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To the Honorable Executive Secretariat of the Inter-American Commission on Human Rights:

The Human Rights Clinic at The University of Texas School of Law (the “Clinic”) has the honor of addressing the Inter-American Commission on Human Rights (the “Commission,” or the “IACHR”) in order to present its observations on the proposed changes to its Rules of Procedure, policies, and practices. The Clinic commends the IACHR for working with the OAS Member States, the OAS Special Working Group to Reflect on the Workings of the IACHR With a View to Strengthening the IAHRs (“OAS Working Group”), and civil society as the Commission reforms its procedures, policies, and practices. Overall, the Clinic believes that the Commission’s proposals will strengthen the Commission as it continues to play a crucial role in the Inter-American system by protecting and promoting human rights in the Hemisphere.

In order to continue our fruitful cooperation and engagement with the Commission, the Clinic presents the following observations. As you recall, In July of 2012, the Clinic published a report, “Maximizing Justice, Minimizing Delay: Streamlining Procedures of the Inter-American Commission on Human Rights.”¹ This report outlined a number of recommendations that the Clinic believes will help to alleviate the backlog of petitions that the Commission faces as well as the delays in its adjudicatory mechanism. The Clinic recognizes that the Commission has made substantial strides with these proposed changes, but more can—and should—be done. The Clinic’s observations will focus on some critical areas where there the current proposal falls short of what is possible and desirable. The Clinic emphasizes these particular areas as a follow up on the recommendations contained in our report. By no means should our focus imply that the other proposed reforms are not important changes for the Commission, nor should our lack of comment on any other areas be seen as a critique or endorsement of those modifications.

¹A copy of the report is available at:
http://www.utexas.edu/law/clinics/humanrights/work/Maximizing_Justice_Minimizing_Delay_at_the_IACHR.pdf.

Draft Reform of the Rules:

The Clinic believes that the proposed changes to the Rules of Procedure include important improvements, but the Commission should make further efforts to streamline procedures in order to deal with petitions in a more timely and efficient manner. In particular, there are two large structural problems in the proposal for the Rules of Procedure. First, the Commission does not intend to merge the admissibility and merits phases of the petition process. Combined admissibility and merits phases were standard practice in the Commission until reforms passed in 2000, and this is the current procedure that the Inter-American Court of Human Rights uses.² In the Clinic's report, we found that the number of cases the Commission decided in full has declined steadily since those changes were implemented.³ Also, the Clinic found that since the division of the admissibility and merits stages in 2000, the overall length of the procedure has increased.⁴ Although the Clinic acknowledges that the OAS Working group does not support our recommendation for consolidating the merits and admissibility decisions, we believe that combining these two phases would allow the Commission to substantially increase its productivity and efficiency, as well as help to reduce the backlog and delays in its procedure.⁵

Second, the Commission failed to create meaningful deadlines and timelines for itself. The absence of meaningful deadlines is concerning, as both the Clinic and the OAS Working Group emphasized the importance of this change.⁶ The adoption of indicative timelines will allow all parties to cases to understand what to expect and when, will permit the Commission to have a more rational planning system, and will allow the Commission to identify crucial bottlenecks and structural inefficiencies.

The maintenance of the two stage process and the lack of time frames for the different stages of the petition process is concerning. A hypothetical case illustrates the duration of the procedure in perfect circumstances. A petitioner submits a petition (that is not eligible for expedited review) on January 1. Assuming that the petition was forwarded to the State by February 1⁷, the State would have three months to respond to the petition—taking us to May 1.⁸ The Commission generally meets in late July, so let us assume that the Commission found the petition admissible, adopted an admissibility report and opened the case on July 25. The petitioner would then have an additional four months to submit observations on the merits, taking us to November 25, after

² Human Rights Clinic, The University of Texas School of Law, *Maximizing Justice, Minimizing Delay: Streamlining Procedures of the Inter-American Commission on Human Rights*, 47, 74 (December 2011). [hereinafter Maximizing Justice].

