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Ambassador Carmen Lomellin

Rachel Owen
Alternative Representative

U.S. Permanent Mission to the Organization of American States
WHA/OAS Bureau of Western Hemisphere Affairs
U.S. Department of State
2201 C Street, NW, Room 5914
Washington, DC 20520

Dear Ambassador Lomellin and Alternative Representative Owen,

Enclosed please find a letter from U.S. human rights scholars and practitioners concerning the potential nomination of a new commissioner to the Inter-American Commission on Human Rights by the United States. Please feel free to contact us if you have any questions or to discuss this matter further.

Sincerely,

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cc: Robert Copley
Jeff Kovar
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February 19, 2013

Dear Ambassador Lomellin and Representative Owen,

On January 16, we received a request for input on the criteria that the U.S. should use to nominate a new human rights expert to serve as a commissioner on the Inter-American Commission on Human Rights (IACHR or Commission). Shortly thereafter, the U.S. announced four candidates currently under consideration for the nomination.

We write in direct response to your request for input. Without endorsing or commenting upon any particular candidate we are pleased to share criteria the U.S. should consider when selecting a nominee to the IACHR in the current process as well as in the future. Indeed, the criteria below can and should inform not only who the U.S. nominates to the IACHR, but who the U.S. supports from other OAS member states as well.

As U.S. human rights scholars and practitioners who practice before, and rely upon, the decisions of the IACHR, we want to emphasize the significant role the Commission plays in promoting and preserving human rights in the Western Hemisphere, and the importance of U.S. engagement and leadership in this major regional institution. A more effective and transparent process would provide civil society an opportunity to engage with candidates from the U.S. and other member states, including through interviews.

While we welcome the request for input into the current nominations process, we underscore the need for greater transparency in selecting and vetting U.S. candidates. We believe that civil society input should be incorporated at a much earlier stage in the nominations process, not after much of the selection has been completed. Through a more robust and public vetting process, the U.S. will ensure that civil society voices are taken into account while also setting a model for nominations throughout the region.

We underscore too that the nominations process is just one way the United States can demonstrate its support for the IACHR and ensure the Commission remains an independent and autonomous promoter and protector of human rights. The U.S. can further legitimize its voice in the OAS and in the IACHR reform process by demonstrating that it takes the Commission seriously in the domestic arena. This requires improved U.S. engagement with the Commission by developing a stronger record of

compliance with IACHR findings and recommendations and sustained efforts to raise awareness of the valuable role the Commission plays in protecting human rights in the United States and throughout the region.

Regarding nominations, as set out in Article 1(3) of the Inter-American Commission Rules of Procedure and Article 34 of the American Convention on Human Rights, commissioners should be “persons of high moral character and recognized competence in the field of human rights.” U.S. nominees should further embody the human rights ideals of both the Organization of American States and the United States.

In addition to these general criteria, the United States should take the following skills and qualifications into account when selecting a nominee. A nominee with these credentials will be well-situated to contribute meaningfully to the promotion and protection of human rights in the region and effectively advance the goals of the IACHR and the United States.¹

- **Knowledge of Latin America and the Caribbean.** The cases that have come before the Commission over the past few decades have largely tracked the socio-political history of Latin America and the Caribbean. A familiarity with this history, and with the major players in the region, would permit the nominee to robustly engage in his or her role as commissioner. Knowledge of the region is particularly important, given that the U.S. member is precluded from hearing cases or matters against the United States.
- **Familiarity with the Inter-American system.** Given that the Commission is a specialized and unique body, it is essential that the U.S. nominee be familiar with the reports and jurisprudence of the Commission and the Inter-American Court of Human Rights, and also be familiar with the key figures, processes, and mechanisms in the Inter-American system.
- **Language ability.** It is important that the nominee have a strong command of, and ideally fluency in, the Spanish language. This would permit the nominee to be a highly effective leader within the Commission, since most of the Commission’s activities, at both the internal and external levels, are carried out in Spanish. Spanish is the primary language spoken in the Americas; individuals and organizations from Spanish-speaking countries compose the majority of the users of the Inter-American system; and the majority of the commissioners and Commission staff, as well as the majority of the judges on the Inter-American Court, OAS Ambassadors and public officers, and relevant media, are native Spanish-speakers. An ability to communicate in French and Portuguese, the two additional official languages of the Commission, is also highly desirable to ensure a U.S. candidate can engage effectively with OAS member states and regional stakeholders, including victims and advocates.

