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09 September 2009

Dato' Sri Mohd Najib bin Tun Abdul Razak,
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By Post and fax

Cc.

1. Datuk Anifah Aman, Foreign Minister of Malaysia
2. Tan Sri Ahmad Fuzi Haji Abdul Razak, Malaysian High Level Penal

Re: Civil society's recommendations on the national process of selecting the representatives of the ASEAN Intergovernmental Commission on Human Rights (AICHR)

Your Excellency,

The Malaysian civil society organisations welcome the announcement that ASEAN leaders will issue a political declaration for the ASEAN Intergovernmental Commission on Human Rights (AICHR). Suara Rakyat Malaysia (SUARAM) on behalf of Malaysian Civil Society Organisations (CSOs) and as Malaysian focal point for 70 organizations under the coalition of the Solidarity for Asian People's Advocacy Task Force on ASEAN and Human Rights (SAPATF-AHR) is however, concerned with the national selection process of the representative to be sitting in the AICHR.

SUARAM believes that independent, impartial, professional representative with high integrity, recognized competence in the field of human rights, and elected and/or appointed in a transparent, participatory and inclusive process of consultation input from all stakeholders is necessary to ensure the effectiveness and credibility of the AICHR (hereafter the "Commission") to fulfill its mandate as the overarching body tasked with the promotion and protection of human rights in ASEAN.

We therefore strongly urge Malaysia's government to nominate, select, and elect or appoint a member to the AICHR in accordance with the following recommendations:

Criteria for Office

1. The members of the Commission should be elected in line with the criteria of the mandate-holders under the Special Procedures of the United Nations and guided by the Paris Principles (see Annexes), including:
 - a. expertise;
 - b. experience in the field of human rights;
 - c. independence;
 - d. impartiality;
 - e. personal integrity and
 - f. objectivity
2. The Head of the States should pursue a policy and process aimed at ensuring a balanced representation of the genders.
3. The pool of qualified candidates from which a member to the Commission is elected or appointed should represent different sectors, backgrounds, and thoughts of society to ensure pluralist representation.
4. In the absence of detailed provisions for the criteria for office in the TOR, Malaysia as one of the most important ASEAN leaders should play the leading role to clarify and elaborate on the criteria set out in Article 5.3 of the TOR and aligns them to the aforementioned criteria and international human rights standards.

Terms of Office: Independence, Impartiality, and Incompatibility

5. The members of the Commission must be elected and serve in a personal capacity and perform their powers, duties and functions independently, impartially, in good faith and without fear, favour, bias or prejudice.
6. Both the appointing Government and the members of the Commission shall be accountable to the people of the appointing country and of ASEAN as a community.
7. Individuals holding decision-making positions in Government or in any other organization or entity which may give rise to a conflict of interest with the responsibilities inherent to the AICHR and to the protection and promotion of human rights in ASEAN shall be excluded from the process.
8. All organs of state and the ASEAN Secretariat, in accordance with Article 7.2 of the TOR, shall afford the Commission all assistance and cooperation as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.
9. No organ of state or the ASEAN and no member, agent or employee of an organ of state or the ASEAN nor any other person, whether state or non-state, shall act or attempt to act in a manner contrary to the ideals and objectives of the AICHR and that undermines or compromises the transparency, participatory nature and fairness of the nomination, selection and election process.

10. Civil society and human rights defenders should be able to freely and genuinely engage the government at all stages of the process without interference and obstruction. This guarantee of non-interference should be given effect by national legislative acts or administrative measures.
11. In the absence of detailed provisions for the replacement of members of the Commission, ASEAN leaders should clarify and elaborate on Article 5.6 of the TOR to ensure that a member who has been elected will not be arbitrarily replaced or dismissed without due process and reasonable justification.