³ *Id.* at 50.

⁴ *Id.* at 55.

⁵ *Id.* at 101.

⁶ *See id.* at 97 (arguing that performance management and creating “flexible targets” for phases of the petition process would make the Commission more efficient); *Id.* at 8; Permanent Council of the Organization of American States, *Report of the Special Working Group to Reflect on the Workings of the IACHR With a View to Strengthening the IAHRs*, 12, 3.A.c (December 2011). [hereinafter OAS Working Group Report].

⁷ This assumes that there are no backlogs in the Registry and that no additional information is needed.

⁸ This assumes that no additional observations are required.

which the State would have four months to submit observations on the merits, taking us to February 25. The petitioners would then have to wait for the Commission's next session, which generally happens in March, for the Commission to make a decision on the merits. In March, the Commission would decide on the merits and prepare a preliminary report on the merits. The preliminary report will be submitted to the State with a deadline for complying with the recommendations, and if the State has ratified the Convention, the petitioner would have a month to make a case for why the petition should be submitted to the Court—this puts us around late April. If, three months after the preliminary report is transmitted to the State, the State has not complied with the Commission's recommendations and the case has not been referred to the Court, the Commission must vote to adopt a final merits report. Again, the Commission will have to be in session, but because it generally meets in July, the Commission could vote in July on the final report. The report is finally transmitted to the State and the petitioners, and both sides present information on compliance with the recommendations before the Commission makes its final decision on whether to publish the decision. This would have to happen when the Commission meets in late October. Thus, overall, it would take nearly *two years* for a petition/case to make it to a final published merits report. The minimum duration of two years assumes that that the system operates perfectly without delay or backlog, that parties do not request extensions, that the Commission does not require any additional observations, that no hearings are convened, and that friendly settlement negotiations are not pursued.

In addition to these two general points regarding combining the admissibility and merits phases and setting time frames for decisions, the Clinic makes the following specific observations.

Article 28: Requirements for the Consideration of Petitions. The Clinic is encouraged that the Commission will be requesting email addresses from petitioners so that the Commission and petitioners with Internet access can correspond online. We further commend the Commission's proposed policy changes that would implement a new portal for users and a new search engine. However, we recommend that the Commission create procedures and policies that further encourage the online filing of petitions from petitioners who have regular access to the Internet, without duplicate submissions in hard copy.⁹ By promoting online filing, the Commission could take advantage of the fact that petitioners will be using the website, and give specific standards and examples of receivable petitions.¹⁰ This would streamline the intake process and reduce the resources used to determine whether or not a petition is receivable.

The Clinic further believes that the Commission should require petitioners and States to present all relevant documents when they submit their petitions or in the States' initial response, rather than waiting for additional requests from the Commission at the admissibility stage¹¹ and then

⁹ Maximizing Justice at 100.

¹⁰ *Id.*

¹¹ As is allowed in Article 30.5 of the Draft Reforms of the Rules.

again at the merits stage¹². The Commission should model rules requiring earlier presentation of evidence on the Rules of Procedure for the Inter-American Court, which requires parties to submit all evidence in their initial filings.¹³

Article 29: Initial Processing. Both the OAS Working Group and the Clinic encouraged the Commission to be clearer about what makes a petition or case worthy of priority treatment,¹⁴ and the Clinic commends the Commission for following this recommendation in Article 29.2(a). This will increase understanding and transparency in the Commission. The Clinic encourages the Commission to expand these definitions—for example, in a separate policy document—in order to clearly define the terms the Commission uses (e.g. a standard age limit that defines “the elderly”).

