf>

and the “lack of legal certainty for their investments, especially for mining and hydroelectric companies that are located or intend to come to the country.”⁵³

In his interview with the Panel, the candidate stated that since joining the Commission, he has stopped litigating cases. This was in response to information received by the Panel from civil society in which his professional performance was related to business groups that have been accused of criminalizing indigenous peoples in violation of their rights,⁵⁴ and in response to the question of how he would consider bridging this potential conflict with rights and standards that have been upheld or consolidated by the IAHRs. The candidate specifically said, “the information is not accurate and I have not defended any company that has been accused of criminalization.”

Ralón Orellana credits as experience in human rights and the IAHRs his role as Commissioner at the IACHR, whose term of office began on January 1, 2020, and ends on December 31, 2023. When it comes to Commissioners or judges of the IAHRs who choose to stand for re-election, the Panel considers it essential to evaluate relevant aspects of their previous term in office.

In his work as Country Rapporteur, Commissioner Ralón Orellana has been in charge of Peru, Cuba, Ecuador, Haiti, Paraguay, and Suriname. He has served as Thematic Rapporteur of the Rapporteurship on Persons with Disabilities, as well as the Rapporteurship on the Rights of Persons Deprived of Liberty.

As Commissioner in charge of Peru, Commissioner Ralón Orellana led the preparation of the Country Report published on May 3, 2023. The report was drafted in the context of social protests that generated a crisis in governance in that country. Among its conclusions, the report stated, “in the demonstrations that took place since December 7, 2022, there were situations of violence not protected by the right to protest. However, the Commission notes that the response of state forces was not uniform throughout the national territory and that serious episodes of excessive use of force were recorded in specific cases.”⁵⁵ The Report was drafted following a working visit of the IACHR to the country on January 11-13, 2023.

Likewise, in his work as Rapporteur for Cuba, he condemned⁵⁶ arbitrary detentions and sentences against individuals who participated in social protests against power outages. He also participated in events regarding restrictions to freedom of expression in Cuba, where he exposed the limitations faced by journalism in the country.⁵⁷

⁵³ Nomad, Here's how the judges' three secret meetings with businessmen went, May 15, 2017, available at <https://web.archive.org/web/20180701145832/https://nomada.gt/pais/asi-fueron-las-tres-reuniones-secretas-de-los-jueces-con-empresarios/>

⁵⁴ According to information sent to the Panel by the Asamblea Social y Popular from Guatemala.

⁵⁵ IACHR, IACHR publishes Report on the human rights situation in Peru, Press release of May 3, 2023, available at <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/083.asp>

⁵⁶ Stuardo Ralón Twitter account, Oct. 5, 2022, available at <https://twitter.com/StuardoRalon/status/1577721476953903120>.

⁵⁷ OAS, Cuba, Violation of Human Rights and Fundamental Freedoms: Fear and Intimidation, April 10, 2023, available at: https://www.oas.org/es/centro_noticias/comunicado_prensa.asp?sCodigo=AVI-048/23.

On the other hand, this Panel had information on five (5) separate reasoned opinions that Ralón Orellana had appended as Commissioner in reports adopted by the IACHR.

In relation to his separate reasoned opinion on the *Report of Indigenous and Tribal Peoples* in 2021, Commissioner Ralón Orellana expressed that he preferred not to share it with the Panel so that it would not be interpreted as if he wanted to “damage” the IACHR report. He stated that this vote had no legal validity because he sent it to the IACHR Secretariat two days after the statutory deadline. Regarding the arguments for this vote, Ralón Orellana told the Panel that “if at some point there was an overlap between some specific rights of a [community’s] territory versus a private right to property, for example, that was registered as such, the relevant criterion to resolve that tension between the two claims should not be the hierarchy [of rights]. In contrast, the controversy should be resolved following a case-by-case analysis. Not only have I mentioned this [in the report], but I have also mentioned it, for example, regarding the principle that in a State there is equality before the law and that everyone belongs to the same State through territorial integrity and national unity, and there are some rules of general character that apply to all.” In other words, he denied the statements made by civil society representatives and indigenous Guatemalan organizations who sent information to the Panel regarding positions the candidate held contrary to the recognition of rights of indigenous peoples. The documentation they provided also affirmed that when he was representing the Chamber of Agriculture, he positioned himself against the constitutional recognition of indigenous rights.

The Panel notes that the standards reiterated by the IACtHR have established that in a case of insurmountable conflict regarding private property [an ancestral lands], the State must resolve it by opting for expropriation with fair compensation to individuals and safeguarding indigenous territory given the importance of said territory in the cosmovision of indigenous peoples’ existence and culture.⁵⁸ This Panel received information from an interview that Ralón Orellana gave on September 20, 2020, as Commissioner to the digital media República Gt, in which he expressed that ILO Convention 169 generates a “lack of security and legal certainty for investments; economic growth will not come from the State if not from economic agents; (...) its application generates uncertainty on how the State should correctly comply with the international obligation it assumed.”⁵⁹

However, in the interview with the Panel, he said, “[Convention 169] is an international human rights obligation of the States and there must be consultation; there is no evidence showing that I am opposed to a consultation, and I have also noticed that since Convention 169 came into force, the different States had a learning curve in implementing and regulating

⁵⁸ I/A Court H.R., *Case of the Yakye Axa Indigenous Community v. Paraguay*, Merits, Reparations, and Costs, Judgment of June 17, 2005, Series C No. 125, para. 135; *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Merits and Reparations, Judgment of June 27, 2012, Series C No. 245, para. 149; *Case of the Yakye Axa Indigenous Community v. Paraguay*, Interpretation of the Judgment on the Merits, Reparations and Costs, Judgment of February 6, 2006, Series C No. 142, para. 34; *Case of the Xucuru Indigenous People v. Paraguay*, Preliminary Objections, Merits, Reparations and Costs, Judgment of February 5, 2018, Series C No. 346, para. 117.

⁵⁹ República Gt. Facebook #RepúblicaLive: “Convention 169 is an international obligation of the State that must be complied with. but the problem is the uncertainty surrounding its interpretation and application,” says Stuardo Ralón, president of Cedecón, September 20, available at <https://www.facebook.com/watch/?v=787291902024560>

it. And yes, there have been in practice many cases in which they granted permits and a consultation was not done; even in those cases, I consider that a consultation should have been carried out, not because authorization was given for a project but because it is possible that it is causing direct effects and it is necessary to take the population into account.”

The Panel also received the reasoned opinion issued by Commissioner Ralón Orellana in the *Report on Trans and Gender Diverse Persons and their Economic, Social, Cultural and Environmental Rights* prepared by the Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights (Redesca) of the IACHR in 2020. On that occasion, Commissioner Ralón Orellana took a position against the so-called right to “gender identity” in a dissenting vote where he stated, “*according to this supposed right, States would be obliged to legislate in such a way as to civilly recognize the sexual self-perception of persons with total independence of their sex. According to the report, States would be obliged to promote such recognition not only for adults, but also for children and adolescents, with total disregard for the rights of parents.*”

In this regard, Commissioner Ralón Orellana stated, “[t]he existence of the aforementioned right is, at the very least, questionable. In the first place, the right in question is not recognized either in the American Declaration or in the American Convention. The only normative document at the Inter-American level that includes the idea of a right to “gender identity” is found in the so-called Inter-American Convention against all Forms of Discrimination and Intolerance, which in Article 1 admits the existence of “gender identity and expression.” In this regard, the preamble of the Convention states that “a pluralistic and democratic society must respect the cultural, linguistic, religious, gender, and sexual identity of all persons, whether or not they belong to a minority, and create the conditions that allow them to express, preserve, and develop their identity.” In principle, this could lead to admitting the existence of a sort of obligation for the States of the region to recognize, within their domestic legislation, a right precisely to so-called “gender identity.” However, to arrive at such a conclusion would be wrong.”

Another dissenting vote by Commissioner Ralón was given in the report of the IACHR in the *Case of Beatriz v. El Salvador*, where he marked his dissenting position and stated his criteria by affirming “there is no general consensus at the global level that there is a right to abortion in the corpus of International Human Rights Law.”⁶⁰ Commissioner Ralón Orellana states, “[t]he Legislative Assembly of El Salvador decided to criminalize all forms of abortion in 1997. Beyond the personal opinions that each of us may hold with respect to this measure, it is worth asking whether the seven of us who make up the Inter-American Commission on Human Rights have the competence and legitimacy in law to create a ‘right’ to abortion that the Convention does not recognize and that the States refused to incorporate at the time of drafting and approving the text of the American Convention on Human Rights.”⁶¹ He added in his separate reasoned vote, “although Beatriz was exposed to a high-risk pregnancy, it did not create a current, certain, and imminent risk of death.”⁶² On this

⁶⁰ IACHR, Report No. 9/20, Case 13.378, Merits, *Beatriz v. El Salvador*, March 3, 2020. DISSENTING VOTE, COMMISSIONER EDGAR STUARDO RALÓN ORELLANA, p. 52. Available in: https://www.oas.org/es/cidh/decisiones/corte/2022/sv_13.378_es.pdf

⁶¹ *Id.* at 72.

⁶² *Id.* at 51.

point, 28 signatories – including associations and individuals – sent a communication to the Panel stating that the reasoned opinion “clearly goes against what the Inter-American Court established in relation to the progressive protection of the right to life, as expressed in the *Artavia Murillo v. Costa Rica* judgment⁶³ and in the position of the IACHR on abortion as a health procedure.”

Compared to what was stated in that vote, when asked about his position on the absolute criminalization of abortion in light of recent IAHR standards during his interview with the Panel, candidate Ralón Orellana answered, “the absolute criminalization of pregnancy (sic) could be contrary to the Convention.” In this sense, he admitted that denying abortion to a woman when her life is in danger would be unconstitutional and explained, “regarding the reasoned vote in the Beatriz case, I did it because what reached the system of petitions and cases was that Beatriz’s life had been at risk, but the medical reports did not show that.”

Commissioner Ralón Orellana issued a separate reasoned vote in the case of “*Crissthan Manuel Olivera Fuentes v. Peru*,” in which the IACHR concluded that the Peruvian State violated the rights to equality and non-discrimination, privacy, judicial guarantees, and judicial protection of the victim resulting from discriminatory acts based on the claimant’s sexual orientation occurred in a supermarket. Commissioner Ralón Orellana considered that the IACHR had become a “fourth instance that contradicts the analysis that five different chambers of judges made of the facts of the case.”⁶⁴

With a similar criterion, he reasoned his separate vote in the case of *Neusa dos Santos Nascimento and Gisele Ana Ferreira v. Brazil*, which the IACHR declared admissible based on racial discrimination. Commissioner Ralón Orellana stated in his separate vote, “it seems reasonable to affirm that the Brazilian State has adopted legislative and administrative measures that reasonably prevent the occurrence of acts of racial discrimination between individuals. In this sense, it is important to point out that the State’s action alone in this area will never be sufficient to prevent all acts of racism within society. A democratic State that respects the freedoms of its citizens understands that its scope of action in the area of preventing racism, although important and essential, is limited. Hence, the importance of institutions such as the family unit, intermediate bodies, churches, and other civil society organizations contribute decisively to the fight against racism within the political community. In conclusion: the measures adopted by Brazil since the return of democracy in 1988 to combat all forms of racism are sufficient to affirm that the State has adopted measures that, reasonably, make it possible to prevent acts of racism between individuals.”⁶⁵ He later added, “[i]t is not for this Commission to analyze the merits of the reasons used by the Brazilian courts to change the regime of deprivation of liberty of the person convicted in this case. To do so would imply evaluating the correctness of the interpretation that the Brazilian courts

⁶³ I/A Court HR, *Case of Artavia Murillo and Others (In Vitro Fertilization v. Costa Rica)*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 28, 2012, Series C No. 257.

⁶⁴ IACHR, Report 304/20, Case 13.505, Merits, *Christian Manuel Olivera Fuentes v. Peru*, p. 23, available at: https://www.oas.org/es/cidh/decisiones/corte/2021/PE_13.505_ES.PDF

⁶⁵ IACHR, Report No. 5/20, Case 12.571, Merits, *Neusa dos Santos Nascimento and Gisele Ana Ferreira v. Brazil*. DISSENTING VOTE, COMMISSIONER EDGAR STUARDO RALÓN ORELLANA, p. 15, available at: https://www.oas.org/pt/cidh/decisiones/corte/2021/BRA_12.571_POR.PDF.

made of their own domestic legislation applicable to the specific case. This Commission does not represent a “fourth instance” and therefore, lacks the competence to hear such matters.”⁶⁶

Based on the international standards established by the Commission and the IACtHR, this Panel recalls that the “fourth instance formula” refers to the fact that the Commission “may not review judgments rendered by national courts acting within the sphere of their competence and applying due process of law, unless it considers the possibility that a violation of the Convention has been committed.”⁶⁷ This has been established since 1996 in Report No. 39/96, Case *Santiago Marzioni v. Argentina*. Therefore, the Commission is “fully empowered to rule on alleged irregularities in domestic judicial proceedings that give rise to manifest violations of due process or of any of the rights protected by the Convention.”⁶⁸ Consequently, this Panel observes that the separate reasoned opinions of Commissioner Ralón Orellana make an inadequate use of the “fourth instance formula” since the ACHR empowers the IACHR, as a complementary international protection body, to hear cases decided by domestic courts in which violations of the Convention are at risk, without implying that the evidence is evaluated or that the functions of domestic jurisdictional bodies are supplanted. In other words, when violations of rights enshrined in the American Convention and other instruments are claimed, the bodies of the IAHRs have the power and obligation to hear and decide the petitions.

The Panel is struck by the consequences of the peculiar way Commissioner Ralón Orellana interprets the “fourth instance formula” argument. Such an argument raises serious concerns since it would lead to exempting States from international responsibility in cases of human rights violations that materialize through judicial decisions. Likewise, the candidate’s position grants the States total deference with respect to the obligation to respect, guarantee, and protect all the rights recognized in the ACHR, and it strongly affects the “effect utile” of the IAHRs.