Nomination, Selection and Election Process at the National Level

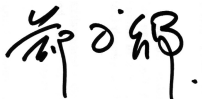
12. The nomination, selection and election process, at all stages, shall be:
 - a. consistent with the principle of a democratic society;
 - b. open to and meaningfully involve all social actors to ensure pluralist representation, consideration for gender balance, and the widest participation, even if such participation is not required by Member States' internal processes;
 - c. conducted in a transparent and open manner in which the public is fully, accurately and continuously informed of its progress and decisions; and
 - d. monitored and evaluated by the public at large and by the legislature or a competent entity with oversight authority granted to it by law.
13. A member of the Commission shall be elected from a pool of qualified candidates proposed through a transparent, participatory and inclusive process guided by the Paris Principles, the general criteria and recommendations included hereto, and international human rights standards.
14. In accordance with the principle of democracy and people's participation, as enshrined in the ASEAN Charter (Article 1) and international human rights law, nominating and selecting candidates to be elected to the Commission should not be the exclusive prerogative of the State, while recognizing the final act of election shall be undertaken by an organ of state. Member States should foster and maintain an enabling environment in which civil society can freely and actively participate in the nomination and selection process.
15. No person shall be barred from becoming a candidate or from being elected as a member to the Commission on grounds of race, color, sex, language, religion, political or other opinion, national origin other than those of ASEAN states, property, birth, disability, health status, age, sexual orientation and other status. This obligation and requirement of non-discrimination shall not prejudice any reasonable and lawful criteria necessarily imposed to ensure the independence, impartiality, and competence of the members of the Commission.
16. In each ASEAN Member State, the entities which may nominate candidates as members of the Commission should include:
 - a. Governments;
 - b. civil society and non-governmental organizations;

- c. universities and academic institutions;
- d. members of national human rights institutions;
- e. other human rights bodies; and
- f. legislative institutions
- g. Media

17. Human rights experts from international organization and the UN human rights system should be invited as observers and advisers to provide technical assistance.
18. A participatory approach should be institutionalized as part of the nomination and selection process. In this respect, an official selecting body to establish criteria, receive and review nominations, and select the final candidates should be formed with a view to ensure the final candidates are highly qualified, competent and deemed to be independent and impartial. The constitution and composition of this selecting body shall be determined in accordance with established practices where they exist or with relevant national laws and processes, guided by the Paris Principles, the general criteria and considerations enumerated here and international human rights standards of transparency and accountability. This body should consist of a balanced and equal representation of social actors with an interest in the protection and promotion of human rights in ASEAN, including but not limited to those listed in Para 19.
19. Before the election of a member to the Commission, the organ of state charged with the election should hold public hearings where each candidate's qualifications, competence and integrity can be thoroughly and adequately reviewed and debated.
20. The official act of election should be undertaken by secret ballot by a representative and deliberative organ of state with constitutional and democratic authority to act on its people's behalf and accountable to the people.

We respectfully request that you take civil society's inputs into a serious consideration and publicly announce your plan to hold the national selection process for the member to the Commission in order for us to monitor the progress. We look forward to your favorable reply and the opportunity to contribute to your good work. In the mean time, shall you have further questions, please contact please kindly contact the undersigned via email at tah09sept@gmail.com or telephone 03 7784 3525 or Ms. Yuyun Wahyuningrum, Secretary of SAPATF-AHR and FORUM-ASIA Program Manager at yuyun@forum-asia.org or at +66 (0) 879914451.

Yours sincerely,



Moon Hui
Campaign Coordinator
Suara Rakyat Malaysia (SUARAM)

ANNEXES

I. Principles relating to the Status of National Institutions (The Paris Principles)

Adopted by General Assembly resolution 48/134 of 20 December 1993 (A/RES/48/134)

Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
 - a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
 - i. Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
 - ii. Any situation of violation of human rights which it decides to take up;
 - iii. The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
 - iv. Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

- b) To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
- c) to encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
- d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
- e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the protection and promotion of human rights;
- f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
- g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:

- a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
- b) Trends in philosophical or religious thought;
- c) Universities and qualified experts;
- d) Parliament;
- e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to

enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

Methods of operation

Within the framework of its operation, the national institution shall:

- a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner,
- b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;
- c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;
- d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly concerned;
- e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;
- f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular, ombudsmen, mediators and similar institutions);
- g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.

Additional principles concerning the status of commissions with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

II. Excerpts from Human Rights Council Resolution 5/1 (Institution-building package)

II. SPECIAL PROCEDURES

A. Selection and appointment of mandate-holders

39. The following general criteria will be of paramount importance while nominating, selecting and appointing mandate-holders: (a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.

40. Due consideration should be given to gender balance and equitable geographic representation, as well as to an appropriate representation of different legal systems.

41. Technical and objective requirements for eligible candidates for mandate-holders will be approved by the Council at its sixth session (first session of the second cycle), in order to ensure that eligible candidates are highly qualified individuals who possess established competence, relevant expertise and extensive professional experience in the field of human rights.

42. The following entities may nominate candidates as special procedures mandate-holders: (a) Governments; (b) Regional Groups operating within the United Nations human rights system; (c) international organizations or their offices (e.g. the Office of the High Commissioner for Human Rights); (d) non-governmental organizations; (e) other human rights bodies; (f) individual nominations.

