

**Abridged version of the
REPORT FROM THE INDEPENDENT PANEL OF EXPERTS FOR THE EVALUATION OF CANDIDATES FOR
THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS***

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* This is an abridged version of the full report. The full report is available in Spanish at <https://www.wcl.american.edu/impact/initiatives-programs/center/documents/2019-informe-del-panel-independiente-de-expertos/>. The abridged version does not include annexes, and a detailed accounting of the candidates' answers to the questionnaire and interviews. A full English version of the report will be available on July 30, 2019.

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PRESENTATION

The Independent Panel of Experts for the evaluation of candidates for the Inter-American Commission on Human Rights is pleased to present this report, the conclusion of three months of intensive work to strengthen the system of nominations and elections to the Inter-American Human Rights System (IAHRS).

The 2019 Independent Panel is comprised of five experts who are internationally recognized for their work in and contributions to human rights. For the second consecutive year, the Center for Human Rights & Humanitarian Law at American University Washington College of Law (CHR&HL) served as the Secretariat of the Panel, thus ensuring the Panel's independence and impartiality.¹

This abridged version of the report will begin by describing the Panel's methodology of work and criteria for evaluation. Subsequently, it provides the conclusions of the Panel after an informed, objective, and independent evaluation of the candidates nominated to the Inter-American Commission on Human Rights (IACHR) for the period from 2020 to 2024: Margarete May Macaulay (nominated by Jamaica), Esmeralda Arosemena de Troitiño (nominated by Panama), Edgar Stuardo Ralón Orellana (nominated by Guatemala), Everth Bustamante García (nominated by Colombia), and Julissa Mantilla Falcón (nominated by Peru).^{*} The report will conclude by offering its recommendations.

The IACHR serves the fundamental function of protecting and promoting the human rights of the people of the American continent, through strengthening the rule of law and promoting democracy across the region. The quality and legitimacy of its work depends not only on the results of its actions, but on the personal and professional qualities of those who lead its mandate. It is for this reason that compromises between states in the processes of nominating and selecting members of the IACHR is essential to the quality and legitimacy of the organization. However, the nomination and election of commissioners on the part of the Member States of the OAS has historically lacked transparent and inclusive procedures and criteria that meet the guarantees that the election of members to the IACHR requires.

The elections of candidates to the Court and to the Commission could be substantively improved by the creation of an independent consulting committee capable of presenting competent, just, and independent evaluations of the nominees, similar to committees that supervise the selection processes for other international tribunals. Further discussion of this, as well as other recommendations, can be found in the 2015, 2017, and 2018 reports of the Independent Panels of Experts.²

ACKNOWLEDGEMENTS

The Panel would like to thank the Center for Justice and International Law, the Due Process of Law Foundation, and the Open Society Justice Initiative for convening the Panel. These organizations share a common goal of strengthening the Inter-American Human Rights System through the principles of

¹Mariela Galeazzi was tasked with the coordination of the secretariat of the Panel with assistance from José Gregorio Correa Torres (both, LL.M. graduates from American University Washington College of Law) and support and supervision from Anastassia Fagan (Program Coordinator), Melissa del Águila (Associate Director), and Macarena Sáez (Faculty Director) of the Center for Human Rights & Humanitarian Law at American University Washington College of Law.

^{*} The abridged version of the final report only contains the Panel's overall conclusions for each candidate.

² Previous reports, in Spanish and in English, can be found on the Secretariat's website:

<https://www.wcl.american.edu/impact/initiatives-programs/center/programs/human-rights-education/independent-panel-for-election-of-judges/>.

just, transparent, and inclusive elections, as well as through the nomination of qualified candidates that ensure a balanced and representative composition of the Commission. The Panel would also like to thank the candidates for their cooperation in this process, for their responses to the survey questionnaire sent by the Panel, and for agreeing to be interviewed by the Panel. The Panel's appreciation is also extended to the various organizations and institutions throughout the region that have supported and contributed to the work of the Panel with their exchange of information and distribution of the Panel's work. The Panel also thanks the Center for Human Rights & Humanitarian Law at American University Washington College of Law for its role as secretariat, and to the Ford Foundation and the Institute of International Education for making this initiative possible.

PART I: On the independence of the Panel, its methodology of work, and its criteria for evaluation

A. INDEPENDENCE OF THE PANEL

The members of the Panel have sought to act with independence from the organizations that promote this initiative, as well as from the Member States or other external entities or organizations. To this end, they have not, nor will they receive any economic or financial benefit for their work on the Panel, nor do they have any kind of personal, professional, economic or other relationship with any of the participating organizations or nominating States. The Panel designed its methodology and agreed upon criteria for evaluation autonomously based on the American Convention on Human Rights and other instruments. Additionally, it relied upon transparent, inclusive, and autonomous procedures and channels of information, through which it received information from entities and individuals from civil society, the media, and academic institutions, as well as from the candidates themselves. As Secretariat of the Panel, the Center for Human Rights & Humanitarian Law at American University Washington College of Law contributed to the work of the Panel and sought to safeguard its independence.

B. METHODOLOGY OF WORK

Once convened, the Panel defined its methodology of work that--in a broad sense--follows the parameters implemented by the previous panels. It was agreed that the process of preparing the final report and evaluating the candidates would be guided by the principles of public access, transparency, and participation. Additionally, the Panel compared the information it received with the information provided by the candidates themselves. The Panel established general and agreed upon lines of communication with the candidates, the permanent diplomatic missions before the OAS, members of civil society, academic institutions, and other interested parties.

Transparency of the Panel

The first action of the panel was to issue a press release in conjunction with the convening organizations that provided information regarding its mission statement and participating members³. Likewise, the Panel recorded and released its subsequent activities via its website⁴ and across the

³ The aforementioned press release can be found at: <https://www.wcl.american.edu/impact/initiatives-programs/center/programs/human-rightseducation/candidatos-as-a-la-corte-interamericana-de-derechos-humanos/>

⁴ See, in general, website: <https://www.wcl.american.edu/impact/initiativesprograms/center/programs/human-rights-education/independent-panel-for-election-of-judges/>

various social media platforms of the Secretariat⁵. It also issued various written materials⁶ and audiovisual infographics that outlined the future work of the Panel⁷. Once completed, the Panel's conclusions were presented in a Report in three different events. The first event was a private convening in Washington, D.C. attended exclusively by the permanent delegations of the States before the OAS and those holding the status of permanent observer. The first public event took place in Washington, D.C., and the second will take place in Medellín, Colombia, during the meeting of the General Assembly of the OAS.