Along the same lines, in relation to the 2021 Annual Report, in Chapter IV.B regarding Cuba, Commissioner Ralón Orellana issued a separate reasoned opinion opposing the IACHR “celebrating” the recognition of same sex marriage in that country.⁶⁹

⁶⁶ *Id.*

⁶⁷ IACHR, Report No. 39/96, Case 11.673, *Santiago Marzioni v. Argentina*, October 15, 1996, para. 50, available at <https://www.cidh.oas.org/annualrep/96span/Argentina11673.htm>. The same Report cites the birth of the fourth instance doctrine: “The ‘fourth instance formula’ was developed by the Commission in the case of Clifton Wright, a Jamaican citizen, who alleged a miscarriage of justice that resulted in a death sentence against him. The national system did not provide for a process to challenge sentences determined by miscarriages of justice, leaving Mr. Wright with no recourse. In that case, the Commission established that it could not act as a ‘quasi-judicial fourth instance’ with the power to review the judgments of the courts of OAS member states. Nevertheless, the Commission found the facts alleged by the petitioner to be well founded and determined that the petitioner could not have committed the crime. Consequently, the Commission concluded that the Government of Jamaica had violated the petitioner’s right to judicial protection, which constitutes a violation of his fundamental rights, because the domestic judicial procedure did not allow for the correction of the miscarriage of justice.”

⁶⁸ *Id.*, para. 61.

⁶⁹ Commissioner Ralón questioned the legitimacy of this consultation due to the “totalitarianism” that exists in Cuba. “I write this dissenting opinion in recognition of all those people in Cuba who were unable to meaningfully express their voice in a debate so central to the common good of a society, such as the legal regulation of the institution of marriage. Their voice was not heard because the regime is afraid of that voice

This Panel identified that Commissioner Ralón Orellana’s pronouncements in separate reasoned opinions were made primarily in specific cases where violations of discrimination (racial), indigenous peoples, sexual diversity, or sexual and reproductive rights were alleged.

- ***Knowledge about the challenges of the IAHRs***

Commissioner Ralón Orellana, in his curriculum vitae and several interviews, has stated that a greater approach should be made toward countries part of the Caribbean Community – CARICOM. He said that, during his mandate, he began to forge alliances with the CARICOM to better understand the region. In the questionnaire, he considered that an aspect to improve could be greater participation in academic activities organized in the region.

Commissioner Ralón Orellana also considered as a recent advance that the IA Court HR ordered Mexico to eliminate the *arraigo* and modify preventive detention in the Case of *Tzompaxtle Tecpile and others v. Mexico*, of January 27, 2023.⁷⁰

Likewise, among the improvements proposed to address the caseload before the IACHR, he referred to the need to process cases more quickly. During his interview with the Panel, the candidate made it known that for his next term he plans to streamline the system of cases and petitions by means of a new team “that will attend to the cases that are most delayed.” In his interview, Commissioner Ralón Orellana stated that “the number of precautionary measures has increased and the effectiveness of the precautionary measures unit [within the Commission] is quite high.” He also said that, if re-elected, he would promote “the establishment of new criteria that could generate the viability of granting precautionary measures.”

In reference to the authoritarian challenges in the region, in the questionnaire, Commissioner Ralón Orellana stated, “one challenge for the Commission is to be able to prevent a total rupture between a State and the Inter-American System, because when that rupture occurs, the victims are completely trapped in authoritarian scenarios and the Commission can no longer help.” Regarding the future of the IACHR, he stated that there was an imbalance of resources due to the fact that not all thematic rapporteurships have the same number of specialists and that the financial issue is a challenge for the Commission.

- ***Diligence and other relevant skills***

The Panel was not aware of other areas in which Ralón Orellana has worked, except only as a professor and as a member of lawyers’ organizations in Guatemala. It is well-known that Ralón Orellana has experience within the IAHRs after having served as Commissioner.

being heard. The Cuban government, like any totalitarian regime, knows that this voice is the voice of dignity and conscience. And that dignity and conscience are stronger than the violence and terror of the regime. It will be precisely that dignity and conscience that, sooner rather than later, will allow Cuba to move towards a just, free and democratic society.” IACHR, Annual Report 2021, Chapter IV.B, Cuba, available at <http://www.oas.org/es/cidh/docs/anual/2021/capitulos/IA2021cap4B.Cuba-es.pdf>

⁷⁰ I/A Court HR, Case of *Tzompaxtle Tecpile and others v. Mexico*, Preliminary Objections, Merits, Reparations and Costs, Judgment of January 27, 2023, Series C No. 470.

Ralón Orellana is a native Spanish speaker, and he noted that he has communicated effectively during the last four years at the IACHR.

iii. Independence, impartiality and absence of conflicts of interest

Commissioner Ralón Orellana is not an official of the Executive Branch, nor has he brought cases before the IAHRs that have forced him to recuse himself.

Guatemalan civil society organizations⁷¹ sent information to the Panel on statements made by Commissioner Ralón Orellana in the media, citing interviews where he may have discussed national issues that were under consideration by the IACHR at the time or immediately thereafter.

Candidate Ralón Orellana emphasized that he had ceased his role as a trial lawyer in Guatemala upon assuming his position at the IA Commission. Despite this, he has participated in public debates before the media in Guatemala, speaking on behalf of Cedecón, a trade association that “defends the constitutional order.” As president and spokesperson of this group, while serving as Commissioner, the candidate issued public statements on different topics such as the mandate of the CICIG, general elections, the application of the ILO Convention 169, alleged overreach of the Constitutional Court,⁷² possible candidacies to popular election, or whether the vice-president of his country would be inciting to break the constitutional order.⁷³ These issues are related to matters that have reached or could reach the IACHR, as they are related to the standards of the IAHRs.

This Panel learned that the former vice-presidential candidate of Guatemala, Jordán Rodas, sent a letter to Julissa Mantilla, then President of the IACHR, on February 24, 2023.⁷⁴ In the letter, Rodas claimed that Commissioner Ralón Orellana had expressed an opinion on his case,⁷⁵ where he was denied participation as a candidate by the electoral tribunal – a situation that was considered at that time by the IACHR.⁷⁶ Rodas denounced his case before the IACHR on February 10, 2023. That same day, Rodas sent the letter to the IACHR, the Commission stated on the social network Twitter that “*the independence of the #IACHR is assured with its internal rules of procedure. Art. 17, for example, establishes that*

⁷¹ Several organizations and individuals signed the communications that reached the Panel; among them, Alianza Estratégica de Mujeres CEDAW en Guatemala, Asociación Gente Positiva, LEGIS, Mujeres Transformando el Mundo, Otra Guatemala Ya, Movimiento de Mujeres con Poder Constituyente, Grupo Intersectorial por los derechos humanos y derechos sexuales y reproductivos en Guatemala, Red Nacional de Mujeres Indígenas, REDNAMI, ATRAHDOM, Coordinadora Institucional de Promoción por los Derechos de la Niñez, CIPRODENI.

⁷² República Gt, Stuardo Ralón, president of Cedecon: The next election in the CC, the dilemma of rescuing the Republic or politicizing justice, February 7, 2021, available <https://republica.gt/guatemala/2021-2-7-17-1-30-stuardo-ralon-presidente-del-cedecon-la-proxima-eleccion-en-la-cc-la-disyuntiva-de-rescatar-la-republica-o-politizar-la-justicia>

⁷³ República Gt, Cedecon: “Lo planteado por el Vicepresidente es contrario a la Constitución”, November 20, 2021, available at: <https://republica.gt/guatemala/2020-11-21-1-52-28-cedecon-lo-planteado-por-el-vicepresidente-es-contrario-a-la-constitucion>

⁷⁴ Communication sent to the Panel on April 27, 2023.

⁷⁵ Emisoras Unidas Twitter account, February 23, 2023, available at: <https://twitter.com/emisorasunidas/status/1628787179148263425?s=46&t=QpZyJlKm9Bo-ZTpwF-debg>

⁷⁶ Jordán Rodas Twitter account, March 15, 2023, available at <https://twitter.com/JordanRodas/status/1635996268911640576>.

Commissioners cannot examine issues of their own country. This strengthens the IACHR and the protection of #HumanRights in the region.”⁷⁷

In the letter that Rodas sent to the President of the IACHR, he refers to a radio interview that Commissioner Ralón Orellana participated on February 23, 2023, in which he reportedly mentioned that his case was being heard in the national courts and that the IACHR was aware. Rodas quotes the phrase of Commissioner Ralón Orellana: *“to say that since not everyone participates is a fraud, I believe that this is not the case (...) In a democracy, maximum pluralism is ideal, but whoever has a clear legal or constitutional impediment should not participate.”*

These pronouncements could be at odds with what the IACHR expressed in its subsequent communication, in which it called on the Guatemalan State to safeguard the right of participation of Jordán Rodas as a vice-presidential candidate.

In that sense, in a communiqué published on March 3, 2023, the IACHR pronounced itself regarding the case of Thelma Cabrera and Jordán Rodas, who had not been registered as candidates in Guatemala presidential elections, where it stated, *“on January 27, the IACHR was informed about the refusal of the General Directorate of the Citizen Registry to register the candidacy for President and Vice President of the political party Movimiento para la Liberación de los Pueblos (MLP), formed by Thelma Cabrera Pérez de Sánchez and Augusto Jordán Rodas Andrade, respectively... The IACHR calls on the State of Guatemala to guarantee the effective participation of individuals, groups and organizations, and political parties through regulations and practices that enable real and effective access to all deliberative spaces on equal terms. Likewise, the competent judicial authorities in charge of hearing appeals that are filed to guarantee political rights must act in accordance with normative frameworks and Inter-American standards.”⁷⁸*

When asked if his statements could lead to a conflict with his work at the IACHR, Commissioner Ralón Orellana stated that the position of Commissioner allowed for professional practice, especially because it is not a full-time job, and that he gave statements only referring to “due process issues without referring to specific cases.” He also indicated that he sees the need for Commissioner positions at the IACHR to be full-time and remunerated. In this regard, Commissioner Ralón Orellana stated, “one way to temper this situation is to always refer to issues of due process, that is, without referring to a specific person or a specific situation, but rather, when faced with any question or situation, my opinions always refer to due process for X hypothetical case... I do believe that one cannot give an opinion on the merits of a case as such because we do not know if that case will reach the Commission. One speaks of due process as hypothetical and does not refer to the specific case. I believe that there is no problem there, which is what has happened to me in some cases.”

The Panel observes that a Commissioner’s public intervention in their country’s human rights issues is inconvenient and can be highly disruptive to the functioning of the IACHR,

⁷⁷ IACHR Twitter account, February 24, 2023, available at: <https://twitter.com/CIDH/status/1629242285710880770>.

⁷⁸ IACHR, IACHR calls to guarantee free and fair elections in Guatemala, March 3, 2023, available at <https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/035.asp>.

particularly when it is expressed contrary to IAHR standards and involves matters that have come or may come to require a pronouncement by the IACHR. Such conduct also affects the perception of the Commissioner's independence and impartiality, placing them in a situation of conflict of interest in the eyes of a reasonable observer.

Although the Commissioners have the right to the free exercise of their profession and freedom of expression, it is desirable that they refrain from issuing opinions and pronouncements, directly or indirectly, on matters that could eventually come before the IACHR. This also applies when such matters concern events in their own countries, even though they will not be directly involved in the discussion of those matters.

iv. Contribution to the balanced and representative integration of the organization.

In his responses to the questionnaire sent by the Panel, the candidate Ralón Orellana indicated that he had acquired experience working in different legal systems in his work as a Commissioner in more than 7 States other than the State of which he serves as Rapporteur.

In terms of geographic representation, Ralón Orellana is the only candidate from Central America.

v. National nomination process

The State of Guatemala, which nominated him, did not carry out any internal selection process, nor does it have any law or regulation in this regard, unlike other States. The organization Asamblea Social y Popular and the Convergencia Nacional Maya Waqib' Kej, in their letter to the Panel, which was also made public through social networks and disseminated through the media, expressed that the process "lacked transparency" because the government did not inform the population of the intention to promote the reelection of Commissioner Ralón Orellana. In another communication received by several Guatemalan social organizations, it was stated that the State of Guatemala "should have opened a public process, as other States did in their nomination processes, or at least allowed the possibility of citizen opinions."⁷⁹

● **Conclusion**

The Panel concludes that the candidate Edgar Stuardo Ralón Orellana meets some of the evaluation criteria contained in the Inter-American instruments to be elected Commissioner. The candidate Ralón Orellana has experience within the IAHR having served as a Commissioner during the current period; and is the only candidate presented by a Central American country.

In addition, the candidate is knowledgeable about the challenges of the IAHR, its strategic plan, and the areas of work that require improvement. With regard to moral authority, the

⁷⁹ Communication sent to the Panel by 28 organizations and individuals; among them, Alianza Estratégica de Mujeres CEDAW en Guatemala, Asociación Gente Positiva, LEGIS, Mujeres Transformando el Mundo, Otra Guatemala Ya, Movimiento de Mujeres con Poder Constituyente, Grupo Intersectorial por los derechos humanos y derechos sexuales y reproductivos en Guatemala, Red Nacional de Mujeres indígenas, REDNAMI, ATRAHDOM, Coordinadora Institucional de Promoción por los Derechos de la Niñez, CIPRODENI.

Panel did not identify any trade union, academic or professional sanctions against the candidate, but took note of the observations made by civil society representatives on some of his activities and public interventions, which are discussed in this report.

The Panel recognizes that candidate Ralón Orellana possesses the legal knowledge of the continental law of his country of origin and comparative law, to which he adds his experience as Commissioner. However, upon reviewing his separate reasoned votes and those known during the evaluation process, the Panel is not convinced that candidate Ralón Orellana meets the requirement of recognized expertise in the human rights standards of the IAHR.

The Panel identified some inconsistencies between the legal positions taken by Commissioner Ralón Orellana in the separate opinions before the IACHR and the positions he maintained before the Panel. The positions reflected in the Commissioner's separate reasoned opinions, analyzed in this report, denote a regression with respect to the minimum standards of protection of rights of the IAHR, especially those relating to the rights of indigenous peoples, non-discrimination on the basis of race or sexual orientation, and same sex marriage. The Panel also analyzed in depth his dissenting vote in the Case of *Beatriz v. El Salvador*, where he departs from the majority of the Commissioners regarding the right to terminate a pregnancy when there is a risk to the mother's life.