43. The Office of the High Commissioner for Human Rights shall immediately prepare, maintain and periodically update a public list of eligible candidates in a standardized format, which shall include personal data, areas of expertise and professional experience. Upcoming vacancies of mandates shall be publicized.

44. The principle of non-accumulation of human rights functions at a time shall be respected.

45. A mandate-holder's tenure in a given function, whether a thematic or country mandate, will be no longer than six years (two terms of three years for thematic mandate-holders).

46. Individuals holding decision-making positions in Government or in any other organization or entity which may give rise to a conflict of interest with the responsibilities inherent to the mandate shall be excluded. Mandate holders will act in their personal capacity.

47. A consultative group would be established to propose to the President, at least one month before the beginning of the session in which the Council would consider the selection of mandate holders, a list of candidates who possess the highest qualifications for the mandates in question and meet the general criteria and particular requirements.

48. The consultative group shall also give due consideration to the exclusion of nominated candidates from the public list of eligible candidates brought to its attention.

49. At the beginning of the annual cycle of the Council, Regional Groups would be invited to appoint a member of the consultative group, who would serve in his/her personal capacity. The Group will be assisted by the Office of the High Commissioner for Human Rights.

50. The consultative group will consider candidates included in the public list; however, under exceptional circumstances and if a particular post justifies it, the Group may consider additional nominations with equal or more suitable qualifications for the post. Recommendations to the President shall be public and substantiated.

51. The consultative group should take into account, as appropriate, the views of stakeholders, including the current or outgoing mandate-holders, in determining the necessary expertise, experience, skills, and other relevant requirements for each mandate.

52. On the basis of the recommendations of the consultative group and following broad consultations, in particular through the regional coordinators, the President of the Council will identify an appropriate candidate for each vacancy. The President will present to member States and observers a list of candidates to be proposed at least two weeks prior to the beginning of the session in which the Council will consider the appointments.

53. If necessary, the President will conduct further consultations to ensure the endorsement of the proposed candidates. The appointment of the special procedures mandate-holders will be completed upon the subsequent approval of the Council. Mandate-holders shall be appointed before the end of the session.

III. Excerpts from the African Charter on Human and Peoples' Rights relating to the establishment of the African Commission on Human and Peoples' Rights

Chapter I -- Establishment and Organization of the African Commission on Human and Peoples' Rights

Article 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

Article 31

1. The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience.

2. The members of the Commission shall serve in their personal capacity. . . .

Article 41

The Secretary-General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs of the staff and services. . . .

Chapter II -- Mandate of the Commission

Article 45

The functions of the Commission shall be:

1. To promote Human and Peoples' Rights and in particular:

(a) to collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.

(b) to formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

(c) co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

2. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.

3. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.

4. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

IV. Excerpts of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

Article 11 COMPOSITION

1. The Court shall consist of eleven judges, nationals of Member States of the OAU, elected in an individual capacity from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights.
2. No two judges shall be nationals of the same State.

Article 12 NOMINATIONS

1. States Parties to the Protocol may each propose up to three candidates, at least two of whom shall be nationals of that State.
2. Due consideration shall be given to adequate gender representation in nomination process.

Article 13 LIST OF CANDIDATES

1. Upon entry into force of this Protocol, the Secretary-general of the OAU shall request each State Party to the Protocol to present, within ninety (90) days of such a request, its nominees for the office of judge of the Court.
2. The Secretary-General of the OAU shall prepare a list in alphabetical order of the candidates nominated and transmit it to the Member States of the OAU at least thirty days prior to the next session of the Assembly of Heads of State and Government of the OAU hereinafter referred to as "the Assembly".

Article 14 ELECTIONS

1. The judges of the Court shall be elected by secret ballot by the Assembly from the list referred to in Article 13 (2) of the present Protocol.
2. The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions.
3. In the election of the judges, the Assembly shall ensure that there is adequate gender representation.

Article 15 TERM OF OFFICE

1. The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years.

2. The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General of the OAU immediately after the first election has been completed.

3. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor's term.

4. All judges except the President shall perform their functions on a part-time basis. However, the Assembly may change this arrangement as it deems appropriate.

Article 16 OATH OF OFFICE

After their election, the judges of the Court shall make a solemn declaration to discharge their duties impartially and faithfully.