The role of the Permanent Missions before the OAS

On March 26 2019, a statement was issued via email to all of the permanent missions before the OAS, providing information regarding the composition and mission of the Panel. Afterwards, another statement was issued to the missions, inquiring about the nomination processes of the candidates on a national level. On April 26 2019, the Panel released the survey questionnaire, which had been sent to the nominees and to the corresponding permanent missions that had nominated them. Finally, on June 6, 2019, the Panel released its Report (in Spanish) at the event for the representatives of the permanent missions before the OAS.

Consideration of the candidates' presentations before the Permanent Council

The Panel took into consideration the candidates' public presentations and their responses to questions issued to them during the Permanent Council session on May 21, 2017, and in the public forum convened by civil society organizations on the same day.

The role of the candidates

The Panel contacted the candidates in accordance with the information provided by the permanent missions. A survey questionnaire was issued to the candidates with questions that would guide their evaluation. It was decided that interviews would be held with each candidate to supplement the information provided by the questionnaire. All of the candidates submitted responses to the questionnaire and, with the exception of candidate Everth Bustamante, complied with the Panel's request for an interview.⁸

The role of civil society, academia, and other interested parties

In order to ensure the participation of civil society, academia, and other interested parties, an online form was created that was disseminated through social media platforms and via email. The Panel received a total of 33 responses from 28 organizations and 24 individuals from 6 countries.

Sources of information

⁵ See Facebook account: @WCLCenterForHumanRights and Twitter account: @humanrts

⁶ See Website, FAQs: <https://www.wcl.american.edu/impact/initiatives-programs/center/programs/humanrights-education/independent-panel-for-election-of-judges/faqs/>

⁷ See Center for Human Rights & Humanitarian Law YouTube Channel: https://www.youtube.com/channel/UCI_1O5EOshnvMz7tpnfqeKA

⁸ The responses of the candidates may be found at the following link: Margarette May Macaulay: <https://drive.google.com/file/d/1WMtVIBETweOmhHE21oEekLeTUNXRlxDo/view?usp=sharing>; Julissa Mantilla: <https://drive.google.com/file/d/1DXyCibzceLok8ux-1UI0njmhORvXFUTd/view?usp=sharing>; Edgar Stuardo Ralón Orellana: <https://drive.google.com/file/d/1CjL0tOQLVVUUDaPRZbuVnayaZBINo7zK/view?usp=sharing>; Esmeralda Arosemena de Troitiño: <https://drive.google.com/open?id=1V6ROZ4hpxZc7wgpUr5XcO-YhNgtFFE>; responses from Everth Bustamante García have not been made public at the request of the candidate.

The Panel analyzed the questionnaire responses of the candidates, their written statements (academic publications, presentations in international forums, resolutions issued as public officials, blogs, and social media accounts), interviews, and various public presentations before the Permanent Council and civil society. Additionally, the Panel analyzed information submitted by organizations and other interested parties through the previously mentioned form. The Panel also undertook its own research, considering available media and other publically accessible information when it found it necessary to supplement or verify information received from various parties.

Meetings and deliberations

The Panel held regular meetings throughout the evaluation process. Once the process (receiving questionnaires, holding interviews, reviewing the information provided) was concluded, the Panel held several sessions of deliberations.

Decisions

All of the decisions reached by the Panel were made by consensus.

Recusals

To preserve the impartiality of the Panel, its members agreed that those who would have reasons that may justify their recusal from the evaluation of one or more candidates, would disclose the conflict before the evaluation process and would abstain from participating in it. Catalina Botero recused herself from participating in the evaluation of the candidate Everth Bustamante García. Ms. Botero justified this recusal in the fact that both Botero and Bustamante García share the same nationality and Botero is a founding member of and a collaborator in several think tanks and organizations that have participated in public debates regarding the selection of this candidate.

C. CRITERIA FOR EVALUATION

The evaluation of the candidates was divided into five sections: (1) high moral authority, (2) recognized competence in the field of human rights, (3) independence, impartiality, and conflict of interests, (4) contribution to a representative and balanced composition of the organization, and (5) processes of nomination at the national level. With this framework, the Panel's evaluation maintained the criteria utilized by previous panels, which stem from guidelines established by the American Convention on Human Rights, the Statute of the Inter-American Commission on Human Rights, and its *Rules of Procedure*. Likewise, the Panel has relied on *The Bangalore Principles of Judicial Conduct of 2002*,⁹ according to which "the work of a Commissioner includes the knowledge of individual petitions and other quasi-judicial work."¹⁰ Furthermore, the Panel sought guidance from the *Guidelines on the independence and impartiality of members of the human rights treaty bodies ("Addis Ababa Guidelines")*,¹¹ which are applied to the independent experts who form a part of these bodies. The Panel also analyzed the possibility of candidates to contribute to the diverse makeup of the IACHR, which reaffirms the importance of promoting diverse, plural, and representative compositions, in line

⁹ The Bangalore Principles of Judicial Conduct are available at http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

¹⁰ Report of the Independent Panel for the Election of Commissioners for the Inter-American Commission on Human Rights 2017, p. 6, [Panel Report 2017] available at: http://www.dplf.org/sites/default/files/iachr_panel_2017_final_report_eng_0.pdf

¹¹ Guidelines on the independence and impartiality of members of the human rights treaty bodies ("the Addis Abeba guidelines")

with the repeated recommendations of the General Assembly to the States. Finally, the Panel has examined the nature of the processes at a national level through which the candidates have been nominated.