The Panel's attention was drawn to the consequences that may arise from Commissioner Ralón Orellana's particular interpretation of the "fourth instance formula." In this regard, he presented an argument with serious implications that could lead to exempt States from international responsibility in cases of human rights violations that materialize through judicial decisions and where the IACHR has played an important role in recognizing grievances of internationally recognized groups.

On the other hand, Commissioner Ralón Orellana's statements in his country, contrary to Inter-American human rights standards and in matters that have reached or may reach the IACHR, affect his independence and may evidence a conflict of interest in the eyes of a reasonable observer.

d. Gloria Monique de Mees

Procedure before the Panel: The candidate Gloria Monique de Mees, nominated by Suriname, answered the questionnaire sent by the Secretariat of the Panel on April 10, 2023, and participated in the interview with the Panel on May 4, 2023. The Secretariat did not receive any communications regarding the candidate.

i. High moral authority

Gloria de Mees stated that she has not received disciplinary sanctions for professional misconduct.

ii. Recognized expertise in human rights

- ***Academic background and professional experience***

Gloria de Mees is a lawyer and lecturer who teaches, among other courses, human rights, Caribbean law, and treaty law at the Anton de Kom University of Suriname. She has been a lecturer at the above mentioned university since 2014.

Gloria Monique served as Deputy Permanent Secretary of the Regional Integration Secretariat of the Ministry of Foreign Affairs of the Republic of Suriname. Throughout her career, Gloria de Mees has held various positions in the government of Suriname, mainly in the executive branch. She has a prolific career as a diplomat.

He is currently part of the Agency of the State of Suriname before the IACHR and the IA Court HR.

Gloria de Mees holds a Master of Business Administration degree from the Australian Institute of Business in Australia, a diploma in International Relations from the Institute of Social Sciences, and a Master of Laws (LL.M.) from the Anton de Kom University of Suriname.

Gloria de Mees was a member of the drafting group that wrote the law to establish the National Human Rights Institute in accordance with the Paris Principles. In addition, she has contributed to designing courses on human rights, training of public security forces, research on the rights of the older persons, and drafting State reports for UN treaty bodies.

Among her main achievements is being a speaker at the 47th Course on International Law organized by the Inter-American Juridical Committee and the Department of Law of the Secretariat for Legal Affairs of the OAS in August 2022.

- ***Knowledge about the challenges of the IAHRs***

Gloria de Mees believes that her diplomatic, academic, and legal background has equipped her with particular skills to work with communities, governments, and international organizations in the Americas and the Caribbean. She believes her strategic planning skills will be valuable in achieving the IACHR's objectives.

The candidate affirmed that one of the greatest challenges facing the IAHRs is the implementation of recommendations of Article 50 reports [of the ACHR]. In this regard, she pointed out that a comprehensive perspective that is balanced and realistic is needed to address this problem. Gloria de Mees proposed carrying out country visits and strengthening dialogue with the States and with civil society organizations. She also considered it necessary to organize training workshops and seminars to train state agents on the IAHRs. Finally, she proposed creating a database of good practices and successful implementation strategies.

In her interview with the Panel, the candidate expressed that, given her work in her country's Ministry of Foreign Affairs, she could bring her experience interacting with Caribbean countries, for example, on issues related to education, culture, and health. She added that she had been involved in sustainable tourism projects with English- and French-speaking Caribbean countries and with Latin American countries.

Gloria de Mees added that her proposal to strengthen the IAHRs's relationship with the Caribbean includes promoting dialogue with governments, non-state actors, Caribbean universities, and other international organizations. She added that one topic that the Commission could address with greater commitment is the situation of climate change as it relates to human rights.

With regard to the system of precautionary measures, in responding to the questionnaire, the candidate considered that a balanced approach to monitoring them should be maintained. She added that country visits can provide valuable information regarding progress made towards compliance and the effectiveness of the measures.

On the same topic, in her interview with the Panel, the candidate added that in order to have a proper perspective of the situation in each country, information can be obtained from key institutions such as universities, international organizations, and non-governmental organizations.

Gloria de Mees considered that climate change and youth involvement should be included in the next IACHR strategic plan.

Regarding the procedural backlog in the IACHR petition system, the candidate stated in her interview with the Panel that it can be addressed in collaboration with non-governmental organizations. In addition, she noted that the work at the IACHR should be full-time. The Panel clarified to her that the work of the IACHR Secretariat is full-time.

Regarding the challenges facing the IAHRs in relation to women's sexual and reproductive rights, the candidate said in answering her questionnaire that there is currently no consensus in the region. She added that an open and respectful dialogue between different perspectives and cultural sensitivities can ensure the protection of all victims of violence, including gender-based violence.

In this regard, in her interview with the Panel, the candidate insisted there is a disparity between countries as to how issues related to women's sexual and reproductive rights should be addressed. She reiterated that dialogue was the way to address this disparity.

When asked if she had applied IAHRs standards in her professional work, the candidate stated that she had done so as a professor of human rights and in her position as Suriname's state agent before the IACHR and the IACtHR. She added that she has advocated in favor of the American Convention for the Protection of the Human Rights of Older Persons.

- ***Diligence and other relevant skills***

Gloria de Mees assisted the Suriname Red Cross for a month with cases regarding individuals petitioning for asylum or refugee status.

- iii. Independence, impartiality and absence of conflicts of interest**

In answering the questionnaire, the candidate stated that given her work as a professor, she did not foresee any conflict of interest that could affect her independence or impartiality if she was elected as Commissioner.

In the interview with the Panel, she added that in addition to being a professor, she works in the office in charge of representing Suriname before the IACHR and the IACtHR to attend to the petitions of those bodies regarding cases.

She noted that should she be elected IACHR Commissioner, this responsibility would override her current position involving her representation of Suriname before the IACHR and the IACtHR. She said she would not risk bringing to the IACHR the stigma of not being

objective or impartial. The Panel asked her if she would resign from her current position working for the State of Suriname if elected as Commissioner and she responded that she would.said yes.

iv. Contribution to the balanced and representative integration of the organization

The candidate belongs to CARICOM, which is an important region in the Americas but underrepresented in the IAHRs. These aspects must be kept in mind when electing Commissioners, as the OAS General Assembly has emphasized on several occasions.

In answering the Panel's questionnaire, the candidate stated that she has knowledge of common law.

v. National nomination process

In this regard, the candidate said that it was the first time that Suriname had nominated a candidate for the IACHR and that she believed that this would have an impact on the human rights situation in the country and the Caribbean.

The Panel is unaware if an open and participatory procedure was carried out for her selection as a candidate by the Government of Suriname.

• Conclusion

The Panel concludes that the candidate Gloria Monique de Mees meets some of the evaluation criteria contained in the Inter-American instruments to be elected as a Commissioner.

The candidate has experience as an academic in various fields related to treaty law, diplomacy, and human rights, and meets the requirement of high moral authority. While the Panel considers her academic dedication to human rights, treaty law, and diplomacy to be positive, as well as her potential to contribute to gender parity and geographic representation at the IACHR, it is not convinced that she has specialized knowledge in Inter-American and international human rights standards. Therefore, the Panel concludes that the candidate does not meet the requirement of recognized expertise in human rights.

In addition, the Panel took note that during her nomination and campaign for her candidacy, the candidate was part of the State's agency before the IAHRs. The Panel considers that the situation described above is a negative precedent that could compromise her independence and impartiality and could raise reasonable doubts about possible conflicts of interest. The candidate stated that if elected to the IACHR she would resign from that position.

e. Lidia Casas Becerra

Procedure before the Panel: The candidate Lidia Casas Becerra, nominated by Chile, answered the questionnaire sent by the Secretariat of the Panel on April 10, 2023, and participated in the interview with the Panel on April 27, 2023. The Secretariat received 30 communications supporting her nomination.

i. High moral authority

Candidate Lidia Casas stated in her questionnaire that she has never received any disciplinary sanction for professional misconduct.

ii. Recognized expertise in human rights

Candidate Casas has dedicated more than 30 years to the study of human rights, which is evidenced by her publications, teaching, and educational degrees. This Panel had access to at least six academic writings published in various universities and prestigious places. She has even taught classes on human rights standards to medical students in Fundamentals of Bioethics and Clinical Bioethics at the Universidad Diego Portales. In the questionnaire, she indicated that she collaborated in the drafting of the first alternative reports presented to the Human Rights Committee and to the CEDAW Committee in 1999, and said that she has participated in gathering information to document certain IAHRs cases and as an expert witness. The candidate has never litigated before the IAHRs.

Casas was trained in human rights by professors Cecilia Medina, Felipe González, and Eduardo Vio Grossi. She then obtained a Master's Degree at the University of Toronto, Canada, with Professor Rebecca Cook, and a Doctorate Degree at the University of Ottawa with professors and international experts Katherine Lippel and Lucie Lamarche. She has also worked in national and international interdisciplinary teams, such as the *Gender Advisory Group* at the Department of Human Reproduction at the World Health Organization. She served as a guest lecturer in the Master's program in Human Rights at the Friedrich-Alexander-Universität in Nuremberg, Germany, in July 2019. In Canada, she worked as a community legal worker at a legal aid clinic for low-income individuals, and litigated in the District Court of Ontario in tenancy law matters and before administrative tribunals such as the Ontario Human Rights Commission and the Immigration and Refugee Board.

In her country, Chile, she has accompanied victims of sexual harassment in education and in cases involving the criminalization of abortion. For 30 years, she has been dedicated to the study and research of sexual and reproductive rights from the angle of civil society organizations and academia.

● ***Academic background and professional experience***

Candidate Casas has dedicated herself to academia and has forged a career in research, publication, and human rights studies, especially on women's issues and sexual rights. She holds a Bachelor of Arts degree from the University of Saskatchewan, Canada; a Master of Laws degree from the University of Toronto, Canada, and a PhD from the University of Ottawa, in Canada.

She has an extensive academic career and has been a guest professor at the Master in International Human Rights Law, Friedrich-Alexander-Universität Erlangen, Nürnberg, Germany; a professor of the Master in Bioethics of the Faculty of Philosophy and Humanities of the University of Chile; a professor of the Master in Public Law, Universidad Austral de Chile; a professor of the Master in Family Law, Universidad de Chile; a professor of the Master in Judicial Protection of Fundamental Rights, Universidad de Jaén and Instituto de Estudios Judiciales de Chile; a member of the Gender and Rights Advisory Group of the Department of Human Reproduction, World Health Organization in Geneva, Switzerland; a

consultant of the Justice Studies Center of the Americas (JSCA), an international agency of the Inter-American system; a visiting professor at the Law School of the Pontificia Universidad Católica del Perú; a visiting Professor at the Master's Program in Social Sciences of the Latin American Faculty of Social Sciences (FLACSO), Mexico City, Mexico; a coordinator of the Summer Program in Chile of the American University College of Law; and an instructor in Law and Gender, in the Summer Program in Chile of American University College of Law, among others.

Finally, the candidate has served as Director of the Human Rights Center of the Faculty of Law of the Universidad Diego Portales, Santiago de Chile, and Co-director of the Master in International Human Rights Law, Faculty of Law of the Universidad Diego Portales. Since 2003, the Human Rights Center of the Faculty of Law of the Universidad Diego Portales prepares an annual report on the human rights situation in Chile.

- ***Knowledge about the challenges of the IAHRs***

In her questionnaire, candidate Casas pointed out that one of the problems facing the region is violence. On one hand, violence and the use of force by State agents against communities and individuals in the context of social protest, and on the other, gender-based violence against women, children, and sexually-diverse individuals, which is now manifested through the use of social networks and the web. She has also studied the violence generated by organized crime, including drug trafficking, which is breaking into societies and institutions.

She also referred to economic inequality as one of the serious problems facing the region, noting that “poverty places millions of people in conditions of exclusion and marginalization in the enjoyment of basic rights such as life, health, food, and education, among others, and results in structural discrimination that in turn combines with multiple forms of discrimination against communities.” She also referred to the massive migration caused by climate, social, and economic crises.

The candidate pointed out in the questionnaire that she has taken an intersectional approach in her research on violence against women, sexual and reproductive rights, and discrimination. She added that her research has been cited by the IACHR and the International Labor Organization. In her work as a professor, she has analyzed standards of the IAHRs and the universal human rights system.

In her interview, candidate Casas made reference to the separate votes in the IACHR. She pointed out that in substantive reports, separate votes express plurality in a court. However, when they are appended to a press release or regarding a country's situation, it could weaken the Commission, given that States could use these criteria to undermine the critical position that the IACHR is taking on a particular issue or situation at that time.

According to Casas, one of the main challenges facing the IAHRs is the weakening of institutions and the violation of civil and political rights occurring in the States. In this context, there are positions that question the role of the IACHR, seeing it as an antagonistic institution and not as an institution that oversees, through dialogue, the respect and promotion of human rights, which, in her opinion, weakens its role. Likewise, the candidate considers it is important to “promote the prevention of human rights violations and also, “effectiveness

in the implementation of friendly settlements to respond to victims and prevent new violations.”

Candidate Casas stated that as Commissioner, she would seek to converge “dialogue between authorities and civil society actors to urge change through persuasion, providing evidence and advocating for victims to identify the necessary changes, whether through legislation or public policies.”

Regarding the special mechanisms such as the group of independent experts (GIEI), Casas stated that it is necessary to point out that “one cannot think of these independent groups as completely distant from the work carried out by the Commission – there must be a strong coordination and articulation, either through one of the Commissioners or someone from the Commission itself, who allows this work to be done. These groups are almost a kind of external consultancy, but they must act under a clear direction that allow to go deeper into some areas to follow urgent situations. However, we cannot think that this should always be the mechanism to be followed in all cases, that is to say, we must also be very clear that it cannot become a pseudo mini commission.”

In her written interview, candidate Casas considered it important to rethink the interpretation of the separate reasoned vote of the members of the Commission, which was reflected in resolution 2/22. In her words, “the meaning and purpose of creating the IACHR was to have a collegiate body to respond to human rights situations in the Americas. The argument that dissenting opinions on resolutions are expressed based on freedom of expression *de facto* weakens the System as a whole. It does not provide certainty as to the standards or criteria applicable to the assessment of State behavior.”