¹ The first eight criteria were previously shared with Secretary Clinton and White House Counsel Gregory Craig during the 2009 nominations process. *See* Letter From U.S. human rights scholars and practitioners, Jan. 23, 2009. This letter supplements and builds upon criteria presented in 2009.

- **Management skills.** The Commission and Court have grown in hemispheric significance in the past decade. However, the Commission has also experienced staffing and financial limitations, managerial problems, and occasional conflicts of interest. The nominee should be willing to assist with addressing structural and bureaucratic problems with the organization and with building the Commission's credibility within and amongst the American states and internationally. Thus, the nominee should possess experience leading teams, institutions, and organizations, as well as experience working in a multicultural, multilingual environment with people from different countries, with different backgrounds and expectations.
- **Time commitment.** The nominee should be prepared to devote at least 12 weeks of full-time work for the Commission between sessions; make appearances in front of the Inter-American Court of Human Rights in San José, Costa Rica; conduct site visits to countries; respond to electronic or phone inquiries and engage in discussions with fellow Commissioners, Secretariat staff, and others. Furthermore, the nominee will need to devote time to read the draft decisions and reports to be discussed during the Commission's sessions. This time commitment is not only essential to perform the basic role of a commissioner, but also to do so with professionalism and leadership.
- **Diversity.** Historically, the vast majority of the commissioners on the Commission (including commissioners from the United States) have been men of Caucasian descent. The ideal nominee from the United States would be an individual who contributes to gender, racial, sexual orientation, or other diversity on the Commission, and with the Inter-American system as a whole.
- **Independent, knowledgeable and well-respected human rights advocate.** Given the increasing complexity of international human rights law and its growing relevance for domestic legal systems in many countries in the Americas, it is important to have a knowledgeable and well-respected human rights advocate (preferably lawyer or law professor) serve as a commissioner from the U.S. In order to maximize the credibility of the Commission's decisions, the U.S. nominee should be likely to exercise his duties independently and without outside influence.
- **International legal background.** The Inter-American human rights system is an important component of a larger international legal structure. It is important that the nominee not only be familiar with international law, but also understand the influence that other international legal regimes, such as the United Nations and European human rights systems, have on the Inter-American human rights system, and vice versa. The nominee should have a nuanced understanding of the importance of the full spectrum of internationally-recognized human rights, including economic, social and cultural rights. Moreover, the nominee should be familiar with both common and continental law and/or with the legal systems in the Americas.

- **Ability to navigate political sensitivities.** The current reform process demonstrates how regional politics impact both the OAS and the role of the IACHR. To be effective, a U.S. nominee should have a familiarity with the geopolitical context of the region, including the civil society landscape, and a demonstrated ability to navigate the OAS with the utmost diplomacy.
- **Respect for a victim-centered approach to human rights concerns.** As a protector and promoter of human rights, the Commission offers a space for some of the most vulnerable individuals and communities across the region to address human rights abuses and confront alleged abusers, sometimes at great cost and political risk. A U.S. nominee, if elected, will oversee cases and thematic concerns emerging from a number of countries, and serve as the face of the Commission. As such, the nominee should be committed to a victim-centered approach and sensitive to the needs of all individuals who come before the IACHR.

We urge the United States to select a nominee for commissioner to the Inter-American Commission on Human Rights who shares the U.S.’ commitment to advancing human rights at home and abroad. A candidate who embodies these credentials can further U.S. credibility within the Inter-American system, contribute to the effectiveness of the Commission and help the U.S. lead by example on the world stage.

Thank you for your attention to this matter. We look forward to the opportunity to discuss these recommendations further.

Sincerely,

Individual Signatories

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David Baluarte, *Practitioner-in-Residence, International Human Rights Law Clinic, American University Washington College of Law*

Caroline Bettinger-Lopez, *Associate Professor of Clinic Education and Director, Human Rights Clinic, University of Miami School of Law*

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Organizational Signatories

American Civil Liberties Union (ACLU)

Center for Gender & Refugee Studies, UC Hastings College of Law

Four Freedoms Forum

The Center for Reproductive Rights

Institute for Justice & Democracy in Haiti

International Center for Advocates Against Discrimination (ICAAD)

National Law Center on Homelessness & Poverty

U.S. Human Rights Network

cc: Robert Copley, Alternative Representative

Jeff Kovar, Political Counselor and Alternative Representative

Andrew Stevenson, Alternative Representative