1. Independence and impartiality

The Commission represents all of the Member States of the Organization (Article 2.2, Statute of the IACHR); its members “are elected in a personal capacity” by the General Assembly of the OAS (Art. 3.1, IACHR Statute). This means that said members must be independent and impartial. The American Convention on Human Rights establishes that:

“The position of judge of the Court or member of the Commission is incompatible with any other activity that might affect the independence or impartiality of such judge or member, as determined in the respective statutes” (Art. 71 ACHR).

Along these lines, both the Statute and the IACHR Rules of Procedure establish that:

“The position of member of the Inter-American Commission on Human Rights is incompatible with the exercise of activities which could affect the independence or impartiality of the member, or the dignity or prestige of the office” (Art. 8.1 IACHR Statute and Art. 4.1 IACHR Rules of Procedure).

The Rules of Procedure add:

“Upon 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” (Art. 4.1 IACHR Rules of Procedure).

The Bangalore Principles define independence as being “free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.”¹² Independence implies not only being free of inappropriate connections or pressures, but also having the ability to “appear to a reasonable observer to be free therefrom.”¹³ Impartiality, on the other hand, is the ability to perform one’s duties “without favour, bias or prejudice” and has to do not only with decisions themselves, but also with the process by which these decisions are adopted.¹⁴

The Addis Ababa Guidelines indicate that both conflicts of interest and non-compliance with the requirements of independence and suitability “may be generated by many factors, such as a member’s nationality, place of residence, current and past employment, membership of or affiliation with an organization, or family and social relations.”¹⁵ These Guidelines add “the independence and impartiality of treaty body members is compromised by the political nature of their affiliation with the executive branch of the State.”¹⁶ Consequently, the members of treaty bodies must “avoid 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.”¹⁷ In a similar sense, assuming

¹² Principles, Value 1, Art. 1.1

¹³ Principles, Value 1, Art. 1.3 and Addis Ababa Guidelines para. 2

¹⁴ Principles, Value 2, Art. 2.2

¹⁵ Addis Ababa Guidelines par. 3.

¹⁶ Addis Ababa Guidelines par. 12

¹⁷ Addis Ababa Guidelines par. 12

positions with decision-making capacity in civil society organizations, academic institutions, corporations or private entities, or State-related organizations may also give rise to the possibility of conflict of interest.¹⁸

To evaluate the independence and impartiality of the candidates, the Panel considered the responses provided by the candidates on this issue, as well as the information provided by civil society that was available in the press online when necessary to supplement or confirm existing information.

2. High moral authority and recognized competence in the field of human rights

The members of the Commission must be “of the highest moral authority and of recognized competence in the field of human rights” (Art. 2.1 IACHR Statute and Art. 1.3 IACHR Rules of Procedure). With respect to moral authority, the Bangalore Principles lay out the values of integrity and propriety. To act with integrity is to “ensure that [one’s] conduct is above reproach in the view of a reasonable observer.”¹⁹ The Principles link this to public trust and the importance of fairness in the decisions being made as well as in the *processes* by which these decisions are made.²⁰ Following the Bangalore Principles, impropriety--and the appearance of such--must be avoided in all activities.²¹

The requirement of recognized competence in the field of human rights implies possession and knowledge of, as well as demonstrated experience in, the field of human rights. Knowing the mechanisms of the Inter-American human rights system, utilizing the standard principles that derive from the treaty bodies of the IAHRs, understanding the internal proceedings and relationship of the IAHRs with external parties, and understanding the dynamics of its function are some of the several variables that the Panel considered for evaluating this quality. The Panel considered “the knowledge and experience of the candidate with respect to the mechanisms of Inter-American Human rights and the Inter-American system” as key, assessed through the “history of professional accomplishment,” “defense of the candidate,” and “record of academic publications or substantial work or litigation experience of the candidate within the system.”²² Furthermore, the Panel analyzed the understanding of the candidate regarding the primary challenges of the Inter-American Human Rights System, as well as their proposals and priorities to said challenges.

The Panel also the commitment to values on the part of the candidates, in line with the goals of the American Convention on Human Rights and the mandate of the IACHR. Commissioners must be able to comply with the duties of their position. These are as follows:

“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 befits the high moral authority of the office and the importance of the mission entrusted to the Commission.”²³

¹⁸ Addis Ababa Guidelines par. 14

¹⁹ Principles, Value 3, Art. 3.1.

²⁰ Principles, Value 3, Art. 3.2

²¹ Principles, Value 4, Art. 4.1

²² Panel Report 2017, *supra* note 9, p. 7.

²³ Statute of the Inter-American Commission on Human Rights, Approved by OAS General Assembly Resolution No. 447, at its ninth regular session, held in La Paz, Bolivia, October 1979, Art. 9.

The capacity to comply with and fulfill these duties was assessed by previous panels as well as the quality of diligence, described as “the capacity of the candidate to fulfill their responsibilities in spite of other obligations and commitments.”²⁴ The Bangalore Principles include competence and diligence among its values.²⁵

Likewise, the Panel continued to respect the criteria of previous panels by observing and valuing complimentary qualities, such as

“the capacity to work as a part of a collegiate body; the capacity to work in more than one of the official languages of the court; understanding of the diverse juridical systems that exist in the region; and an ample exposure to and comprehension of the political, social, and cultural surroundings of the region and its subregions.”²⁶

3. Contribution to a balanced and representative composition of the organization

The contribution by a candidate to a balanced composition of the organization with respect to gender, geographic representation, demographic groups, and legal systems, is a criteria that has been established and maintained in the resolutions of the General Assembly since 2015.

The 2015 Panel stated that it would take into consideration “whether the candidate would contribute to a balance within the Commission in terms of area of expertise, gender, and other forms of diversity.”²⁷ Regarding this point, the Panels of 2017 and 2018 referred to the resolutions of the General Assembly No. AG/RES.2887 (XL VI-O/16) and No. AG/RES. 2909 (XLVII-O/17). In 2018, the General Assembly approved the resolution No. AG/RES. 2928 (XLVIII-O/18) in support of the same objective.