Regarding the challenges faced by the IAHRs with respect to the situation of CARICOM countries, the candidate pointed out that the Commission has a more general view of the situation in the region. She considered that the CARICOM countries see the IACHR as distant, beyond issues such as sexual diversity and the death penalty.

She added that there are issues that significantly affect the people of CARICOM countries, yet they do not seem to be in dialogue with Spanish-speaking countries despite their issues being similar. Therefore, Spanish-speaking countries should not monopolize the conversation.

Some particular issues that she highlighted concerning CARICOM countries included the differentiated effects they suffer due to climate change.

- ***Diligence and other relevant skills***

The candidate answered in the questionnaire that she has knowledge and mastery of issues related to violence and discrimination against women and children. In 2003, she conducted the first evaluation of adversarial criminal justice on violence against women in Chile. As a JSCA advisor and consultant, she worked on the first evaluations of criminal justice with colleagues from Honduras, Ecuador, and Guatemala.

The candidate also said she has over three decades of experience researching and working on sexual and reproductive rights. She has conducted research on sex education, sterilization, and human rights that are violated when abortion is criminalized.

In her CV, she indicated that she speaks Spanish and English and can read French and Portuguese.

iii. Independence, impartiality, and absence of conflicts of interest

Casas has been predominantly active in academia and has accompanied victims of sexual violence. She has not held public office, has not represented companies or States, and has not served as an official of any international organization.

Regarding the rule that prevents Commissioners from participating in the deliberation of cases related to their own country, the candidate pointed it out as a necessary rule that protects impartiality. She considers that this rule protects the Commission and its work.

She added that if elected Commissioner, she would not participate in any activity that could affect her objectivity. In case of a conflict of interest, she would communicate it as soon as possible.

iv. Contribution to the balanced and representative integration of the organization

Casas is a candidate with a track record in defending women's rights. The document sent to the Panel by the Chilean Foreign Ministry states that the nomination was decided "taking into account gender parity."

Regarding her experience working in legal systems outside of Chile, the candidate answered in her questionnaire that she lived in Canada for nine years and worked as a community legal worker to defend low-income people. While in Canada, she litigated lease cases, human rights cases before administrative tribunals, and migration and refugee cases.

v. National nomination process

Ms. Karinna Fernández submitted a request for access to information to the Ministry of Foreign Affairs in which she asked, "*I request information regarding the copy of the call for applications, indicating the mechanisms for dissemination, information on the various candidates who participated, what were the mechanisms to ensure the participation of civil society, and a detail of how the process of scrutiny with civil society was developed. Finally, please detail the role of the INDH and the Ombudsman's Office for Children in the process, indicating which authorities of said institutions participated in the process and why they and not other state agencies participated in the process.*" (sic)

The coordinator of Citizen Attention and Transparency of the Ministry of Foreign Affairs responded, using a letter dated April 13, 2023, detailing the evaluation process through an "ad-hoc mechanism" that included the participation of the Director of the Human Rights Division, the Deputy Director of the Human Rights Division, the Director of the Multilateral Division of the Foreign Ministry, the Ambassador of Chile to the OAS, and the Head of the Protocol Sub-Directorate of the Undersecretariat of Human Rights. It also stated that they invited the Ombudswoman for Children and the Director of the National Human Rights Institute as "guarantors." The Panel was informed that the Human Rights Division took into

account the gender balance and the existing profiles in the IACHR and invited several people to evaluate possible candidacies to the IACHR. Four people agreed to this invitation and were interviewed by the “ad-hoc mechanism” with a list of questions attached to their communication as an annex. The mechanism then prepared a report that was sent to the Minister of Foreign Affairs, who sent it to the President of the Republic with the nomination proposal.

In this regard, the candidate stated in the questionnaire that the election, not only the announcement of her nomination, should have been made public. Casas added, “the process is an improvement of previous ones, yet it is necessary to go further and have a more inclusive process, with greater publicity, transparency, and participation from civil society.”

This Panel welcomes that Chile has established a participatory and merit-based internal selection process for its candidate that reflects the good practices recommended by this Panel in past reports, including the observance of gender parity. However, it agrees with the position of Casas in the sense that the process should continue to be strengthened to make it more inclusive, public, and transparent. In this sense, the State of Chile must continue to advance towards the objective of having a diverse and independent committee that includes representatives of civil society, and not only public officials.

- **Conclusion**

The Panel concludes that the candidate Lidia Casas Becerra meets the evaluation criteria contained in the Inter-American instruments to be elected as Commissioner.

She has extensive experience working in the field of human rights, especially in relation to the IAHRS. The candidate is knowledgeable about the main challenges facing the IAHRS, and identified the problems and challenges facing the region including CARICOM countries. The candidate also met the requirement of high moral authority.

The Panel did not identify any impediment that would affect the candidate’s independence or impartiality to be elected as Commissioner. In addition, the candidate is a qualified jurist, which would contribute to parity at the IACHR.

f. Pier Paolo Pigozzi

Procedure before the Panel: The candidate Pier Pigozzi, nominated by Ecuador, answered the questionnaire sent by the Secretariat of the Panel on May 9, 2023, and participated in the interview with the Panel on May 11, 2023. The Secretariat received three communications regarding the nominee. All three were critical of his candidacy. The Panel noted that on February 20, 2023, the University of Notre Dame Law School expressed its support for the candidate through its social networks and in a press release.⁸⁰

Pigozzi made known his willingness to complete the questionnaire and be interviewed by the Panel only after the deadlines had passed and he was sent several reminder emails. The Panel

⁸⁰ See press release, available at: <https://law.nd.edu/news-events/news/2010-11m-2020-jsd-alumnus-pier-pigozzi-inter-american-commission-on-human-rights/>

then gave the candidate the opportunity to complete the questionnaire and conduct the interview.

i. High moral authority

Pier Paolo Pigozzi stated in the questionnaire that he has never received any disciplinary sanctions for professional misconduct.

ii. Recognized expertise in human rights

● ***Academic background and professional experience.***

Pier Paolo Pigozzi holds a law degree from the Pontificia Universidad Católica del Ecuador. He holds an LLM in International Human Rights Law and an SJD in International Human Rights Law from the University of Notre Dame Law School.

Since July 2020, Pigozzi has served as a full-time lecturer at the Faculty of Law of Universidad Finis Terrae. He has also been a professor at the University of Siena in Italy, the Catholic University of Pázmány Péter in Budapest, Hungary, the University of the Hemispheres in Quito, Ecuador, the University San Francisco de Quito in Quito, Ecuador, the Universidad Andina Simón Bolívar in Quito, Ecuador, the University of Notre Dame in Indiana, United States, and the Pontificia Universidad Católica del Ecuador.

Regarding his work experience, Pigozzi has served as legal advisor to the General Directorate of Refugees of the Ministry of Foreign Affairs of Ecuador; supervisor of the legal protection area at the Office of the United Nations High Commissioner for Refugees; constitutional assistant at the Constitutional Court of Ecuador; advisor in constitutional law and public international law at the law firm DLL Law Office; and Founder and member of the organization Dignidad y Derecho.

Pigozzi has also provided expert opinions before the Supreme Court of Justice of the Republic of Paraguay; the Southern Lights Group regarding the Ecuadorian constitutional framework on consultation and prior consent to extractive activities; and the Attorney General's Office of Ecuador, where he provided an expert opinion to the IACtHR on the definition of extrajudicial, summary, or arbitrary executions in international human rights law in the case of *García Ibarra et al. v. Ecuador*.

According to the information shared with the Panel, Pigozzi has participated on several English publications as a co-author with Johanna Fröhlich; and has published his own work in Spanish and two translations.

● ***Knowledge about the challenges of the IAHRs***

In the questionnaire sent, candidate Pigozzi pointed out that violence and exclusion continue to be structural problems in the region. He also pointed out that institutional frameworks are becoming increasingly weak due to new transnational actors that corrupt state authority, as well as new challenges such as those arising from climate change and mass migration. Likewise, he said forced disappearance, arbitrary deprivation of life, forced displacement, torture, and freedom of expression continue to be sensitive situations at the regional level.

The candidate answered in the questionnaire that he has been a professor of public international law and international human rights law for 8 years in Chile and Ecuador. In addition, he has been a professor in Italy and Hungary.

He added that he was associated with the Center for Civil and Human Rights at the University of Notre Dame for more than 6 years. He also mentioned that he participated in initiatives to strengthen the IAHRs.

In his questionnaire, Pigozzi indicated that he has submitted cases before the IAHRs as a volunteer at the Human Rights Center of the Pontificia Universidad Católica del Ecuador, including the cases of *Camba Campos* and *Quintana Coello* cases, against Ecuador. He noted that at the Center for Civil and Human Rights of Notre Dame, he supported complaints regarding threats to freedom of expression and judicial independence in Ecuador between 2011 and 2015. In this regard, the candidate expressed that he has been a user of the petition and case system of the IA Commission. In 2012, he filed an individual petition against Ecuador on the GASPETSA case and the systematic violation of judicial guarantees.

In addition, when answering the questionnaire, the candidate sent to the Panel writings submitted to the IACHR in which he appears as a petitioner or signatory. One of them is related to the constitutional reform referendum promoted by the then government of President Rafael Correa Delgado, which had the potential of affecting judicial independence and impartiality in Ecuador. Another of the writings referred to a case related to the dismissal of more than 600 officials at a public company in Ecuador.

In relation to the challenges facing the IAHRs, he referred to the implementation of the decisions of the IACtHR and the IACHR by the States, especially measures of non-repetition. He believes that the relationship between the Commissioners in charge of rapporteurships and the State representations to the OAS should be strengthened.

Regarding proposals to improve the system of precautionary measures, he referred to the implementation of a computerized tool for notification, addressing the repeated ineffectiveness of measures to protect journalists and human rights defenders, designing more specific protection orders, and using the offices of rapporteurs who saved many lives in the 1980s through *international habeas corpus*.

On the other hand, the three communications received by the Panel expressed that “the nomination by the Government of Guillermo Lasso of Pier Pigozzi Sandoval to the Inter-American Commission on Human Rights (IACHR) has generated controversy and rejection by representatives of human rights organizations, due to his positions contrary to, for example, access to abortion and the recognition of different types of families in Ecuador.”⁸¹

The information received by this Panel, critical of the candidate’s nomination, is referenced and analyzed below.

⁸¹ Note sent by César Ricaurte, Director of Fundamedios and 40 other organizations. Pigozzi, an ultra-conservative lawyer, nominated by Ecuador to the IACHR. Note received by the Secretariat of the Panel on May 9, 2023.

Case of García Ibarra v. Ecuador

Candidate Pier Pigozzi was an expert witness for the Attorney General's Office of Ecuador at the IACtHR in the case of *García Ibarra et al. v. Ecuador*.⁸² He was summoned by the Court to analyze the systematic evolution of the jurisprudence at the ECtHR and the IACtHR regarding levels of legal scrutiny in matters relating to extrajudicial executions, selected cases, and their historical context. He was also asked to refer to the proportional use of force by State agents, the ECtHR's jurisprudential approach, and the IACHR's jurisprudential treatment of this matter.

At the public hearing, when the IACHR questioned him about his assessment of the conceptualization made by the IACtHR in the case of *Nadege Dorzema et al. v. Dominican Republic* regarding the use of force and extrajudicial executions, expert witness Pigozzi responded, "this is a case that escapes my mind." When asked about the case of *Landaeta Mejía et al. v. Venezuela*, he answered, "I am sorry that my memory has failed me given the specific way in which you have asked me the question." Subsequently, he was asked about the *Enukidze and Girgvliani v. Georgia* case at the ECtHR, and he replied, "I do not have it in mind." The expert subsequently failed to establish the difference between a public and a private act for purposes of determining the international responsibility of the State.

In his explanation, the candidate did not demonstrate a clear understanding of international human rights standards regarding summary, arbitrary, or extrajudicial executions. During his presentation before the IACtHR, the candidate indicated that he would submit additional arguments in his final written report. However, the report was not taken into account because it was submitted after the deadline.

In the judgment of November 17, 2015, on the *Case of García Ibarra et al. v. Ecuador*, the IACtHR declared inadmissible the additional arguments filed by the candidate because they were submitted after the deadline, and stated, "together with its final written arguments, the State submitted an 'expansion of the expert opinion' rendered by Pier Pigozzi's after his testimony in a public hearing. Although in other cases the Court has admitted complementary documents to expert opinions rendered at hearings, in the present case this document was presented in an untimely manner along with the final written arguments, and for this reason it is inadmissible."⁸³

In the interview held on May 11, 2023, in response to the Panel's question regarding his testimony as an expert witness before the IACtHR on the definition of summary or arbitrary extrajudicial executions in the framework of international human rights law in the case of *García Ibarra et al. v. Ecuador*, and his answers to the questions posed by the Commission, the candidate responded, "well, to begin with, that is almost 10 years ago, obviously in terms of knowledge and so on, a lot of water has flowed under the bridge. On the other hand, I stand by what I said in that expert opinion. It seems to me that the style was very typical of

⁸² See the complete video of the public hearing of the *García Ibarra vs. Ecuador* case, where expert witness Pier Pigozzi renders his expert opinion, available at: <https://vimeo.com/118766033>

⁸³ I/A Court HR, *Case of García Ibarra et al. v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs), Judgment of November 17, 2015, Series C No. 306, para. 41. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_306_esp.pdf

the Commission's counsel at that time [...], I felt that I had gone back nine years and was participating in a Court, in a moot court, in a student competition on the knowledge of the Inter-American System.”

In his interview before the Panel, the candidate pointed out that there is no clear definition for extrajudicial or arbitrary executions, and even pointed out that there was a contradiction in the jurisprudence of the IACtHR between the cases *Nadege Dorzema et al. vs. Dominican Republic* and *Hermanos Landaeta Mejia et al. vs. Venezuela*. He said, “there were contradictory decisions given by the Inter-American Court in both cases – both had executions of people literally kneeling and being executed with a coup de grace. Nonetheless, in the case of the Landaeta brothers in Venezuela, the Court said that only one of these occurrences was an execution and the other was not, whereas in the case against the Dominican Republic, the Court concluded that there was an extrajudicial execution and provided a definition of this conduct.”