Article 17 INDEPENDENCE

1. The independence of the judges shall be fully ensured in accordance with international law.

2. No judge may hear any case in which the same judge has previously taken part as agent, counsel or advocate for one of the parties or as a member of a national or international court or a commission of enquiry or in any other capacity. Any doubt on this point shall be settled by decision of the Court.

3. The judges of the Court shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law.

4. At no time shall the judges of the Court be held liable for any decision or opinion issued in the exercise of their functions.

Article 18 INCOMPATIBILITY

The position of judge of the court is incompatible with any activity that might interfere with the independence or impartiality of such a judge or the demands of the office as determined in the Rules of Procedure of the Court.

Article 19 CESSATION OF OFFICE

1. A judge shall not be suspended or removed from office unless, by the unanimous decision of the other judges of the Court, the judge concerned has been found to be no longer fulfilling the required conditions to be a judge of the Court.

2. Such a decision of the Court shall become final unless it is set aside by the Assembly at its next session.

Article 20 VACANCIES

1. In case of death or resignation of a judge of the Court, the President of the Court shall immediately inform the Secretary General of the Organization of African Unity, who shall declare the seat vacant from the date of death or from the date on which the resignation takes effect.
2. The Assembly shall replace the judge whose office became vacant unless the remaining period of the term is less than one hundred and eighty (180) days.
3. The same procedure and considerations as set out in Articles 12, 13 and 14 shall be followed for the filling of vacancies.

Article 21 PRESIDENCY OF THE COURT

1. The Court shall elect its President and one Vice-President for a period of two years. They may be re-elected only once.
2. The President shall perform judicial functions on a full-time basis and shall reside at the seat of the Court.
3. The functions of the President and the Vice-President shall be set out in the Rules of Procedure of the Court.

Article 22 EXCLUSION

If the judge is a national of any State which is a party to a case submitted to the Court, that judge shall not hear the case.

V. Excerpts from the Statute of the Inter-American Commission on Human Rights

II. MEMBERSHIP AND STRUCTURE

Article 2

1. The Inter-American Commission on Human Rights shall be composed of seven members, who shall be persons of high moral character and recognized competence in the field of human rights.
2. The Commission shall represent all the member states of the Organization.

Article 3

1. The members of the Commission shall be elected in a personal capacity by the General Assembly of the Organization from a list of candidates proposed by the governments of the member states.
2. Each government may propose up to three candidates, who may be nationals of the state proposing them or of any other member state of the Organization. When a slate of three is proposed, at least one of the candidates shall be a national of a state other than the proposing state.

Article 4

1. At least six months prior to completion of the terms of office for which the members of the Commission were elected,[1] the Secretary General shall request, in writing, each member state of the Organization to present its candidates within 90 days.
2. The Secretary General shall prepare a list in alphabetical order of the candidates nominated, and shall transmit it to the member states of the Organization at least thirty days prior to the next General Assembly.

Article 5

The members of the Commission shall be elected by secret ballot of the General Assembly from the list of candidates referred to in Article 4(2). The candidates who obtain the largest number of votes and an absolute majority of the votes of the member states shall be declared elected. Should it become necessary to hold several ballots to elect all the members of the Commission, the candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the General Assembly.

Article 6

The members of the Commission shall be elected for a term of four years and may be reelected only once. Their terms of office shall begin on January 1 of the year following the year in which they are elected.

Article 7

No two nationals of the same state may be members of the Commission.

Article 8

1. Membership 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.
2. The Commission shall consider any case that may arise regarding incompatibility in accordance with the provisions of the first paragraph of this Article, and in accordance with the procedures provided by its Regulations.
3. If the Commission decides, by an affirmative vote of a least five of its members, that a case of incompatibility exists, it will submit the case, with its background, to the General Assembly for decision.
4. A declaration of incompatibility by the General Assembly shall be adopted by a majority of two thirds of the member states of the Organization and shall occasion the immediate removal of the member of the Commission from his post, but it shall not invalidate any action in which he may have participated.

...

Article 11

1. When a vacancy occurs for reasons other than the normal completion of a member's term of office, the Chairman of the Commission shall immediately notify the Secretary General of the Organization, who shall in turn inform the member states of the Organization.
2. In order to fill vacancies, each government may propose a candidate within a period of 30 days from the date of receipt of the Secretary General's communication that a vacancy has occurred.
3. The Secretary General shall prepare an alphabetical list of the candidates and shall transmit it to the Permanent Council of the Organization, which shall fill the vacancy.
4. When the term of office is due to expire within six months following the date on which a vacancy occurs, the vacancy shall not be filled.