These resolutions emphasize:

“the importance of ensuring balanced gender representation, equitable geographic distribution, and representation of the different legal systems on the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR), ensuring full and equitable access by men and women in keeping with the principles of impartiality, independence, and non-discrimination so that they can continue to carry out their mandates effectively.”²⁸

Consequently, it encourages

“member states, when selecting judges of the IACtHR and commissioners of the IACHR, they ensure balanced gender representation and equitable regional geographic representation, and of population groups and legal systems of the hemisphere, while guaranteeing the requirements of independence, impartiality, and recognized competence in the field of human rights.”²⁹

²⁴ Panel Report 2017, supra note 9.

²⁵ Principles, Value 6

²⁶ Final Report of the Independent Panel for the Election of Inter-American Commissioners and Judges 2015, p. 5 [Panel Report 2015], available here: <https://www.justiceinitiative.org/uploads/34b476e4-dd7b-431e-acd4-e25fbff100cc/iachr-panel-report-eng-20150603.pdf>

²⁷ Panel Report 2015, p. 5

²⁸ OAS General Assembly Resolution AG/RES. 2928 (XLVIII-O/18), xviii.

²⁹ OAS General Assembly Resolution A AG/RES. 2928 (XLVIII-O/18), xviii.

These resolutions, issued throughout the years, allow the Panel to affirm that the balanced and representative composition of the organization is a critical criterion for its composition, which should especially be considered at the moment of the electing its members.

4. Processes of nomination at a national level

The Panel assessed the processes of nomination of the candidates with the understanding that transparent and inclusive internal nomination processes based on the merits and competency of the candidates serves as a guarantee of the independence, impartiality, and suitability of the candidates. This approach also diminishes the power of States over internal selection processes when civil society, academia, and other interested parties are granted the capacity to participate in these processes.³⁰ Though they do not prevent the existence of “reciprocal political agreements (the exchange of votes)”³¹--a practice which the previous panels have been firmly opposed--these practices promote better guarantees of independence, impartiality, understanding and experience.

The Panel adopted the statements of the 2015 Panel under which

“The affirmation and the fulfillment of the principles of competence, independence, and impartiality in the IASHR are intimately tied to the process of nomination of the corresponding members to the Commission and the Court. Following the nomination of the candidates at a national level the process of election in the General Assembly of the OAS is the second and final step through which these values may be upheld in a firm and resolute manner.”³²

In conclusion, this Panel considers that transparent and inclusive processes of nomination, designed to select the best possible candidates, not only contributes to the legitimacy of the candidate, but it also contributes to guaranteeing the nomination of candidates with higher levels of independence, impartiality, knowledge, and experience.

In the case of candidates who applied to a second term, the Panel assessed their work and accomplishments during their first term, in addition to the above criteria.

5. Assessment of the above terms and conclusions

The panel is the opinion that independence and impartiality, on one hand, and high moral authority and recognized competence in the field of human rights, on the other, along with the aforementioned conditions, form the fundamental criteria for the assessment of each candidate. The Panel believes that States must ensure that both, those nominated and those selected, meet the highest standards of independence and suitability.

The Panel believes that the contribution of a candidate to a balanced and representative composition of the IACHR is a crucial criterion. Should two candidates meet equally high standards of independence and suitability, the Panel believes that States should opt to select the candidate who would best contribute to the diversity of the Organization. Nonetheless, in no case should the goal to promote diversity of the Organization be prioritized above the requirement that members be competent and seen as independent and impartial.

³⁰ See in this sense, Judith Schönsteiner, Alternative appointment procedures for the commissioners and judges in the Inter-American Human Rights System, en Revista IIDH, p. 203, disponible en <http://www.corteidh.or.cr/tablas/R22023.pdf> [internal citations omitted]

³¹ Panel Report 2015, supra note 26, p. 49

³² Id., p. 49.

With respect to the process of nomination at national levels, the Panel considers that the existence of such internal processes on the part of States is crucial to improving the nominations and elections before the OAS. Nonetheless, the absence of these processes do not invalidate a candidate, nor does the passing of a candidate through such a system guarantee their suitability for the position. As it currently stands, with local processes of nominations that are nonexistent or of poor transparency or inclusivity, the position of having been nominated does not offer sufficient guarantees of suitability and independence. With the implementation of such processes, having been nominated in accordance with these standards would eventually allow for a candidate's nomination to serve as a better guarantee of the suitability, independence, and impartiality than if the candidate had not passed through such a process.

PART II Evaluation of the candidates³³

A. JULISSA MANTILLA FALCÓN

The Panel concludes that Julissa Mantilla meets the requirements to be elected commissioner, and that, if elected, she would contribute significantly to the work of the IACHR due to her relevant knowledge and experience.

On the requirement of *high moral authority*, the Panel received more than twenty letters from different academic institutions, organizations, and individuals—all leaders in the human rights field—that illustrate the respect and trust the candidate has garnered throughout her career in human rights, in her country, as well as internationally. There is nothing in her file that indicates any disciplinary action, unethical behavior, or professional impropriety.

Regarding the requirement of *recognized competence in the field of human rights*, Professor Mantilla has a respected academic background in international human rights law, with professional experience in issues relating to crimes against humanity; memory, truth, and justice; sexual violence; discrimination; and analysis of human rights violations in different contexts. Furthermore, she has directly contributed to the legal development of the Inter-American Human Rights System: first, in her role as expert of the Inter-American Commission on Human Rights before the IACtHR and, second, as coauthor of a report on the Peruvian Truth and Reconciliation Commission that was later cited by the Inter-American Court of Human Rights in an emblematic decision of the IAHRs.³⁴

The Panel also believes that her professional experience working in different sectors—government, academia, United Nations— and her direct work with civil society organizations working with victims from indigenous peoples and Afro-descendant communities constituted an added value. During candidate Mantilla's interview, the Panel confirmed that such experience has enabled her to incorporate perspectives from different areas and develop strong interpersonal skills to establish dialogues and interactions between governmental institutions and societal organizations. The Panel believes this is an essential skill for a commissioner of the Inter-American Commission on Human Rights.