In its Judgment of November 17, 2015, the IACtHR held the State of Ecuador responsible for violation of Article 4(1) as a result of the arbitrary deprivation of life of José Luis García Ibarra⁸⁴ and referred to the elements that define arbitrary executions.

Margin of appreciation

According to information received by this Panel, civil society organizations pointed out that on numerous occasions, both in academia and in judicial processes or legislative discussions, Pigozzi even qualified the binding nature of international law and defended the doctrine of the “margin of appreciation of the States,” which allows for national discretion in the fulfillment of international commitments.

This type of position erodes the duty of all branches of government, including the judiciary, to ensure compliance with the ACHR and other international obligations assumed in good faith. This theory is specific to the European human rights System and is not recognized under the ACHR. Even so, the ECtHR is the final judge and interpreter of the national margin of appreciation, and the ECtHR defines the common European mandatory minimums in the field of human rights. Therefore, this is not merely a theoretical position but a political one, and it weakens the effectiveness of the IAHRs and compliance with international standards.

When asked about this in his interview with the Panel, candidate Pigozzi said, “in terms of interpretation by international organizations, they should also value and recognize the forms of expression of pluralism and how the States are also shaping the application of international conventions. In that sense, I believe that on the Inter-American side we speak more adequately of the issue of legal pluralism.”

The Panel notes that “legal pluralism” allows for the coexistence of different legal orders, especially in the domestic sphere (e.g., State law and indigenous law), but should not be an excuse to exempt States from the application of the mandatory standards of international human rights law.

⁸⁴ *Id.*, paras. 105-118.

Freedom of expression and the use of criminal law

In the interview with the Panel, Pigozzi was invited to express his opinion on what are the limits of freedom of expression and the use of criminal law. The candidate began by using an allegorical figure between the verbs “shall” and “should.” He said that he sees the application of criminal law in this subtlety of language. Pigozzi points out that there are many international standards contained in international treaties that are in dispute, and the use of criminal law is not best practice, but the use of language and these distinctions can strengthen the IAHR, “perhaps explore without weakening.”

In his interview, the candidate ended by saying that he personally would not agree with the use of criminal law in situations related to freedom of expression, as the evidence indicates that it does not work, but there is much to think about the use of criminal law in general.

In this regard, the Panel notes that the jurisprudence of the IACtHR has declared the inadmissibility of the use of criminal law against violations of Article 13 of the ACHR in matters of public interest that affect public officials. Further, the reports of the IACHR have also been clear in pointing out the risks of criminalization when using penal law in referring to public officials or issues of public interest, because they can affect legitimate activities in society and of special importance to democratic life, such as journalism and the defense of human rights.

Same sex marriage and therapeutic abortion

Civil society organizations submitted information to this Panel saying that the candidate affirms, for example, that marriage is not ‘natural’ if it is not between a man and a woman, and therefore it is not the State’s responsibility to legislate on the subject. They also pointed out that the candidate set himself up as an organic intellectual of political projects and emphatically defended positions that were reluctant to advance sexual and reproductive health rights. For example, he criticized local and regional initiatives on sexual education, and campaigned in Ecuador against the recognition and guarantee of the right to voluntary interruption of pregnancy, including in cases of rape.

The Panel asked the candidate why he stated that the State should not legislate on same-sex marriage. The candidate responded that he was referring only to cases of pedophilia and incest. According to information shared with the Panel by civil society organizations, the candidate made the following pronouncement in 2018: “there are families that are forbidden, where there is force, children sold, women forced or given for sale. These families are not valued by international law. That is on one extreme. At the other extreme, we have a series of forms of coexistence that currently exist in our society and the State has no reason to name, identify, or list.”⁸⁵

Similarly, the candidate stated before the Ecuadorian Assembly that “talking about the right to abortion is misleading. It is more than anything a communicational strategy; it has no legal basis. All the emotional speech about the victims and their accompaniment is very valuable.

⁸⁵Andean Foundation for the Observation and Social Study of the Media (FUNDAMEDIOS). Information note submitted to the Panel of Experts through Official Communication No. FDM 257 - 2023 dated May 9, 2023.

It is fundamental because we listen to it to determine the needs to which the law must respond, but the legal technique is not debated between extremes. We cannot fall in the error of considering that either a right is guaranteed or a conduct is prohibited and there is no possibility in the middle.” He made this statement on December 9, 2021, in the first debate of the National Assembly of the Organic Law to Guarantee Access to the Voluntary Interruption of Pregnancy.

The Panel asked him what his assessment would be of precedents such as the *Beatriz v. El Salvador* case if he were elected Commissioner. The candidate responded that he would “put aside his personal opinions and follow the path of current law, the precedents of the Court, and the previous decisions of the Commission.”

Adoption by same-sex couples

The candidate sent to the Panel, as an annex to his questionnaire, an *amicus curiae* brief that he submitted to the Constitutional Court of Ecuador. In said brief, the candidate presented arguments before the Court with the objective of dismissing a petition in which two women requested the civil registry to register them as mothers of their daughter Satya. Specifically, the candidate requested the dismissal of the extraordinary protection action filed by the Ombudsman’s Office of Ecuador in 2012 for discrimination against the de facto union formed by Nicole Susan Rotheron and Helen Louise Bicknell, for preventing them from registering their daughter Satya.⁸⁶ Ultimately, the action was declared founded by the Constitutional Court of Ecuador.⁸⁷

⁸⁶ Candidate Pigozzi argued, among other things, the following:

- “[T]he same is developed in infra-constitutional norms such as Article 232 of the Civil Code [footnote omitted] and in the same differentiating sense makes a distinction between, for example, families that constitutionally may or may not adopt. [footnote omitted]”
- “[The] Constitution recognizes other types of rights for family members, such as equality in decision-making (Article 69, paragraph 3). In this category of rights, it is of special relevance for this case to note the systematic and express manner in which the Constitution recognizes “maternity and paternity” in an indivisible manner: “**the mother and father** shall be obliged to the care, upbringing, education, feeding, integral development and protection of the rights of their daughters and sons” (article 69 numeral 1). The same when it says that “the State shall promote maternal and paternal co-responsibility and shall monitor compliance with the reciprocal duties and rights between mothers, fathers, daughters and sons.”
- “it would be a violation of the Constitution to attempt to circumvent or evade the constituent will to grant filiation and parental rights only to ‘different-sex couples’ regardless of the set of terms chosen (i.e. registration, inscription, adoption, etc.)”
- “At the level of international human rights law, the discussion on filiation and parental rights has not been addressed by our Regional System for the Protection of Human Rights. This illustrious Court should note that the case of *Atala Rifo v. Chile* refers only to custody issues. Filiation and registration were not subject to any substantive discussion in that case. [footnote omitted]”.

⁸⁷ See JUDGMENT No 184-18-SEP-CC, Case No 1692-12-EP. May 29, 2018, available at: <http://doc.corteconstitucional.gob.ec:8080/alfresco/d/d/workspace/SpacesStore/bdcf8eb2-6f40-447e-9bdd-4cf152c7b311/1692-12-ep-sen.pdf?guest=true>

Diligence and other relevant skills

The candidate mentioned in his questionnaire that between 2005 and 2009, he worked with migrants and refugees at the Ecuadorian Foreign Ministry, IOM, and UNHCR.

Regarding languages, candidate Pigozzi said when answering his questionnaire “Spanish is my mother tongue and I have a Master’s Degree and an SJD in English. I also have an initial-intermediate level in French.”

Regarding the time he will devote to the work of the IA Commission, candidate Pigozzi indicated in the questionnaire that in the event that he should engage in any other professional activity, he would only engage in teaching and academic research.”

iii. Independence, impartiality, and absence of conflicts of interest

Candidate Pigozzi stated that in the face of an eventual conflict of interest, “I will present my excuse in any matter involving the PUCE Human Rights Center and the Notre Dame Center for Civil and Political Rights (where I denounced human rights violations by the government between 2007 and 2016) when they are related to matters known to them on the dates when I was linked to their team.”

iv. Contribution to the balanced and representative integration of the organization

The candidate did not express a position on the balanced and representative integration of the organization; however, he pointed out that the full realization of economic, social, and cultural rights is essential to ensure a more equitable society and to favor the exercise of all the rights of women and children.

The candidate indicated in the questionnaire sent by the Panel that he was trained in the two legal traditions in the region: Anglo-Saxon and Roman-Germanic law.

v. National nomination process

Ecuador does not have a national public mechanism for the appointment of high-level positions, as is the case for IACHR Commissioners.

Through communications received by the Panel, human rights defenders also questioned the nomination “without consultation or participation of civil society organizations” and “in the midst of a generalized policy of human rights violations in Ecuador as a result of the actions and omissions of the last two governments.”

They also pointed out, “without prejudice to this, the internal processes of selection and nomination of candidates for the conformation of human rights organs have been characterized by a lack of transparency and absence of deliberative spaces, and have revealed the disregard of transversal principles of popular control: autonomy, equality, gender parity, respect for difference, solidarity, and interculturality.”

In a search for information, no mention regarding the selection and nomination of Pigozzi was found in the official Twitter accounts of the Presidency of the Republic

(@Presidencia_Ec), the Ministry of Foreign Affairs and Human Mobility (@CancilleriaEc), and the Permanent Mission of Ecuador to the Organization of American States (@Ecuador_OAS). There is also no information on whether other individuals were considered to form the list of internal candidates to integrate the IACHR, nor reports of public interviews or invitations to present observations regarding the candidacies.

- **Conclusion**

The Panel concludes that the candidate Pier Paolo Pigozzi meets some of the evaluation criteria contained in the Inter-American instruments to be elected as Commissioner. The candidate meets the requirements of moral authority, independence, and absence of conflicts of interest.

In relation to the requirement of recognized expertise in human rights, although the candidate has knowledge and postgraduate studies in the field and has significant and recognized academic experience, he maintains positions that denote regression in relation to consolidated international standards for the protection of human rights, relying on what he calls a “criterion of textual interpretation of the Inter-American instruments” and his interpretation of the doctrine of “margin of appreciation” and “legal pluralism.” In this regard, while the candidate indicated that he is sensitive to the realities of the Hemisphere, the Panel identified clear inconsistencies between his previous public positions and answers given in his interview. In particular, there were inconsistencies with respect to the authoritative interpretation of the Inter-American instruments by IAHR bodies versus his version of the “margin of appreciation,” same sex marriage and the right of same-sex couples to adopt, sexual and reproductive rights, and the use of criminal law to resolve conflicts between freedom of expression and the honor of individuals or public officials.

IV. Withdrawal of candidates

In the current nomination and selection process to the IACHR, OAS Member States nominated ten (10) candidates: Andrea Pochak (Argentina), Christopher Arif Bulkan (Guyana), Edgar Stuardo Ralón Orellana (Guatemala), Fábio Balestro Floriano (Brazil), Gloria Monique de Mees (Suriname), James Cavallaro (United States of America), Joaquín Mejía Rivera (Honduras), Julissa Mantilla Falcón (Peru), Lidia Casas Becerra (Chile), and Pier Paolo Pigozzi (Ecuador).

States withdrew four (4) of the ten (10) nominations. James Cavallaro was nominated on February 10, 2023.⁸⁸ However, four days later, the United States withdrew Cavallaro’s nomination without explanation, even though the nominee stated that it was due to his comments related to the human rights situation in Israel and Palestine. The University Network for Human Rights issued a statement criticizing the US’s decision to withdraw the candidacy of James Cavallaro. Subsequently, on March 3, 2023, the United States issued a statement in which it argued that “after the Department completed its selection process, several inappropriate social media posts by Professor Cavallaro on a variety of topics came to light, including Professor Cavallaro’s ad hominem attacks on several elected officials.

⁸⁸ U.S. Department of State. Announcement of candidate for the Inter-American Commission on Human Rights. February 10, 2023. Available at: <https://www.state.gov/translations/spanish/anuncio-de-candidato-a-la-comision-interamericana-de-derechos-humanos/>

Because of this information, we lost confidence in his viability as a U.S. candidate for Commissioner.”⁸⁹

Commissioner Julissa Mantilla was nominated by Peru for re-election on February 14, 2023. Fábio Balestro Floriano was nominated by Brazil to the IACHR on February 28, 2023. Joaquín Mejía Rivera was nominated by Honduras to the IACHR on March 7, 2023.

However, on March 31, 2023, Brazil withdrew the candidacy of Fábio Balestro. The Panel received an invitation from the Brazilian Mission to discuss the decision to withdraw the candidacy. The meeting took place at the Mission’s headquarters on April 11, 2003, where the Panel was informed of the withdrawal of the candidacy after having initiated its promotional (campaign) activities. In spite of the questions formulated by a representative of the Panel, no explanation was obtained as to the motives and reasons for the withdrawal of the candidacy.

Six days later, on April 6, 2023, Honduras withdrew the candidacy of Joaquín Mejía. Finally, on April 28, 2023, Peru withdrew the candidacy of Commissioner Julissa Mantilla. It should be noted that these nominations were withdrawn by the States after the deadline for submitting nominations, March 23, 2023, has passed.

In response, the Panel issued a press release on April 30 in which it expressed its concern regarding the unwarranted withdrawal of IACHR nominations.

Among other things, the Panel indicated that these events had not occurred in previous nomination processes for IAHR bodies to such an extent, and it could affect the transparency and participation of different stakeholders in the process.

The reduction in the number of candidates implies a reduced possibility for achieving an open process where the suitability of candidates can be discussed. In no case would it be desirable for the same number of candidates to be proposed as there are vacancies in the IAHR bodies. This also allows for a highly politicized election.

The IAHR Panel recalls that the selection of candidates must comply with the requirements of independence, impartiality, high moral authority, and recognized competence in the field of human rights – all of which must be based on an examination of the nominees’ track record. The Panel also emphasizes that in the selection and nomination process at the national level, States are responsible for publicizing the positions available and ensuring the participation of broad sectors of society.