...

Article 13

The members of the Commission shall receive travel allowances and per diem and fees, as appropriate, for their participation in the meetings of the Commission or in other functions which the Commission, in accordance with its Regulations, entrusts to them, individually or collectively. Such travel and per diem allowances and fees shall be included in the budget of the Organization, and their amounts and conditions shall be determined by the General Assembly.

VI. Excerpts from the Rules of Procedure of the Inter-American Commission on Human Rights

CHAPTER I

NATURE AND COMPOSITION

Article 1. Nature and Composition

1. The Inter-American Commission on Human Rights is an autonomous organ of the Organization of American States whose principal functions are to promote the observance and defense of human rights and to serve as an advisory body to the Organization in this area.
2. The Commission represents all the Member States of the Organization.
3. The Commission is composed of seven members elected in their individual capacity by the General Assembly of the Organization. They shall be persons of high moral character and recognized competence in the field of human rights.

CHAPTER II

MEMBERSHIP

Article 2. Duration of the Term of Office

1. The members of the Commission shall be elected for four years and may be re-elected only once.
2. In the event that new members of the Commission have not been elected to replace those completing their term of office, the latter shall continue to serve until the new members are elected.

Article 3. Precedence

The members of the Commission shall follow the President and Vice Presidents in order of precedence according to their seniority in office. When there are two or more members with equal seniority, precedence shall be determined according to age.

Article 4. Incompatibility

1. 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. 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.

2. The Commission, with the affirmative vote of at least five of its members, shall decide whether a situation of incompatibility exists.
3. The Commission, prior to taking a decision, shall hear the member whose activities are claimed to be incompatible.
4. The decision with respect to the incompatibility, together with all the background information, shall be sent to the General Assembly, through the Secretary General of the Organization, for the purposes set forth in Article 8.3 of the Commission's Statute.

Article 5. Resignation

The resignation of a member of the Commission shall be submitted to the President of the Commission in writing. The President shall immediately notify the Secretary General of the OAS for the appropriate purposes.

VII. Excerpts from the Statue of the Inter-American Court of Human Rights

CHAPTER II COMPOSITION OF THE COURT

Article 4. Composition

1. The Court shall consist of seven judges, nationals of the member states of the OAS, elected in an individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions under the law of the State of which they are nationals or of the State that proposes them as candidates.
2. No two judges may be nationals of the same State.

Article 6. Election of the Judges – Date

1. Election of judges shall take place, insofar as possible, during the session of the OAS General Assembly immediately prior to the expiration of the term of the outgoing judges.
2. Vacancies on the Court caused by death, permanent disability, resignation or dismissal of judges shall, insofar as possible, be filled at the next session of the OAS General Assembly. However, an election shall not be necessary when a vacancy occurs within six months of the expiration of a term.
3. If necessary in order to preserve a quorum of the Court, the States Parties to the Convention, at a meeting of the OAS Permanent Council, and at the request of the President of the Court, shall appoint one or more interim judges who shall serve until such time as they are replaced by elected judges.

Article 7. Candidates

1. Judges shall be elected by the States Parties to the Convention, at the OAS General Assembly, from a list of candidates nominated by those States.
2. Each State Party may nominate up to three candidates, nationals of the state that proposes them or of any other member state of the OAS.
3. When a slate of three is proposed, at least one of the candidates must be a national of a state other than the nominating state.

Article 8. Election - Preliminary Procedures

1. Six months prior to expiration of the terms to which the judges of the Court were elected, the Secretary General of the OAS shall address a written request to each State Party to the Convention that it nominate its candidates within the next ninety days.

2. The Secretary General of the OAS shall draw up an alphabetical list of the candidates nominated, and shall forward it to the States Parties, if possible, at least thirty days before the next session of the OAS General Assembly.

3. In the case of vacancies on the Court, as well as in cases of the death or permanent disability of a candidate, the aforementioned time periods shall be shortened to a period that the Secretary General of the OAS deems reasonable.

Article 9. Voting

1. The judges shall be elected by secret ballot and by an absolute majority of the States Parties to the Convention, from among the candidates referred to in Article 7 of the present Statute.

2. The candidates who obtain the largest number of votes and an absolute majority shall be declared elected. Should several ballots be necessary, those candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

Article 10. Ad Hoc Judges

1. If a judge is a national of any of the States Parties to a case submitted to the Court, he shall retain his right to hear that case.