³³ The presentation order of the candidates in this chapter responds to the chronological order in which the interviews were performed.

³⁴ See Inter-American Court of Human Rights, *Caso del Penal Miguel Castro Castro vs. Perú*, Judgment of November 25, 2006, Judgment on Merits, Reparations and Costs, p.197.3, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_160_esp.pdf.

On her *independence and impartiality*, the Panel is the opinion that candidate Mantilla would appear independent and impartial to a reasonable observer. Her profile is one of an expert in human rights who has worked in the field in many different capacities. She has supported civil society and victims' organizations through her roles as expert and professor (with *amicus curiae*, for example³⁵), from within the State (as an attorney in the Ombudsman's office and Truth Commission), as a consultant for the United Nations, and as an expert for the IACHR.³⁶ This professional profile presents Mantilla as an independent and impartial candidate, who is able to shield herself from undue influence and external pressures.

B. ESMERALDA AROSEMENA DE TROITIÑO

The Panel concludes that Emseralda Arosemena meets the requirements to be elected commissioner, and that, if elected, she would contribute significantly to the work of the IACHR due to her relevant knowledge and experience.

On the *high moral authority* requirement, the Panel looked at the extensive career and visibility of candidate Arosemena as a promoter of important initiatives for human rights. The numerous accolades she has received—in her country as well as internationally— illustrate the respect and recognition that her work has generated as a teacher and judge, particularly with regard to the defense of human rights, children's rights, access to justice, and gender. There is nothing in her file that would indicate any disciplinary action, or unethical or professional impropriety.

Regarding the *recognized competence in the field of human rights* requirement, the Panel analyzed candidate Arosemena's knowledge and experience prior to her mandate in the IACHR, in addition to her experience serving nearly four years as commissioner. Candidate Arosemena has taught human rights at the university level and has worked as a human rights advisor in academic institutions. She has worked *ad honorem* in human rights issues in the legislative sphere advocating for the adoption of international treaties and protocols in matters of children's rights. Professor Arosemena has also served as a public official directing initiatives in the Ministries of Childhood, Family and Labor. During her time as a Panamanian Supreme Court Magistrate, she promoted judicial reforms in support of access to justice with a gender perspective. This experience, together with her almost four years as commissioner of the IACHR—which included a term as president--has enabled her to effectively assess the internal challenges facing the IACHR and the Inter-American Human Rights System, as well as the implications of these challenges to the regional political context.

On her *independence and impartiality*, the Panel is the opinion that candidate Arosemena would appear independent and impartial to a reasonable observer. Throughout her professional career, she worked to promote human rights in different sectors at a local level, including civil society, teaching, public service, advising in the legislative branch and as a magistrate. In addition, at the international level, she has promoted human rights through collaboration with different United Nations organizations and the OAS, as well as through her work as a commissioner of the IACHR.

C. MARGARETTE MAY MACAULAY

The Panel has concluded that Margarettte May Macaulay meets the requirements to be reelected as a commissioner and that, if reelected, she would significantly contribute to the work of the IACHR, due to her knowledge and experience. The Panel believes that the candidate contributes greatly to the OAS' mission of maintaining an inclusive and diverse composition.

³⁵ See *supra* 37.

³⁶ See Julissa Mantilla's expert work in *Caso Espinoza González v. Perú*, available at <https://vimeo.com/91000707>.

On the requirement of *high moral authority*, the Panel analyzed candidate Macaulay's career dedicated to activism and the promotion of human rights in the Caribbean and throughout the region. Candidate Macaulay was elected judge of the Inter-American Court of Human Rights and commissioner of the IACHR, positions for which she also met "the highest moral authority" and "high moral authority," respectively. There is nothing in her file that indicates any disciplinary action, unethical behavior, or professional impropriety.

The Panel also concluded that candidate Macaulay satisfies the requirement of *recognized competence in the field of human rights* after examining her extensive career as a teacher, speaker, and activist for human rights in Jamaica—at the regional and international levels. The Panel also considered her extensive work promoting the ratification of human rights treaties in the Caribbean, as well as her experience as a judge of the Inter-American Court of Human Rights and as commissioner of the IACHR.

On her *independence and impartiality*, the Panel is of the opinion that candidate Macaulay would appear independent and impartial to a reasonable observer. Throughout her career, she has worked on the promotion of human rights within civil society at the local and international levels. She has also served as a judge to the Inter-American Court of Human Rights, a position that demands total independence and impartiality. Finally, during her career, she has advocated and promoted knowledge of human rights in her country by serving as Rapporteur of the Caribbean

D. EVERTH BUSTAMANTE GARCÍA

On May 17, 2019, candidate Bustamante arrived at American University Washington College of Law for his interview with the Panel, along with Colombian Ambassador before the OAS, Alejandro Ordoñez and Mr. Mauricio Baquero Pardo, Coordinator for Institutional Affairs of the Colombian Ministry of Foreign Affairs. Candidate Bustamante García explained that he would be abstaining from the interview. He stated:

"[He] wanted to share with the Panel a situation that forced [him] to abstain from participating in the interview. This is not a reservation held against this procedure, but [he would not give the interview] due to a lawsuit brought up in [his] country by non-governmental organizations (...) that questions [his] experience, knowledge and career in matters of human rights."

Candidate Bustamante added:

"The National Government and the Ministry of Foreign Affairs have been examining the issue very closely. [He] explained to them the development [of the process before the Panel]. Mr. Bustamante's will to participate in the process was known by the government. However, this lawsuit is directed against the President of the Republic and the Minister of Foreign Affairs, even asking as precautionary measures, for the judge to withdraw [his] nomination. The lawsuit led the national government to ask [him] not to participate and for [him] to ask [the Panel], respectfully, while this legal matter is being resolved, not to use the questionnaire that [he] voluntarily provided to [the Panel]."