Article 30: Admissibility Procedure. The Clinic regrets that the Commission decided to maintain the two-stage procedure for admissibility and merits decisions. Indeed, one of the main conclusions of our report was that the two-stage system leads to substantial delays in getting petitions to decisions on the merits and focuses most of the Commission’s attention on the admissibility stage.¹⁵ The Clinic recognizes that the OAS Working Group argued that combining admissibility and merits decisions should only be an exceptional mechanism.¹⁶ However, the Clinic believes that combining the admissibility and merits decisions would allow the Commission to follow the lead of the Inter-American Court, which combined decisions on preliminary objections, merits, and reparations and has since decreased the time it takes for cases to go through the Court.¹⁷ This is also the tendency of the European System, which currently allows for more joint decisions on admissibility and merits.¹⁸

If the Commission rejects this recommendation, the Clinic suggests that in order to decrease the number of petitions that have been awaiting admissibility decisions for substantial periods of time, the Commission should establish a provision in Article 36 mandating the joining of the admissibility and merits decisions on any petition that has been in the Commission since before 2001, the year after the Commission officially decided to split its procedure.¹⁹ This is logical, because prior to 2001 when the procedure was split, the parties argued on both admissibility requirements and on the merits of the case in their filings.

¹² As is allowed in Article 37.1 of the Draft Reforms of the Rules.

¹³ Rules of Procedure of the Inter-American Court of Human Rights Articles 35.1, 36.1, 40.2, 41.1. [hereinafter Court Rules of Procedure].

¹⁴ Maximizing Justice at 107; OAS Working Group Report at 12, 3.A.h.

¹⁵ Maximizing Justice at 101.

¹⁶ OAS Working Group Report at 12, 3.A.d.

¹⁷ Maximizing Justice at 5,

¹⁸ European Convention on Human Rights, Article 29 § 1; Rules of Procedure of the European Court of Human Rights, Article 54.A.

¹⁹ Maximizing Justice at 101 (“According to sources, in the past, the Commission would apply such a rule [to join admissibility and merits decisions] in all petitions that were opened before the 2000 amendments, and had been in the Commission for at least five years”).

Furthermore, if the Commission does not implement the Clinic’s recommendation to combine the admissibility and merits decisions, or until that change comes into force, the Commission should include an alternative mechanism in the Rules for reducing the backlog of petitions at the admissibility stage. The Clinic recommends that the Commission adopt admissibility decisions by a working group (composed of four members to establish a quorum) rather than by the plenary of the Commission. If the Commission adopts admissibility decisions by working group, the Commissioners may adopt the same amount of decisions in a shorter period of time, consequently freeing more time for the plenary to decide merits decisions. Moreover, working groups can meet when the Commission is not in session, leaving even more time for merits decisions during sessions. The Clinic notes however, that the Commission should not use this change merely to adopt more admissibility decisions, because that would simply move the backlog to a later stage in the procedure. The other three Commissioners should form another working group to do an initial review of the merits reports in order to speed up their discussion in plenary. In this way, the Commission should use these changes to shift its attention during session to merits decisions.

Finally, the changes to Article 30 still contain a number of vague statements, which could cause confusion and frustration with petitioners and States. For example, section 3 says that the Executive Secretariat shall evaluate “duly founded” requests for extensions, but there are no examples in the Rules, practices, or policies of what a duly founded extension request would look like. Section 7, which addresses expedited cases, asks for responses from States in a “reasonable period,” but does nothing to explain what “reasonable” means in particular circumstances. Without clearer definitions, it will be hard for the Commission to establish consistent standards that petitioners and States can understand and follow. While the Clinic understands that the reasonableness standard ultimately requires a case-by-case approach, there is space to provide some type of guidance and framework—particularly through additions to the Commissions’ policies or practices.

Article 36: Decision on Admissibility. The Clinic applauds the Commission’s increased transparency in showing under what circumstances it will join the admissibility and merits decisions. Nevertheless, the Clinic again reiterates its recommendation that these two stages be permanently combined.