Therefore, the nomination and withdrawal of candidacies to IAHR bodies should be based on the criteria established by the Inter-American legal framework in order to protect the integrity and purpose of the process. In this sense, when a State withdraws a candidate to an IAHR body, it must do so in a reasoned manner and disclose the reasons or motives for

⁸⁹ Unofficial translation by the Secretariat of the IAHR Panel. The full communiqué is available at: <https://usoas.usmission.gov/u-s-department-of-state-response-to-february-22-open-letter-from-human-rights-activists/>

doing so to comply with transparency requirements. We recall that it was the OAS Member States themselves that approved Resolution AG/RES. 2991 (LII-O/22), aimed at providing transparency (and gender parity) to the entire selection process at both the national level and before the OAS.

V. Reasoned votes and transparency

In the present selection process, the Panel noted that some of the separate reasoned opinions of current Commissioner Ralón Orellana were not incorporated into the decision adopted by the IACHR, from which he totally or partially departed, and therefore are not available for public access. For example, in the Report on Trans and Gender Diverse Persons and their Economic, Social, Cultural, and Environmental Rights, the following note appears: “*Commissioner Edgar Stuardo Ralón issued his reasoned vote against the report. This reasoned vote is available at the Executive Secretariat of the IACHR.”

For this reason, the Panel requested that the Executive Secretariat of the IACHR give access to this and other separate votes, in order to be in a position to evaluate the Commissioner’s candidacy for reelection. In this regard, the Panel acknowledges the willingness of the IACHR to share the separate reasoned opinions it requested as part of the evaluation process.

However, the Panel draws attention to the scarce amount of information published online by the IACHR on dissenting votes and opinions by Commissioners. Likewise, it is not clear what procedure is available to individuals and civil society organizations to request this information. At the same time, it notes that Resolution 2/22 Reasoned Vote⁹⁰ constitutes an exception that is not based on the protection of a compelling overriding interest, making it unnecessary and disproportionate with respect to access to information on the proceedings of the IACHR plenary, which limits public scrutiny.

In the Panel’s opinion, the practice of not incorporating reasoned or dissenting votes impacts the transparency of the IACHR’s decisions because it prevents knowing the reasons why a Commissioner departed from a decision debated and reached by the IACHR. The only exception to this principle could be press releases since they are the expression of the basic consensus reached. In this sense, the Panel considers that all votes cast, whether unsubstantiated in writing, reasoned, or dissenting, should be made public along with the decision reached by the IACHR.

In this regard, the IAHR Panel encourages the IACHR to publish all separate reasoned opinions made by Commissioners, pursuant to Article 19.2 of the IACHR Rules of Procedure.⁹¹

Finally, the Panel makes public the votes it requested and received from the IACHR Secretariat in this selection process, which were not generally available:

⁹⁰ See Resolutive paragraph 7: “That, at the well-founded request of a Commissioner, and in order to preserve the object and purpose of the country report, thematic report or resolution, the IACHR may agree on another modality, timing and access to the respective reasoned vote.”

⁹¹ This provision states: If the decision concerns the approval of a report or preliminary report, the explanation of the vote shall be included following the text of that report or preliminary report.

- Reasoned Vote Report on Trans and Gender Diverse People and their economic, social, cultural, and environmental rights.
- Reasoned Vote IACHR Annual Report 2022. Chapter IV.B - Cuba.

VI. Recommendations

The fulfillment of human rights protection functions by the bodies of the IAHRs depends, to a large extent, on the suitability, independence, and impartiality of its members. The application of Inter-American human rights standards in a timely and relevant manner depends on the qualities and capacities of the Commissioners that make up the IACHR.

The characteristics of the nomination and selection processes for these positions necessarily influence the composition of the plenary of these bodies, as well as the quality of their decisions and perception of their legitimacy. Therefore, the nomination and selection processes at the national level must be transparent, participatory, and based on the merits of the participants.

The Panel notes that Argentina and Chile have implemented measures with respect to the recommendations made by the OAS General Assembly and by the Panel itself in its previous evaluation exercises. In this regard, the Panel welcomes the fact that these States have participatory processes in place and that in the case of Argentina, this has been formalized through a Resolution of the Executive Branch.⁹²

However, the rest of the States did not report the existence of a public and participatory selection process. Therefore, the Panel encourages those States to continue advancing transparency, publicity, and participation in the internal selection process, including fostering civil society participation.

The Panel also highlights other positive aspects observed in this nomination period at the national level. The Panel welcomes the fact that the States respected gender parity in the nomination process: 3 women and 3 men were nominated. The Panel also notes with enthusiasm that the States nominated two candidates from CARICOM countries – a region historically underrepresented in the composition of these bodies.

In addition, it insists on the importance of continuing to work on procedures that include adequate diversity and representation of historically underrepresented groups, such as people belonging to indigenous and afro-descendant communities.

Apart from the two cases mentioned above, the nomination procedures at the national level continue to be mostly controlled in a discretionary and exclusive manner by the Executive Branch. In this sense, the current systems for nominating and selecting Commissioners present a series of deficiencies in terms of transparency and participation. The Panel has pointed out these deficiencies throughout its various evaluation exercises.

It is important to reiterate that Inter-American legal instruments are silent on how nominations should be developed at the national level, and “there are no OAS guidelines

⁹² See the text of the Resolution, available at: <https://www.argentina.gob.ar/normativa/nacional/resoluci%C3%B3n-20-2023-379394/texto>

establishing minimum standards or requirements for member States to consider when selecting candidates for the Court or the Commission, nor is any OAS body empowered to review the process or the qualification of candidates once States submit their candidates.”⁹³

Without clear and uniform rules, these processes are mostly controlled by the States’ Executive Branches and are exempt from the possibility of being officially audited by other actors. The information provided to the Panel by the candidates and by the States themselves confirms that, in general, nominations are made through a discretionary appointment by the Executive, usually through the Ministry of Foreign Affairs.

At the election stage, the practice of vote trading has historically dominated these processes. States exchange pledges of political support for votes in elections to various bodies, and this support often ignores the capabilities and suitability of the candidates. The previous Panels have made detailed criticisms of these practices, which are also reiterated by civil society organizations at the regional⁹⁴ and universal levels.⁹⁵

In this regard, it is interesting to note the experience of the Coalition for the International Criminal Court – a global network of more than 3,000 organizations around the world working for fair, transparent, and merit-based nomination and selection processes. The coalition has developed specific campaigns against vote-swapping, which it has characterized as “...a destructive practice done as a matter of course in other international institutions, opposed to the fair and effective functioning of international justice and that must be avoided altogether at the ICC. For this reason, we promote informed and merit-based elections. This type of situation, vote trading, or other forms of politicization cannot happen when it comes to electing those who will lead the Rome Statute’s international justice system.”⁹⁶

In this scenario, throughout its five previous installments, the Panel has made a series of recommendations with the objective of adjusting national nomination processes and the OAS selection process to international standards and the experiences of other comparable bodies, such as the ICC and ECtHR. The shortcomings of the current process, as well as best practices developed by other international institutions, guide the Panel in developing its recommendations. Several recommendations that the Panel has issued in the past are still valid and will be discussed later in this section.

Both the ICC and the ECtHR are models with features comparable to those of the Inter-American bodies – they have official evaluation mechanisms for national nominating processes and their election process. For this reason, the Panel considers it valuable to

⁹³ Final Report of the 2018 Panel, *supra*, p. 32, citing Open Society Justice Initiative and International Commission of Jurists, *Strengthening from Within: Legal Framework and Practice in the Selection of Human Rights Judges and Commissioners*, 2017, pp. 43-44.

⁹⁴ See, for example, Center for Justice and International Law (CEJIL), *Aportes para el proceso de selección de miembros de la Comisión y Corte Interamericanas de Derechos Humanos*, 2005, p.9; Katya Salazar and Naomi Roht-Arriaza, *Democracia y Transparencia en el SIDH: una experiencia en marcha*. Revista Derecho y Praxis, Vol. 08, N.2, 2017, pp. 1652-1681, p. 1655, ISSN-2179-8966. Available at: <https://www.redalyc.org/pdf/3509/350951354024.pdf>

⁹⁵ See Coalition for the International Criminal Court. ICC Election Campaign. Available at: <http://www.coalitionfortheicc.org/es/elecciones-2020-cpi-sp>.

⁹⁶ *Id.*

highlight in its recommendations the experiences that have worked in these bodies, so that they may be taken as a guide for the Inter-American model.

Before concluding, it is important to note that the Panel has found it challenging to reconcile the candidates' professional work with the responsibilities involved in assuming the position of Commissioner, and to prevent them from incurring in a conflict of interest. For example, a full-time job may be incompatible with the position of Commissioner due to the responsibilities that the later demands.

In line with its previous reports, the Panel maintains the organization of its recommendations around two essential objectives for the improvement of the current system:

i) That States create a transparent, participatory, and open procedure at the national level that allows for the selection of a greater number of suitable candidates who meet the normative requirements; and ii) that the election process at the OAS be improved to avoid many of the deficiencies mentioned above and to ensure that the election of Commissioners complies with the normative requirements and fully reflects the diversity of the region.

a. Recommendations for national nomination processes:

i) Each State should have a formal, independent body, of diverse composition, to select nominations

In many States, institutions already exist that could carry out the selection process by appointing some of its members. If not, the Panel considers that such an institution should be created. The individuals making the selection should be independent, impartial, and well informed about the purpose and functions of IAHR bodies. They should also have an impeccable human rights record. This body should ideally be representative of different constituencies and sectors of society within the State (academic, professional, and human rights, among others). It should be permanent or formed well in advance of the next election.

This type of evaluation body already exists in other comparable models. For example, the system for nominating and selecting female judges to the ECtHR is supported by an Advisory Panel of Experts that acts during the nomination process of candidates at the national level. Its main mandate is to provide advice to States to assess whether the candidates meet the essential requirements established in the European Convention on Human Rights,⁹⁷ which are similar to the requirements established by Inter-American regional instruments.

It is also relevant to note that for the recent election of the new ICC Prosecutor, an independent evaluation body called the "Prosecutor Selection Committee" was created. The Committee was in charge of analyzing the nominations and was assisted by a panel of expert

⁹⁷ European Convention of Human Rights, art. 21: The judges shall be of the highest moral character and possess the qualifications required for appointment to high judicial office or be jurisconsults of recognized competence. The judges shall serve on the Court in their individual capacity. 3. During their term of office, judges may not engage in any activity that is incompatible with the requirements of independence, impartiality or availability necessary for full-time service: any question arising as to the application of this paragraph shall be decided by the Court.

members.⁹⁸ The Committee was composed of 5 members who acted independently, in their personal capacity, and without instructions from any external agent. As for its composition, a gender and geographic balance was required, as well as an adequate representation of the main legal systems of the world.

ii) States should publicize a call for nominations, explaining the criteria and processes for nominating and electing candidates

The more publicity the call for nominations receives, the more equitable and transparent the process will be. Therefore, States should disseminate all information on the nomination process used internally for the selection of candidates. States should make a public announcement, encouraging all those who meet the requirements to be a candidate to participate in the internal selection procedure. This public announcement should be published on the OAS and IACHR websites. It is also suggested that it be widely disseminated at the national level.

In the comparative model of the ECtHR, the Committee of Ministers of the Member States has highlighted a series of good practices regarding the publicity of calls for applications, highlighting the importance of making them known to all those who are potentially qualified for the position.⁹⁹ It also indicates that the announcement of the call for applications may be made through various means, such as official gazettes or other similar official publications, the government's website, national or regional newspapers, and the specialized legal press. It may also be publicized through judicial bodies or bar associations, the Ombudsman, national human rights institutions, universities, and civil society organizations.¹⁰⁰

In the same vein, another experience of comparative interest is the one developed for the election of the new ICC Prosecutor. In this case, the vacancy announcement was circulated to State parties and requested to be disseminated at the national level, through relevant professional or institutional channels, in order to reach as wide an audience of criminal justice professionals as possible and across all regions. The vacancy announcement was also distributed to other interested parties.¹⁰¹

Likewise, dissemination should be carried out so that interested groups can follow the process and, eventually, participate in the scrutiny of its different stages.

iii) Applicants should present evidence of compliance with the requirements set forth in the ACHR and the Statute of the IACHR Commission

⁹⁸ See Committee's announcement, available at <http://www.coalitionfortheicc.org/es/icc-prosecutor-elections-2020>

⁹⁹ See CM Explanatory Memorandum (2012)40, para. 40. Full text in English, available at: https://www.coe.int/t/dgi/brighton-conference/documents/Guidelines-explan-selection-candidates-judges_en.pdf.

¹⁰⁰ *Id.*, paras. 39, 40 and 41.

¹⁰¹ See *Interim Report of the Prosecutorial Selection Committee*, November 13, 2019. Spanish version, available at: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-INF4-SPA.pdf

Since regional instruments do not provide details regarding requirements for evaluating each applicant, the States should develop national guidelines for their own evaluation. To this end, the Panel suggests that, in accordance with international standards on the subject, the guidelines should consider the “high moral authority” of a person, their record of sanctions, misdemeanors, complaints, as well as awards, and honors received by the candidate, among others. In order to evaluate recognized expertise in human rights, the Panel considers it important to assess the person’s demonstrated knowledge and experience working with the IAHR and its instruments.

To this end, the candidate’s record of professional achievements, academic publications, or substantial experience working or litigating before the IAHR should also be taken into account. In addition, the candidate’s specific knowledge of the main challenges of the IAHR and his/her commitment to the object and purpose of the ACHR should be taken into account. Finally, the concepts of independence and impartiality constitute two of the six fundamental values developed by the Bangalore Principles¹⁰² which, with respect to the independence of judges, provide that they must be free from “inappropriate connections with the executive and legislative branches” and must “appear to a reasonable observer to be free from the former.”¹⁰³ For their part, the values of independence and impartiality are at the core of the Addis Ababa Guidelines,¹⁰⁴ which provide that the members of these bodies, in addition to being independent and impartial, should appear to a reasonable observer to be independent and impartial. These guidelines also provide that those working for the treaty bodies shall not be subject to any influence or pressure from the State of which they are nationals, or from any other State or its agencies, and shall not seek or accept instructions from anyone in connection with the performance of their functions.¹⁰⁵

These criteria can be applied by analogy to IACHR Commissioners.

iv) Applicants should be asked to provide information on the activities they plan to carry out simultaneously with their work as Commissioners

In the spirit of Article 71 of the Convention, the Panel also recommends that States refrain from nominating persons who occupy – simultaneously with their position at the IACHR and/or at the time of their nomination positions of authority and responsibility in any area of government or the diplomatic corps of their country. This could give rise to a conflict of interest that would impair the real or apparent independence and impartiality that any judicial or quasi-judicial body should have. The Panel recognizes that this does not derive from an impediment established by the ACHR or the Statute of the Commission. However, the recommendation is extended as a suggestion relating to political prudence, and should not be understood as a criticism of personal qualities or capabilities. The advised restriction would apply fundamentally to those who are active in the executive branch and/or performing diplomatic tasks at the time of applying, since they are the ones in charge of developing the foreign policy of a State based on its own interests.