During this time, Mr. Bustamante also delivered a letter sent to him by the Ministry of Foreign Affairs. The letter reads as follows:

Dr. Bustamante: In the most attentive way I am referring to the call that American University, through the Center for Human Rights and Humanitarian Law, has made for you to attend on May 17 at 4 pm to an Interview with the Panel. Taking into account that a judicial process has been opened around your candidacy, I would like to thank the Panel of Experts for requesting that this interview be postponed until this situation has been clarified. Regards. Mauricio Baquero Pardo. GIT Coordinator of Institutional Affairs. Head of the Directorate of Multilateral Political Affairs [contact information].

After analyzing Mr. Bustamante's refusal to participate in the interview, the Panel concluded that the decision of candidate Bustamante, made per his government's request, should not prevent the Panel from analyzing his qualifications as a candidate to the IACHR, especially considering that interviews were opportunities given to the candidates to provide complementary and additional information. The Panel decided to respect the request of the candidate to not participate in an interview. Mr. Bustamante offered to notify the Panel if a possibility of an interview opened up once the legal proceedings in Colombia were over. The Panel regrets that the candidate did not want to take advantage of the opportunity to share or contrast the information the Panel had gathered on behalf of his nomination.

Even though candidate Bustamante also requested that his answers to the questionnaire not be used by the Panel, Mr. Bustamante posted on his public website answers to 5 of the 19 questions issued by the Panel.³⁷ Those answers remained public at the moment of issuing this Report and for that reason, the Panel considered them as part of public information available on the candidate.

Conclusion

The Panel is of the opinion that the candidate does not meet the requirement of *recognized competence in the field of rights law*. Additionally, the Panel believes that aspects of the candidate's career and current work would cast doubt on a reasonable observer about his independence and political impartiality.

About his *moral authority*, the Panel considered the candidate's long career and visibility in his country's public life. There is nothing in his file that would indicate any disciplinary action, unethical behavior of professional impropriety, except information related to a disciplinary process initiated by the Office of the Attorney General whose current status and results have not been corroborated by the Panel.

On the *recognized competence in the field of human rights* requirement, there is evidence that candidate Bustamante has a long career in his country's political arena, holding positions such as mayor and senator, and leadership positions within the executive branch. The Panel, however, has doubts as to whether Mr. Bustamante's career in international human rights is enough to meet the requirement. The Panel could not find any direct and robust knowledge by Mr. Bustamante of norms, jurisprudence or doctrine in the area. The candidate's broad academic background focuses on public law, administration and government. His *curriculum vitae* and website do not provide information about Mr. Bustamante's public service position during his political career specifically related to the defense and protection of human rights. His participation at the United Nations in representation of the World University Service before the UN Human Rights Commission was noted. This participation, however, occurred over thirty years ago. Finally, his legislative proposals in matters of special criminal jurisdiction and state agents responsibility in the recovery of the Palace of Justice, cast doubts about the candidate's knowledge of IAHRs' jurisprudence on those matters.

³⁷ Official website of Everth Bustamante García, "*Trayectoria y experiencia en derechos humanos*" <https://everthbustamante.com/2019/05/16/trayectoria-y-experiencia-en-derechos-humanos/>

On his *independence and impartiality*, the Panel has enough information to consider that a reasonable observer would have doubts about his independence and impartiality. The candidate was nominated by authorities of the government party from which he is an active member. His public appearances on social media on matters of human rights are followed by the *hashtags #DuquePresidente o #EverthConElQueEs*, which increase doubts that a reasonable observer would view Mr. Bustamante as independent. The Panel regrets not having been able to interview the candidate to know his perspective on these issues and, thus, dissipate any doubts.

E. EDGAR STUARDO RALÓN ORELLANA

The Panel is of the opinion that, the candidate does not meet the requirements of *recognized competence in human rights* to serve effectively as a commissioner. The Panel also has reason to doubt that a reasonable observer would find candidate Ralón politically independent and impartial.

Regarding the requirement of *moral authority*, the Panel considered the candidate's long career as a constitutional law attorney and participation in the public sphere. The Panel noted concerns related to the alleged involvement of candidate Ralón in the registry of companies and offshore bank accounts revealed by the investigation known as the "Panama Papers," which could suggest the possibility of acts consistent with tax evasion or capital gains. Although the personal or professional actions of the many people and companies mentioned in that investigation do not necessarily imply illegal activities, such acts might suggest the possibility of capital flight or tax evasion, which would merit a more thorough explanation on the subject.

The Panel further concluded that Edgar Stuardo Ralón Orellana's career in human rights is limited only to the work of a constitutional attorney, and, therefore, would not meet the requirement of *recognized competence in the field of human rights*. Mr. Ralón has a long career in his country as a constitutional attorney, primarily providing legal representation to companies and business chambers. The Panel found no evidence in his legal, academic or scholarly career that would demonstrate knowledge or the adequate use of international human rights rules, jurisprudence, and doctrine.

Regarding the candidate's *independence and impartiality*, the Panel has enough information to conclude that a reasonable observer would doubt Mr. Ralón's independence and impartiality. The information received by the Panel shows that the candidate's public opinions related to relevant human rights issues directly align with the government that nominated him.

PART III RECOMMENDATIONS

A. SPECIFIC RECOMMENDATIONS FOR THESE ELECTIONS

The Panel's goal is for the States to take into account the evaluations presented in this report at the time of casting their ballots for the IACHR commissioners. The Panel affirms that the fact that the vote is secret does not exempt representatives of permanent missions to the OAS of their duty to be held accountable for their actions by the citizens of their countries— especially victims of human rights violations.

The Panel considers that the fact that only five persons were nominated to fill four vacancies, and that of those five people, two may not meet the qualifications required for the position of commissioner, can hinder the election process. The Panel calls on all OAS States—not only those that have

nominated candidates—to reflect on the importance of presenting candidates with high moral authority and professional suitability in sufficient numbers as to allow for a wide margin of choice, depending on the vacancies in any given cycle. The number of candidates proposed, and their qualifications, should be reviewed for upcoming elections.