The Clinic recommends that the Commission add a rule explicitly allowing the Commission to issue *per curiam* decisions in petitions and cases that are substantially similar to petitions and cases that have previously been decided. The use of *per curiam* decisions should be allowed at both the admissibility and merits stages. The Clinic recognizes that the Commission has used *per*

curiam decisions in the past²⁰, and the Clinic encourages the Commission to codify this practice with an addition to the Rules of Procedure.

Article 37: Procedure on the Merits. The Clinic regrets that the Commission *increased* the length of time that petitioners and States have to submit additional documentation at the merits stage from three to four months. The Clinic additionally notes that this process could be streamlined if petitioners and States were required to submit complete documentation during the admissibility stage, rather than waiting for the merits stage.²¹ The Clinic also recommends that the Commission define “reasonable time period” with respect to Section 3—indeed, in the most urgent cases, it would seem that the time period for submitting observations should be the most strict. Finally, the Clinic reiterates once again the importance of establishing time limits for processing cases.²²

Additionally, the Clinic encourages the Commission to adopt a provision in the Rules of Procedure allowing “pilot decisions,” which the European Court of Human Rights has utilized when deciding cases that are nearly identical.²³ Under a rule permitting pilot decisions, when faced with cases with similar root causes, the Commission can decide one case, and then use that decision as the basis for *per curiam* decisions on the other petitions.²⁴

Article 42: Archiving of Petitions and Cases. Although the Clinic commends expansions of the explanations for when a case can be archived, firmer time frames would increase transparency and understanding. For example, the Commission could establish a rule that after a certain number of years of inactivity, a petition would enter an archiving track, and petitioners would receive notice that if they did not respond in a certain number of months, their petition would be archived.

Article 44: Reports on the Merits. The Clinic believes that in order to streamline its process, reduce the number of steps in the adoption of final reports, and encourage the universal ratification of the American Convention on Human Rights, the procedure established in Article 44 of the Rules should be applicable only to those States that have ratified the Convention.

²⁰ See Maximizing Justice at 103 nn.364-65 (citing César Fierro v. U.S., Case 11.331, InterAm. Comm’n H.R., Report No. 99/03 OEA/Ser.L./V/II.118, doc. 5 rev. 2 ¶37 (2003) and Douglas Christopher Thomas v. U.S., Case 12.240, Inter-Am. Comm’n H.R., Report No 100/03, Case 12.240, OEA/Ser.L./V/II.118, doc. 5 rev.2 ¶¶39-41 (2003) to show that the Commission has used *per curiam* decisions in the past).

²¹ Maximizing Justice at 105.

²² *Id.* at 8; OAS Working Group Report at 12, 3.A.c.

²³ Maximizing Justice at 103.

²⁴ See *id.* (explaining the European system and suggesting a number of proposals for how the Commission could adopt a pilot decision rule).

For those States that have not ratified the Convention, there is no legal requirement mandating a three-step process at the end of the merits stage (preliminary report, final report, and then publication). The Commission should establish a two-step process for States that have not ratified the Convention. The Commission should adopt a final report and give the State time to implement the recommendations. At the end of the period, the Commission should decide whether the State has implemented the recommendations and decide whether to publish the report. By eliminating one step, the Commission can save time and resources while also creating an additional incentive for States to ratify the Convention.

Article 46: Suspension of Time Limit to Refer the Case to the Court. Although the Clinic commends the flexibility that the Commission offers to States that are willing and able to implement the Commission's recommendations, we recommend that the Commission establish standards to evaluate advances in the implementation of the recommendations and/or for how long the suspension of these time limits would last.