2. If one of the judges called upon to hear a case is a national of one of the States Parties to the case, any other State Party to the case may appoint a person to serve on the Court as an ad hoc judge.

3. If among the judges called upon to hear a case, none is a national of the States Parties to the case, each of the latter may appoint an ad hoc judge. Should several States have the same interest in the case, they shall be regarded as a single party for purposes of the above provisions. In case of doubt, the Court shall decide.

4. The right of any State to appoint an ad hoc judge shall be considered relinquished if the State should fail to do so within thirty days following the written request from the President of the Court.

5. The provisions of Articles 4, 11, 15, 16, 18, 19 and 20 of the present Statute shall apply to ad hoc judges.

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CHAPTER IV RIGHTS, DUTIES AND RESPONSIBILITIES

Article 15. Privileges and Immunities

1. The judges of the Court shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents under international law. During the exercise of their functions, they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties.
2. At no time shall the judges of the Court be held liable for any decisions or opinions issued in the exercise of their functions.
3. The Court itself and its staff shall enjoy the privileges and immunities provided for in the Agreement on Privileges and Immunities of the Organization of American States, of May 15, 1949, mutatis mutandis, taking into account the importance and independence of the Court.
4. The provision of paragraphs 1, 2 and 3 of this article shall apply to the States Parties to the Convention. They shall also apply to such other member states of the OAS as expressly accept them, either in general or for specific cases.
5. The system of privileges and immunities of the judges of the Court and of its staff may be regulated or supplemented by multilateral or bilateral agreements between the Court, the OAS and its member states.

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Article 17. Emoluments

1. The emoluments of the President and the judges of the Court shall be set in accordance with the obligations and incompatibilities imposed on them by Articles 16 and 18, and bearing in mind the importance and independence of their functions.
2. The ad hoc judges shall receive the emoluments established by Regulations, within the limits of the Court's budget.
3. The judges shall also receive per diem and travel allowances, when appropriate.

Article 18. Incompatibilities

1. The position of judge of the Inter-American Court of Human Rights is incompatible with the following positions and activities:
 - a. Members or high-ranking officials of the executive branch of government, except for those who hold positions that do not place them under the direct control of the executive branch and those of diplomatic agents who are not Chiefs of Missions to the OAS or to any of its member states;
 - b. Officials of international organizations;

c. Any others that might prevent the judges from discharging their duties, or that might affect their independence or impartiality, or the dignity and prestige of the office.

2. In case of doubt as to incompatibility, the Court shall decide. If the incompatibility is not resolved, the provisions of Article 73 of the Convention and Article 20(2) of the present Statute shall apply.

3. Incompatibilities may lead only to dismissal of the judge and the imposition of applicable liabilities, but shall not invalidate the acts and decisions in which the judge in question participated.

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Article 19. Disqualification

1. Judges may not take part in matters in which, in the opinion of the Court, they or members of their family have a direct interest or in which they have previously taken part as agents, counsel or advocates, or as members of a national or international court or an investigatory committee, or in any other capacity.

2. If a judge is disqualified from hearing a case or for some other appropriate reason considers that he should not take part in a specific matter, he shall advise the President of his disqualification. Should the latter disagree, the Court shall decide.

3. If the President considers that a judge has cause for disqualification or for some other pertinent reason should not take part in a given matter, he shall advise him to that effect. Should the judge in question disagree, the Court shall decide.

4. When one or more judges are disqualified pursuant to this article, the President may request the States Parties to the Convention, in a meeting of the OAS Permanent Council, to appoint interim judges to replace them.

VIII. Excerpts from the European Convention on Human Rights, relating to the European Court of Human Rights

Section II – European Court of Human Rights

Article 19 – Establishment of the Court

To ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto, there shall be set up a European Court of Human Rights, hereinafter referred to as "the Court". It shall function on a permanent basis.

Article 20 – Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21 – Criteria for office

1 The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2 The judges shall sit on the Court in their individual capacity.

3 During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

1 The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

2 The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23 – Terms of office

1 The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.

2 The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.

3 In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.

4 In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.

5 A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.

6 The terms of office of judges shall expire when they reach the age of 70.

7 The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.

Article 24 – Dismissal

No judge may be dismissed from his office unless the other judges decide by a majority of two-thirds that he has ceased to fulfil the required conditions.

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Article 51 – Privileges and immunities of judges

The judges shall be entitled, during the exercise of their functions, to the privileges and immunities provided for in Article 40 of the Statute of the Council of Europe and in the agreements made thereunder.