According to this Panel, of the nominated individuals, only three—Esmeralda Arosemena de Troitiño, Margarette May Macaulay, and Julissa Mantilla Falcón—meet the qualifications required by international standards and local regulations to become a commissioner of the IASHR. In the opinion of this Panel, and in accordance with the criteria set out at the beginning of this report, candidates Everth Bustamante García and Edgar Stuardo Ralón Orellana have not adequately demonstrated two of the conditions that are essential for service as a IACHR commissioner: recognized competence in the field of human rights, and independence and impartiality.

B. GENERAL RECOMMENDATIONS FOR FUTURE NOMINATION PROCESSES

1. Deficiencies in the nomination and election system of the OAS

The Panel concurs with the analysis and reflections of previous Panels that

“There are currently no OAS guidelines setting out 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 qualification of candidates once states submit their candidates.”³⁸

This Panel recognizes, as did the previous Panel, that, in the past, organs of the Inter-American Human Rights System “have benefitted from the presence of persons with impeccable credentials and extensive experience in matters of human rights” and it agrees that

“This has generally coincided with demonstrations of interest for the Inter-American System of Human Rights in several countries, which translates into increased active public participation, particularly with respect to human rights organizations, in the decision-making leading to nominations.”³⁹

In other words, good candidates have been the result of political will by several States towards strengthening the IAHRs, rather than the result of appropriate nomination and selection procedures.

As noted by previous Panels, the nomination processes of the candidates at the local level are neither transparent nor participatory. Rather, they are reduced to a discretionary appointment by the Executive, usually through the Ministry of Foreign Affairs. It may happen that, in some cases, there are spaces for the participation of civil society; however, they occur informally and on a case by case basis, rather than through a public, regulated, and transparent process, capable of involving the largest number of civil society organizations, in particular those with less access to spaces of political participation and whose interests are, for that reason, under-represented. The process at the international level is also non-transparent and lacks participation, which hinders a diverse composition

³⁸ Panel Report 2018, *supra* note 22 citing Open Society Justice Initiative and International Commission of Jurists, “Strengthening from within...”, 2017, p. 43-44, available at

<https://www.opensocietyfoundations.org/sites/default/files/fortaleciendo-dentro.pdf>

³⁹ Panel Report 2018, *supra* note 22, p. 31.

that can reflect diversity of people and legal systems, as well as the promotion of gender parity and geographic representation within the organs.

Once nominations are submitted and made public,

“what usually happens is that States seek to obtain promises from other States to vote for their candidate (...). In order to obtain firmer commitments, States engage in an exchange of votes, given that in most cases there is more than one vacancy for the respective organ. However, the exchange of votes is not limited to the same election or organ. States can exchange a vote for a judge by voting for a Commissioner, and it is not uncommon for votes in elections for positions in organs not related to the IAHRs, as well as for other elected positions, even outside the OAS.”⁴⁰

The result, according to the 2018 Panel, is that “successful candidates tend to be those whose candidate countries have a very active, committed, and participatory diplomacy and who can offer benefits to other States in exchange for their votes.”⁴¹ According to the 2018 Panel, this system does not automatically favor those persons nominated by the most powerful States, but it has been comparatively more difficult for small Latin American countries to get their candidates elected to the IACHR and the IACtHR.⁴² This system also favors “voting in blocks, so that a group of small states that have common language, geography, and other interests generally vote together and become crucial for electing certain members or denying others election or re-election.”⁴³

This Panel agrees with the 2018 Panel when it states that “a perfect system that routinely or even consistently offers the best results simply is not currently viable, at least not while the appointments are ultimately made by the Member States by secret ballot and without openly participatory and transparent prior procedures.”⁴⁴ This Panel also agrees with the opinion of the 2018 Panel according to which “any change in this would require the adoption of standards that could include an amendment to the Convention and the Statutes, which would not only be difficult but could have negative consequences.”⁴⁵ In this context, this Panel considers that “within the existing rules, there are possibilities for improvement and innovation, where States Parties themselves—in consultation with civil society—could adopt norms, resolutions, or agreements that would allow the regulation of these procedures.”⁴⁶

2. Proposals for the selection of candidates for the Commission Inter-American Commission on Human Rights

The Panel endorses the conclusions drawn by previous panels and recommends the following:

Recommendations for the nomination processes at the national level

i) “Each State should have a formal body for selecting candidates with a diverse, independent, and non-political composition. Many States already have institutions that could facilitate the nomination process by designating some of their members for this task. If such institutions do not exist, the Panel finds that an institution of this type should be created. Whichever modality is chosen, members

⁴⁰ Panel Report 2018, *supra* nota ..., p. 32.

⁴¹ *Id.* p. 33.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

involved in the selection process should be independent, impartial, and knowledgeable about the purpose and duties of the Court. They should also have a strong background in the field of human rights. This body should ideally be representative of different constituencies within the State and its society (comprising academia, professional associations, human rights organizations, etc.). It should be permanent or it should be formed well in advance of upcoming elections.”⁴⁷

ii) “States should publish a call for candidates, explaining the nomination and election criteria and processes. When States select and nominate their candidates for the IACHR, they should include information on the nomination procedure utilized at the national level. This is important for the transparency and legitimacy of the selection process, as well as the legitimacy of the IASHR.”⁴⁸

iii) “The selection of nominees should involve the full participation of all relevant stakeholders. In order to ensure inclusivity, there should be a public call for candidates that fulfills all the requirements for service on the IACHR. This public call should be placed on the websites of the OAS and the IACHR, and broadly disseminated nationally.”⁴⁹

iv) “Candidates should present evidence of compliance with the requirements of the Convention and the Statute of the Court. Since the Convention and the Statute do not provide details on the qualifications required by a member of this body, it is necessary that these requirements be elaborated at the national level. To evaluate whether candidates comply with the requirement of recognized competence in the field of human rights, the State must request documents, opinions or evidence of a candidate’s defense and promotion in the area of human rights. Each person’s background should be carefully studied to determine their recognized competence in the field of human rights. They should also evaluate their moral authority, independence, and impartiality.”⁵⁰ The Panel suggests that the criteria defined in the first part of this report be used as a guide for States and applicants at the moment of assessing compliance with the requirements.