Establishing Deadlines. The Clinic believes that that the Commission is missing an opportunity to make its procedure more efficient by establishing deadlines for the different stages of the petition and case. Both the Clinic²⁵ and the OAS Working Group²⁶ urged the Commission to establish deadlines that would allow cases to move more quickly through the Commission. Although we acknowledge the Commission's concerns about such deadlines,²⁷ we believe that with appropriate leadership and planning, the Commission will be able to set deadlines without sacrificing quality in decision-making.²⁸ The Clinic encourages the Commission to set reasonable deadlines based on its understanding of what is reasonable considering the number of pending cases and petitions, the available resources and the other competing functions of the Commission.²⁹ The Commission should use the data from its Petition and Case Management System (PCMS) and the Document Management System (DMS) to help evaluate the appropriate deadlines for petitions. The deadlines should not be fatal for the processing of the petition or the case if they are missed, as the petitioners and victims should not be punished for the delays. The deadlines should be mainly guidelines for the parties to be able to understand what and when to expect something from the Commission, and for the IACHR to be able to make a more complete and effective planning process.

Conclusion: Proposed Changes to the Rules of Procedure. The Clinic applauds the Commission's efforts to update its Rules of Procedure to reflect the recommendations of the OAS Working Group, OAS member States, and civil society. However, the Clinic is particularly

²⁵ *Id.* at 97.

²⁶ OAS Working Group Report at 12, 3.A.c.

²⁷ Inter-American Commission on Human Rights, *Reply of the Inter-American Commission on Human Rights to the Permanent Council of the Organization of American States regarding the recommendations contained in the Report of the Special Working Group*, 27 (October 2012).

²⁸ Maximizing Justice at 97.

²⁹ *Id.* at 96.

troubled by the Commission's decision not to combine the merits and admissibility phases of their procedure, as combining these could contribute to a decrease in petition backlog and an increase in Commission productivity.

Draft Reform of Policies:

The Clinic strongly commends the Commission for the proposed reform of its policies. The Clinic is encouraged to see that the Commission has decided to prioritize implementing a portal and a new Internet search engine. The Clinic and the OAS Working Group have both emphasized the importance of increasing the use of technology at the Commission,³⁰ and the Clinic eagerly anticipates the development and widespread use of the new portal and search engine. However, the Clinic encourages the Commission to further promote the filing of petitions online, as well as disseminating information online that would allow petitioners to see what type of cases are unlikely to be granted admissibility.³¹ Furthermore, the Commission should digitalize all petitions and cases that are still working their way through the Commission, regardless of when the petitions were filed.³² The continued development and use of technology will help to streamline and speed up the petition process.

Draft Reform of Practices:

Overall, as with the Commission's draft reform of policies, we commend the Commission for clearly taking the advice of others into consideration and creating a strong revision of its practices.

Friendly Settlement. The Clinic commends the Commission for continuing to advocate for friendly settlements as a resolution to its cases. The increased use of friendly settlements in different domestic courts has dramatically reduced the caseload that courts face each year.³³ The Clinic believes that the continued use of friendly settlements can help the Commission to decrease its caseload and improve its efficacy, as friendly settlement cases are completed more quickly and have better rates of compliance with than merits reports.³⁴

Reports and Digests. Additionally, the Clinic is pleased to see that the Commission will be issuing a number of digests and guidebooks that better explain its standards for everything from precautionary measures to the exhaustion of remedies under domestic law. Increased access to information about the Commission increases transparency and builds trust between petitioners, States, and the Commission. By better preparing petitioners for the standards that they will face

³⁰ *Id.* at 99-100; OAS Working Group Report at 12, 3.A.k.

³¹ Maximizing Justice at 100 ("The Commission should also publish the Rules within the online petition system with an explanatory note showing clear examples of cases which cannot be processed...By being very explicit with these standards and examples...the number of unacceptable petitions will hopefully be reduced and the transparency of the Commission's standards increased.").

³² *Id.* at 99

³³ *Id.* at 87.

³⁴ *Id.* at 60.

when filing with the Commission, the Commission will spend less time processing petitions that are improperly filed or are inappropriate for the Commission.

However, there are a number of areas where the Clinic believes that the Commission can and should improve its practices.