¹⁰² Bangalore Principles, *supra*.

¹⁰³ *Id.*, para. 1.3.

¹⁰⁴ Addis Ababa Guidelines, *supra*.

¹⁰⁵ *Id.*, para. 5.

In order to avoid a conflict of interest that might interfere with a candidate's work, the selection body should advise candidates on the limitations they will have, if elected, in relation to their future field or work. It is important that candidates are able to bring dedication and continuity to the position. In this regard, the Panel reiterates that in the history of the IACHR there have been resignations from the Commission. The Panel considers that the early resignation of any member of the IA Commission affects the dynamics of the plenary and the activities of the thematic and country rapporteurships for which he/she was responsible – a situation that is not desirable for the body's work. In addition, the learning and adaptation process involved in the arrival of a new Commissioner must be considered.

v) A broad range of linguistic competencies and bilingualism would be desirable

It is important to be fluent in more than one of the four official languages of the OAS (Spanish, English, Portuguese, and French). It would also be desirable to have at least a passive knowledge of another language.

At the ECtHR, it has been accepted that individuals extend written commitments to take intensive classes if elected. Such a practice could be applied in the Inter-American case in the situation where there is a candidate who fully complies with all the requirements, but is not fluent in more than one of the official languages of the OAS.¹⁰⁶

(vi) Interviews should be an essential part of the selection process

The national selection body should call individuals for an interview to assess their qualifications. There should be pre-established rules to allow representatives of the most important non-governmental human rights organizations at the national level to participate in the interviews. Interviews should be conducted on the basis of a model template to ensure a level playing field for interviewees and their evaluation. The questionnaires attached in Annex B can provide an idea of the type of questions that could be asked to the applicants. The body's decisions should not be binding, but political authorities should only deviate from its advice by means of a reasoned and public decision.

vii) States should nominate at least two candidates for each election

Given the historical under-representation of women and over-representation of men in the Commission and to maintain gender parity, at least one candidate should be a woman with the capacity of being elected. Also, candidates should not necessarily be nationals of the nominating State.¹⁰⁷ This would ensure the possibility of a real election in the General Assembly, and allow voting States to elect individuals by considering the need of having human rights bodies that reflect the diversity of individuals they protect by means of the constitutive and treaty instruments, including members of underrepresented communities.

¹⁰⁶ See Guidelines of the Committee of Ministers CM (2012) 40 on the selection of candidates for judges of the European Court of Human Rights, adopted on March 28, 2012. Full text in English available at https://rm.coe.int/16805cb1ac#_ftn1. See also CM (2012)40 Explanatory Memorandum, para. 26, full text available at https://www.coe.int/t/dgi/brighton-conference/documents/Guidelines-explan-selection-candidates-judges_en.pdf.

¹⁰⁷ Article 3.2. of the Statute of the IACHR Commission.

From the United Nations Human Rights Council, States and international bodies have been urged to intensify their efforts to advertise available vacancies and “*encourage more women to apply as candidates and to monitor and report on progress in achieving gender-balanced representation.*”¹⁰⁸

(viii) States should seek the nomination of individuals who, in addition to meeting the conditions of recognized expertise in human rights and independence and impartiality, contribute to a diverse and representative composition of the body

Nomination processes at the local level must guarantee access to these positions for members of minorities or disadvantaged groups in the region, such as indigenous peoples, Afro-descendants, people with disabilities, and members of sexual minorities, among others.

Likewise, given that the IACHR is faced with a broad thematic spectrum of issues arising from the human rights situation in the region, it is also necessary for it to be composed of members with diverse areas of expertise. In this regard, it is essential that there be a balance in its composition. As the OAS General Assembly has repeatedly stated, it is necessary to ensure “*a gender-balanced composition, with representation of the different regions, population groups, and legal systems of the Hemisphere.*”¹⁰⁹

The Panel notes that with respect to the geographic distribution of the six candidates, three of them are from South America, one is from Central America, and two are from CARICOM. The Panel welcomes with enthusiasm the nomination of candidates from the Caribbean region, which has been historically under-represented in both organizations.

ix) The Panel encourages the OAS General Assembly to create a framework law containing minimum criteria for Member States to nominate candidates to IAHR bodies

The Panel takes up the proposal that representatives of Member States suggested at a meeting held in February 2023 and recommends to the General Assembly that it adopt a resolution entrusting the Inter-American Juridical Committee with the drafting of a framework or model law. Such a law could reflect the criteria contained in this report and would serve as a guide for Member States to establish participatory and transparent internal processes for the selection of candidates to Inter-American human rights System bodies.

b. Recommendations for the selection process in the OAS

In the present evaluation exercise, the Panel endorses the conclusions drawn by previous panels, due to their full validity. In this regard, it recommends:

¹⁰⁸ United Nations General Assembly, Human Rights Council A/HRC/41/L.6/Rev.1 of July 10, 2019, item 15. b. Available at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G19/210/57/PDF/G1921057.pdf?OpenElement>

¹⁰⁹ OAS General Assembly, AG/RES. 2887 (XL VI-O/16), of June 14, 2016, *supra*; AG/RES. 2908 (XLVII-O/17), of June 21, 2017, *supra*; AG/RES. 2928 (XLVIII-O/18), of June 5, 2018; AG/RES. 2941 (XLIX-O19), of June 28, 2019, *supra*; and AG/RES. 2991 (LII/O22), of October 7, 2022, *supra*.

i) The OAS should establish a Consultative Committee of independent experts (without State representation) responsible for ensuring the suitability of the persons nominated to be Commissioners of the IACHR or judges of the IACtHR

Throughout its various versions, the Panel has accumulated valuable experience on the methodology and processes for the evaluation of candidates. This evaluation exercise should be institutionalized within the OAS. The Panel recommends that this Advisory Committee have a diverse composition of independent members, including representatives of civil society, academia, and officials in their individual capacity and as independent experts, and an equitable number of representatives. The OAS could also invite the Inter-American Juridical Committee to assist the Consultative Committee in its work, in accordance with Article 99 of the OAS Charter, which states that the Juridical Committee exists to serve the Organization as a consultative body on legal matters.

Within the ECtHR, there is a Committee for the election of Judges to the Parliamentary Assembly that could serve as a reference. The Committee has the mandate to interview candidates, evaluate their curricula vitae, analyze the nomination procedures at the national level according to minimum requirements of impartiality and transparency, and consider the interviews conducted and the interaction of the States with the Advisory Panel that functions in the national nomination instance. The Committee also approves or rejects the lists of candidates submitted by the States and, in case of approval, establishes an order of preference to be communicated to the Parliamentary Assembly.¹¹⁰

Within the ICC, Article 36(4)(c) of the Rome Statute provides that the Assembly of States Parties may establish a Nomination Advisory Committee. The Committee was created in 2011 with the objective of having a fair and independent assessment of the qualifications of nominees. The Committee reviews the qualifications of the nominees, who are then elected by secret ballot at the Assembly of States Parties.¹¹¹ The Advisory Committee for the evaluation of nominations is composed of 9 members of high moral character, competence, and experience in criminal or international law. The members must be nationals of State parties, but act independently of the interests of the State of which they are nationals. They must reflect the principal legal systems of the world and ensure an equitable and balanced geographical representation of both genders.¹¹²

ii) The terms of reference of the Advisory Committee would include evaluating and assessing the nominees with respect to their suitability for their term of office as Commissioner, Judge or Justice

The Committee would be empowered to meet with these individuals, gather independent information about them, and conduct public panels to provide them with the opportunity to

¹¹⁰ Procedure for the election of judges to the European Court of Human Rights. Memorandum prepared by the Secretary General of the Parliamentary Assembly. SG-AS (2019) 05, 15 April 2019, para.4, English version available at <http://www.assembly.coe.int/LifeRay/CDH/Pdf/ProcedureElectionJudges-EN.pdf>, paras. 13, 17, 18 and 21.

¹¹¹ Rome Statute, Article 36.6 (a).

¹¹² Report of the Bureau on the Establishment of an Advisory Committee on the Nominations of Judges of the International Criminal Court, 20 November 2011, ICC-ASP/10/31. See Annex point a.3, Spanish version available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-36-SPA.pdf.

present themselves to the States, as well as to regional and national civil society organizations. The Advisory Committee could also access the information gathered on each applicant at the national level and in the eventual selection process used at the local level. The Committee should evaluate their suitability not only on the basis of criteria of professional suitability for election, but also on personal qualities of independence, impartiality, integrity, decency, competence, diligence, equanimity, and empathy. Finally, its evaluation should take into account the diversity of the candidates in its recommendations.

iii) The OAS should publish and widely disseminate the names and *curricula vitae* of the candidates sufficiently in advance

In order for institutions, civil society organizations, and any interested person to adequately prepare themselves to participate and contribute to the selection process, it is necessary for the OAS to announce who will stand for election at least 90 days prior to the General Assembly.

iv) The Panel affirms the value of the continued use of an interview process as an integral part of the Committee's work

The Panel notes that the presentation of candidates to the OAS Permanent Council in recent years has been considered an effective and productive activity in facilitating the selection of the most suitable individuals. The Panel suggests that the questionnaires used for the evaluation of candidates, which are included in Annex B of this report, may be useful in developing standardized questions for these interviews.

v) The Panel recommends that the Consultative Committee make a final written report to the OAS regarding the evaluation of the applicants and that the States take this report into account when casting their votes

The Committee's report provides guidance and advice through independent evaluations that States could use for the selection of the most qualified individuals. The Committee's task would not be to endorse or object to individual nominations, but to validate their suitability according to conventional criteria.

vi) The Panel encourages that the election process take into account both the need for diversity on the basis of gender, ethnicity, sexual orientation, disability status, professional specialty, gender identity or other considerations, as well as the need for balanced integration in the Commission and the IACtHR based on the individual's professional background

The selection between two or more suitable persons could be determined on the basis of this need, provided that they meet other essential requirements. The Panel also encourages States to select the most qualified individuals based on their relevant skills and other qualities, as well as the needs of the IACHR to perform its functions equitably, fairly, and efficiently.

c. Recommendations to the IACHR

i) The Panel encourages the IACHR to publish all reasoned or dissenting votes of the Commissioners as an exercise of transparency

In carrying out the evaluation process, the Panel noted the validity of Resolution 2/22 regarding some of Commissioner Ralón Orellana's separate reasoned or dissenting opinions that were not publicly available. Therefore, it requested the IACHR to forward them to the Panel. The Panel considers that in order to respect transparency, the separate reasoned votes of the Commissioners should be published.

VII. ACKNOWLEDGMENTS

The Panel would like to thank all of the actors who collaborated in this process and contributed to the development of a transparent and participatory exercise. Fundamentally, it wishes to thank all of the candidates for their collaboration and willingness to share information about their backgrounds and skills, respond to the questionnaires sent, and participate in interviews with the Panel. We are also grateful for the valuable participation of organizations and institutions in the region that have convened, supported, and actively contributed to the panel's work by sending information and disseminating its work. The Panel particularly appreciates the collaboration of the Permanent Missions to the OAS that have supported the work of the Panel, provided information, actively participated in the meetings, and established transparent and collaborative channels of communication. We also thank the American University Washington College of Law and members of the Secretariat. Finally, we thank the Ford Foundation for its contribution and for making this initiative possible.

VIII. Annexes

a. Annex A. Biographies of the Panel Members

Mariclaire Acosta

Mariclaire Acosta is a renowned academic, activist, and internationally recognized expert in human rights. She served as the president of Mexico's National Anti-Corruption System in 2018 and has founded several civil organizations dedicated to human rights, as well as held important positions in the public sector. She was the Director of Freedom House Mexico, Director for the Americas at the International Center for Transitional Justice (ICTJ), Special Advisor to the Secretary General of the Organization of American States (OAS) for Civil Society Affairs, and Undersecretary for Human Rights and Democracy at the Ministry of Foreign Affairs during the Fox administration. She collaborated with the United Nations High Commissioner for Human Rights for six years through the Board of Trustees of the Voluntary Fund for Technical Cooperation and served as a council member of the National Human Rights Commission from 2013 to 2019.

Currently, she leads JTMX, an organization that seeks to promote a transitional justice process for Mexico. She is the President of Oxfam-Mexico. She is a member of the Board of Directors of the Due Process of Law Foundation (DPLF).

Carlos Ayala

Carlos Ayala is an international jurist and distinguished professor of constitutional law with experience in systems for protecting human rights. He is the Vice President of the International Commission of Jurists and was a member of the Board of Directors of the International Human Rights Institute (IHRI). From 1996 to 1999, he served as the President and Member of the Inter-American Commission on Human Rights and as the Rapporteur on the Rights of Indigenous Peoples in the Americas. In 2005, he was a member of the International Observers Commission for the selection and appointment process of the Supreme Court of Justice of Ecuador and was a consultant to the UN for the appointment of the Supreme Court of Justice in Guatemala in 2009. Since 1998, he has been the Honorary President of the Venezuelan Association of Constitutional Law.

He is a professor of Constitutional Law at the Andrés Bello Catholic University (UCAB) and the Central University of Venezuela (UCV) from 1983 to 2008, serving as the Head of the Chair of Constitutional Law at UCAB since 1992. He has been a professor of International Human Rights Protection in the Postgraduate Program in Human Rights at UCV since 1992, and also teaches the course on Human Rights in the undergraduate program of Law at the Metropolitan University and UCAB since 2005. He has been a professor of Postgraduate Constitutional Law at UCAB since 2006. He has been a Professor of International Human Rights Law at the University of Oxford, New College since 2011, and was a professor of Human Rights at Georgetown University and American University, Washington College of

Law (AUWCL) in 1999, and has been a professor at AUWCL since 2004. He was also a professor at the Ibero-American University of Mexico in 2003.