v) “Candidates should be asked to provide information on the activities they plan to carry out at the same time as their duties as Commissioners. In the spirit of article 71 of the Convention, the Panel also recommends that States, as a matter of policy, should abstain from nominating persons who occupy positions of authority and responsibility for the government at the time of their service to the Court/Commission and at the time they are nominated. Governments should also abstain from nominating persons who are exercising diplomatic functions and whose services may give rise to conflicts of interest, and thus harm the actual or perceived independence and impartiality required of a judicial organ. Even if the Panel recognizes that this is not necessarily an impediment established by the IACHR, nor by the Statutes of the Court or the Commission, the suggestion is extended for reasons of political prudence and must not be interpreted as a critique of the personal qualities or capacities of any candidate. The proposed restriction would apply mainly to active agents of the executive branch of the government and/or to those who are carrying out diplomatic duties at the time nominated, as they are the ones in charge of carrying out the foreign policy of the State for its own benefit.”⁵¹

“vi) Broad linguistic competences and bilingualism are essential criteria. Fluency in one of the four official languages of the OAS (Spanish, English, Portuguese, and French), and at least a passive knowledge of another, is essential. There must also be a clear understanding that candidates are committed to be available for work whenever they are needed.”⁵²

⁴⁷ Id., p. 39-40.

⁴⁸ Id., p. 40.

⁴⁹ Id., p. 40.

⁵⁰ Id.

⁵¹ Id., p. 41.

⁵² Id.

“vii) Interviews should be part of the selection process. Once the period for presenting candidates is over, the national selection body should interview candidates to evaluate their qualifications. Delegates from the most representative national human rights non-governmental organizations should be present, and interviews should be carried out following an agreed-upon template to guarantee equality to those being interviewed. The questionnaire provided in [Annex B] of this Report* could serve as a model for future interviews. The selecting body should further make candidates aware of the limitations they will have, if elected, regarding their future field or work in order to prevent any conflict of interest. The decisions of the selecting body need not be binding, but the political authorities should only deviate from its advice with a public and reasoned decision.”⁵³

“viii) States should nominate at least two candidates for the election. Given the history of underrepresentation of women in international bodies, at least one candidate should be from the under-represented sex. This would allow voters the opportunity to elect candidates taking into account the need to reflect the diversity of those protected by their constitutional and conventional instruments, including candidates from under-represented communities.”⁵⁴

ix) States should seek the nomination of persons who, in addition to the conditions of *recognized knowledge in human rights* and *independence and impartiality*, contribute to a diverse and representative composition of the Organization. For this purpose, nomination processes at the local level

“must also ensure access to these positions to members of disadvantaged minorities or vulnerable collectives in our hemisphere, such as indigenous communities, Afro-descendants, persons with disabilities, members of sexual minorities, among others. Furthermore, considering that the [IACHR] faces a wide range of problems, it is also necessary that it is composed of members with diverse areas of expertise and life experiences. In the end, it is vital that there is an overall balance in the Court’s composition. As required by the OAS General Assembly, it is necessary to ‘ensure a membership that provides balance in terms of gender, representation of the different regions, population groups, and legal systems of the Hemisphere.’”⁵⁵

Recommendations for the selection process at the OAS

“i) The OAS should establish an Advisory Committee that would be responsible for ensuring the suitability of candidates for service as Commissioners. The Panel recommends that this Advisory Committee be composed of diverse and independent members, including for example, representatives from civil society, academia, and States, and an equal number of male and female representatives. The OAS may also invite the Inter-American Juridical Committee to assist the Advisory Committee with its work, pursuant to article 99 of the Charter of the OAS. The article provides that the Juridical Committee “is to serve the Organization as an advisory body on juridical matters.”⁵⁶

“ii) The Advisory Committee’s terms of reference would be to assess and evaluate the candidates with regard to their suitability for service as Commissioners. The Committee would be authorized to meet with candidates, gather independent information about them, host public panels to give candidates the opportunity to introduce themselves to States, and regional and national civil society associations.

* Available in the full Final Report in Spanish.

⁵³ Id. p. 41-42.

⁵⁴ Id., p. 42.

⁵⁵ Id., p. 42.

⁵⁶ Id., p. 43.

The Advisory Committee could also access the information compiled on the candidate at the national level and in the local nomination process. The Committee should assess the suitability of the candidates based not only on the criteria regarding professional eligibility for the election, but also on the personal qualities of independence, impartiality, integrity, propriety, competence, diligence, fairness, and empathy. Finally, it should also take into account the diversity of candidates in its recommendations.”⁵⁷

“iii) The OAS should publish and disseminate the names and curriculum vitae of the candidates within a reasonable and appropriate time before upcoming elections. To provide institutions, organizations of civil society, and any persons interested in the process with enough time to prepare to participate and contribute to it, the OAS should announce who will be standing for election at least 90 days prior to the General Assembly.”⁵⁸

“iv) The Panel affirms the value of continued use of an interview process as an integral part of the Committee’s work. The Panel notes that the presentation of candidates for the [IACHR] before the Permanent Council in previous years was considered an effective and productive activity to facilitate the election of the best-suited candidates. The Panel suggests that the questionnaire used in 2018 could be useful for developing standardized questions for these interviews.”⁵⁹

“v) The Panel recommends that the Advisory Committee draft a final written report for the OAS regarding the evaluation of candidates, and that States take this report into account when voting. The Committee report would provide guidance and advice regarding independent evaluations and information collection, which States could use in electing the most qualified candidates. The Committee’s task would not be to endorse or object to individual candidates, but to advocate for the integrity of the election process.”⁶⁰

“vi) The Panel encourages States to take into account the need for diversity in the election process, whether on the basis of gender, ethnic origin, sexual orientation, areas of expertise, gender identity, among other considerations, as well as the need for a balanced composition in relation to professional history of the candidates. The selection between two or more suitable candidates could be determined on the basis of this need, provided that the candidates satisfy the criteria for eligibility

⁵⁷ Id., p. 43.

⁵⁸ Id., p. 44.

⁵⁹ Id., p. 44.

⁶⁰ Id., p. 44.