Length of Decisions. Closely related to our recommendations regarding *per curiam* and “pilot decisions” above, the Clinic recommends reducing the length of the reports that the Commission produces, particularly at the admissibility stage. In particular, when a State has not questioned the admissibility of a petition, or when the issues in the petition are substantially similar to other petitions that the Commission has already addressed, admissibility reports should be short and direct.³⁵ The Commission can prepare admissibility reports that are more like a checklist and only discuss the requirements challenged by the State or those that the Commission understands require further explanation.

Joining Decisions Based on Similar Facts. Similarly, the Clinic believes that the option for joining petitions under Article 29.5 should be more consistently utilized, and that petitions addressing similar facts, the same persons, or the same pattern of conduct be regularly joined.³⁶ This will decrease duplicitous work and keep the Commissioners from making two identical rulings on two nearly identical cases.

Joining Merits and Admissibility Decisions. The Clinic agrees with the OAS Working Group that the Commission should clearly define and consistently apply its criteria for combining merits and admissibility decisions under Article 36.4³⁷, but the Clinic additionally recommends that the Commission combine these decisions with greater frequency. Given the large backlog of petitions that the Commission currently faces, the Clinic encourages the Commission to use procedural devices at its disposal to decrease the length of time it takes for a petition to reach a final decision. Combining merits and admissibility decisions (using consistent and transparent standards) under Article 36.4 is a prime example of a procedural step the Commission can take to wait times and backlog.³⁸

Follow-up Measures. The Clinic strongly recommends that Article 48.1 of the Rules be amended to make the adoption of follow-up measures mandatory. The Commission should follow-up more closely and actively on cases by making detailed assessments on the status of each recommendation issued by the Commission. On-site visits and particularly working visits are specifically appropriate to conduct follow-up measures. Thus, the Commission should increase its visits to countries on a more regular basis and should fully utilize these on-site and

³⁵ *Id.* at 103.

³⁶ *Id.* at 101-2.

³⁷ OAS Working Group Report at 12, 3.A.d.

³⁸ Maximizing Justice at 101.

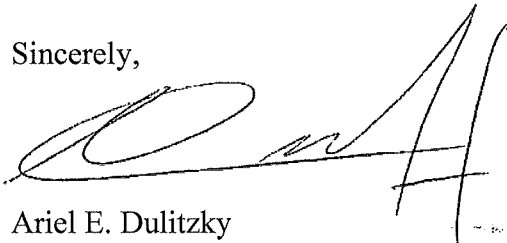
working visits to promote compliance with recommendations and prevention of future abuses.

In order to facilitate implementation and to secure proper follow-up, the Commission should avoid vague language that merely indicates the state should “adopt necessary measures.”³⁹ The Commission should specify what sorts of measures would be sufficient. Additionally, the Commission should create and publicize clear criteria that evaluates whether, and to what degree, a recommendation has been complied with. When the Commission follows-up with States and petitioners, it can then use its precise initial recommendations and the established criteria to evaluate the level of compliance and determine the necessary next steps.

Conclusion:

The Clinic supports the Commission as it takes seriously this opportunity to develop and strengthen its crucial work. The proposed changes to the Rules of Procedure, the policies, and the practices of the Commission will help to increase efficiency and transparency at the Commission, and allow it to continue to help to protect and promote human rights in the Americas. However, the Commission’s reforms are incomplete. Most importantly, the Clinic recommends that the Commission (1) combine the admissibility and merits decision phases, and (2) increase transparency by establishing firmer deadlines for how long petitions should take in each phase of the Commission’s process. The Clinic additionally recommends that the Commission further define the circumstances under which the Commission makes certain decisions, and further increase the use of technology at the Commission. Implementing these recommendations as well as the other reforms that the Commission has proposed will lead to a stronger, more efficient Commission that can better serve the human rights needs of the region.

Sincerely,



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³⁹ See, e.g., Report No. 79/11, Case 10.916, James Zapata Valencia and José Heriberto Ramírez (stating that Colombia must “adopt the necessary measures to ensure a due investigation into the cases of the executions perpetrated by State security agents”).