Sergia Galván Ortega

Sergia Galván Ortega is an educator specializing in women's studies and human rights in the Dominican Republic. She has been a leader of the feminist movement in Latin America and the Caribbean for more than 40 years. She served as Director of Public Policies & International Affairs for the Ministry of Women in the Dominican Republic. She co-founded the Network of Afro-Caribbean, Afro-Latin American and Diaspora Women. She also served as Executive Director of the Colectiva Mujer y Salud and currently serves as a Board Member of the Women's Health Network of Latin America and the Caribbean. She was an expert in the Follow-Up Mechanism (MESECVI) to the Inter-American Convention on the Prevention, Punishment & Eradication of Violence Against Women (Convention of Belém do Pará). She cofounded the Democratic Choice Party for which she was also a candidate for deputy. She is a member of various feminist and women networks and organizations in Latin America and the Caribbean. She has fought for women's sexual and reproductive rights and against racism, violence against women, and pedophilia.

Ariela Peralta Distéfano

Ariela Peralta Distéfano is an Uruguayan lawyer and expert in international law and the Interamerican System. She served as Executive Secretary for the Institute of Public Policy & Human Rights (IPPDH) of the Southern Common Market (MERCOSUR). In 2017 and 2020 she was nominated by the Uruguayan government as a candidate to the International Criminal Court (ICC). From 2012 to 2017, she served as a member of the first Board of Directors of the National Institute of Human Rights & Ombudsperson of Uruguay. Before that, she served as Deputy Director of the Center for Justice & International Law (CEJIL) in Washington, D.C. She also served as Academic Coordinator of the "Human Rights, Democracy & Rule of Law" postgraduate program at FLACSO, Uruguay. Additionally, she worked for the Association for the Prevention of Torture in Geneva. She has been as a human rights consultant to the Organization of American States (OAS) and the United Nations Development Program (UNDP). She obtained her LL.M. in International Legal Studies with a concentration on human rights and transitional justice at the American University Washington College of Law. She completed her specialization on the UN system and international law at Geneva and The Hague, respectively.

Edison Lanza

Edison Lanza is a Uruguayan lawyer and journalist specializing in freedom of expression. He has litigated national and international cases and has worked as a journalist for various media outlets. Currently, he is the Secretary for International Relations and Institutional Affairs of the government of the department of Canelones, Uruguay. From 2014 to 2020, he was the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights and co-founder of the Center for Archives and Access to Public Information (CAInfo) and the Media and Society Group.

Currently, he is a senior fellow at the Inter-American Dialogue and a consultant for the United Nations Educational, Scientific and Cultural Organization (UNESCO). He graduated as a lawyer and completed postgraduate studies in freedom of expression and criminal law at the University of the Republic. He is a teacher and lecturer in the field of freedom of expression and the right to information at universities such as American University (Washington), University of the Republic (Uruguay), UNAM (Mexico), Universidad Carlos III (Spain), Stanford (California), Universidad del Pacífico (Peru), UBA (Argentina), Universidad Diego Portales (Chile), Udelar (Uruguay), and Universidad de los Andes (Colombia). He is a journalist, columnist, and frequent contributor to various media outlets.

b. Annex B: Questionnaires sent to candidates

Questionnaire for Candidates to the Inter-American Commission on Human Rights

The Independent Panel of Experts¹¹³ has been convened to evaluate candidates to the Inter-American Commission on Human Rights (IACHR), who will be elected during the 53rd Regular Session of the Organization of American States (OAS) General Assembly, to be held on June 2023 in Washington, D.C. In particular, the Panel will:

- Evaluate if a candidate meets the requirements established by the American Convention on Human Rights, the IACHR statute, pertinent OAS resolutions,¹¹⁴ and international standards established by the most relevant instruments regarding judicial independence and conduct.¹¹⁵
- Make recommendations pertaining to the process of nominating candidates at the national level and their subsequent selection at the OAS General Assembly.

Similar practices exist in which State representatives, independent experts, and civil society organizations participate in the process of nominating candidates to judicial or quasi-judicial bodies at the international level. These exist at the Caribbean Court of Justice, the International Criminal Court, the European Court of Human Rights, the Court of Justice of the European Union, and the Economic Community of West African States Court of Justice.

Given that these independent evaluation processes strengthen the transparency and legitimacy of selection procedures and institutions, we cordially invite you to provide us with the information requested in this questionnaire. The Panel may make your responses public unless there is any objection on your part.

The questionnaire covers the following areas:

¹¹³ The 2023 Independent Panel is integrated by Carlos Ayala, Mariclaire Acosta, Sergia Galván, Ariela Peralta, and Edison Lanza.

¹¹⁴ See AG/RES. 2120 (XXXV-O/05), of June 7, 2005, AG/RES. 2166 (XXXVI-O/06), of June 6, 2006, AG/RES. 2887 (XLVI-O/16), of June 14, 2016, AG/RES. 2908 (XLVII-O/17), of June 21, 2017, AG/RES. 2928 (XLVIII-O/18), of June 5, 2018, AG/RES. 2941 (XLIX-O/19), of June 28, 2019, AG/RES. 2961 (L-O/20), of October 21, 2020, and AG/RES. 2991 (LII-O/22), of October 7, 2022.

¹¹⁵ **Basic Principles on the Independence of the Judiciary**, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and confirmed by the General Assembly in its resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985, **Bangalore Principles of Judicial Conduct**, adopted in the Round Table Meeting of Chief Justices held at The Hague (2002), **Burgh House Principles on the Independence of the International Judiciary**, adopted by the Study Group of the International Law Association on the Practice and Procedure of International Courts and Tribunals, in association with the Project on International Courts and Tribunals (2004), **Resolution of the Rhodes Institut de Droit International about the position of the international judge**, Rhodes session, September 9, 2011, **Guidelines on the independence and impartiality of members of the human rights treaty bodies** (“the Addis Ababa guidelines”), U.N. Doc. A/67/222 (2012).

(I) Background, recognized competence, and contribution to the diverse composition of the body,

(II) Conflicts of interest, impartiality, and non-discrimination,

(III) Nomination process.

I. Background, recognized competence, and contribution to the diverse composition of the body

1. List the three structural issues regarding human rights that persist or emerge in the region.
2. Given your professional development and the personal characteristics with which you identify, how do you value your contribution to the IACHR and the possibility for you to adequately complement the current membership of this body?
3. Why do you want to be a Commissioner?
4. What are your particular areas of knowledge and experience working in the field of human rights?
5. Which do you think are the biggest challenges facing the Interamerican Human Rights System (IAHRS) and how could you contribute to addressing them if elected?
6. What changes do you think should be introduced to make the issuance of IACHR precautionary measures more efficient?
7. As you know, the IACHR has prepared its 2023/2027 Strategic Plan: a) How do you evaluate the work of the IACHR in preparing this plan? What would be your contribution to the implementation of this plan? b) What do you consider to be the most relevant themes that could not be missing in the next strategic development plan?
8. Do you think any interpretation of the American Convention or other Inter-American treaties made by the Inter-American Commission should be corrected by the Commission?
9. What is your opinion about the role of the current rapporteurships? What level of independence would you assign to them? Do you think it is necessary to make any changes or expansions related to the rapporteurships?
10. Do you have any knowledge or experience working with legal systems different from the one in your own country?
11. Do you have experience assisting victims of human rights violations?

12. Do you have any experience or competence in litigation or investigation of issues related to violence, discrimination, sexual assault, or other similar conducts against women or children?
13. In your experience, have you ever had to address topics referred to as sexual rights or reproductive rights of women? What challenges does the IAHR face in addressing these topics?
14. Do you have any suggestions on changes that could be implemented to improve the perception of the IACHR in the eyes of the international community?
15. What are your specific language abilities? If possible, please provide documents or links that can allow us to verify your answer.
16. Please provide electronic links or digital files of your most significant and recent writings – opinions, manifestos, *amicus curiae*, or advocacy or lobbying actions in the field of human rights – highlighting those that identify a critical position towards the norms, administrative or judicial decisions, public policies, or public or private institutions that you have criticized in terms of human rights or humanitarian law (maximum 5). Additionally, if you wrote a professional thesis when obtaining an academic degree, can you mention the title and indicate what was your main conclusion?
17. Have you applied the Inter-American standards in your professional work?
18. Have you advocated for or against the adoption or implementation of treaties or other instruments on human rights or humanitarian law? Please describe your experience, referring in particular to activities aimed at disseminating, defending, or strengthening the Inter-American Human Rights System.
19. Please attach your CV.

II. Conflicts of interest, impartiality, and non-discrimination

20. Based on your professional career, under what conditions do you consider that a conflict of interest could arise that would affect your independence and impartiality in your work as Commissioner?
21. What is your opinion on the rule that prevents Commissioners from participating, directly or indirectly, in deliberations and decisions on situations and cases related to their country?
22. Have you actively participated in civil society movements in favor of human rights? Would that present a conflict of interest in your candidacy and the role you would

assume as Commissioner? If that were the case, what measures would you adopt to mitigate a possible conflict of interest?

23. Have you ever served as a public servant? If that is the case, what position(s) have you served in? Would that present a conflict of interest in your candidacy and the role you would assume as Commissioner? If that were the case, what measures would you adopt to mitigate a possible conflict of interest?
24. Have you ever served as an official in an international organization? Would that present a conflict of interest in your candidacy and the role you would assume as Commissioner? If that were the case, what measures would you adopt to mitigate a possible conflict of interest?
25. During your time serving as Commissioner, what other positions or professional activities do you anticipate being engaged with?
26. Have you ever been sanctioned for professional misconduct?
27. Do you have any disagreement with the following statement?:

“A Commissioner is expected to, either by conduct or verbally, not to manifest or condone any bias or prejudice on the basis of age, race, beliefs, color, gender, gender identity, sexual orientation, religion, national origin, disability, political opinion, marital status, socioeconomic status, criminal record, or citizenship status. A Commissioner is also expected to require that persons under his/her direction or control refrain from making these types of statements or engage in this type of conduct.” Please indicate any relevant information regarding your ability to meet this expectation.

III. Nomination process

28. How were you elected to be a candidate to the Inter-American Commission? What was the nomination process? Was a preestablished procedure followed? Was it made known publicly? Did you play any role in civil society, academic entities, or other actors? If yes, please specify.

c. Annex C. Form for Submitting Information to the IAHRs 2023 Panel on the Election Process of IACHR Commissioners

The Independent Panel of Experts for the evaluation of nominations to the IAHRs bodies (the IAHRs Independent Panel) was established in 2015 in response to calls from civil society to ensure transparency and participation in the nomination and selection processes of IAHRs members. Since then, it has monitored 5 processes and published final reports in 2015, 2017, 2018, 2019, and 2021.

On this occasion, the Independent Panel will only evaluate nominations to the IACHR.

The Panel evaluates candidates according to the following criteria: 1) high moral authority; 2) renowned competence in human rights; 3) independence, impartiality, and conflicts of interest; 4) contribution to the body's diversity and representativeness; and 5) nomination process at the national level.

The Independent Panel has recommended, among other things: a) the installation of national nomination procedures that guarantee transparency and participation and are based on merit in order to reduce the margin of discretion in the selection of candidates; and b) consideration of the need for diversity on the basis of gender, ethnic origin, sexual orientation, disability status, professional specialty, and gender identity.

OAS Member States nominated seven individuals for the four IACHR positions that will become available in December 2023. In order of nomination, the candidates are Pier Paolo Pigozzi (Ecuador), Edgar Stuardo Ralón (Guatemala), Julissa Mantilla (Peru), Christopher Arif Bulkan (Guyana), Andrea Pochak (Argentina), Gloria Monique de Mees (Suriname), and Lidia Casas (Chile).

The ISHR Panel is grateful for the candidates' collaboration. Additionally, through this form, you can share information about the candidates with the Independent Panel. The information will be evaluated based on its relevance and pertinence. Please attach documents and links to sources supporting the information you provide, if possible. The Panel may pass on the information received to the nominees and give them an opportunity to respond. **Only properly supported information will be considered.** If you wish to provide information on different candidates, please complete one form per candidate (this means that you may have to complete the form multiple times). To attach files, please send them to the Panel Secretariat: Luis Tapia Olivares, e-mail: ltapia@wcl.american.edu. The deadline for submitting the information is *April 21, 2023*.

Email:

Full name:

Place of Work

Country

Name of Candidate

Suitability

Please provide relevant information and supporting data on the candidate's background and competence in human rights. Is the candidate suitable?

Independence

Please provide relevant information and supporting data on the candidate's ability to act with independence and impartiality and any potential conflicts of interest that may affect his/her performance. Is the candidate independent and impartial?

Non-Discrimination

Please provide relevant information and supporting data on the candidate's ability to perform his/her duties with respect to the principle of non-discrimination. This means that, either through his/her conduct or verbally, the candidate does not manifest or appear to condone bias or prejudice based on age, race, creed, color, gender, gender identity, sexual orientation, religion, national origin, disability, political opinion, marital status, socioeconomic status, criminal record, foreign status, or citizenship. Is the candidate capable of performing his/her duties with respect to the principle of non-discrimination?

Representativeness in the IACHR

Please provide any information that is relevant and supporting data on how the candidate may affect the IACHR's composition and its representativeness. In 2016, 2017, 2018, 2019, 2020, and 2022, the OAS approved resolutions that recommended Member States to nominate and elect persons considering the need for gender parity and representation from the different regions, populations, and legal systems of the hemisphere while ensuring that they meet the requirements of independence, impartiality, and renowned competence in human rights. Does the candidate contribute to a balanced and representative membership in the IACHR?

Nomination Process

Please provide any relevant information and supporting data regarding the nomination process of the candidate at the national level: what was the nomination process like? Was a pre-established procedure followed? Was it publicly announced? Did civil society, academic entities, or other actors play a role in the process?

Documentary Support

Please copy and paste here any links that support the information provided. If you want to send files, please send them to the following e-mail: ltapia@wcl.american.edu.

Please indicate any other relevant information that you believe the Panel should be aware of: