



Resolution 1/25

Inter-American Commission on Human Rights

Document 145

Approved on July 15, 2025

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Commissioner Carlos Bernal Pulido requested to abstain from participating in the deliberation and voting on this Resolution.

Commissioner Edgar Stuardo Ralón Orellana submitted a dissenting vote on this Resolution, which was joined by Commissioner Gloria De Mees. Commissioner Andrea Pochak submitted a concurring reasoned vote. In accordance with Article 19.2 of the IACHR Rules of Procedure, these votes are included at the end of this document.

HAVING SEEN:

That Commissioner Carlos Bernal Pulido, a Colombian national, was elected at the 51st Regular Session of the General Assembly of the Organization of American States (OAS) on November 12, 2021, for a four-year term, from January 1, 2022, to December 31, 2025.

That on March 26, 2025, the State of Peru submitted the candidacy of the current Commissioner Carlos Bernal Pulido to the Inter-American Commission on Human Rights for the period 2026-2029.

That, on June 6, 2025, Commissioner Carlos Bernal Pulido, in order to safeguard his impartiality and avoid conflicts of interest, requested to abstain from participating matters related to Peru until June 27, 2025, the date on which the election of the commissioners for the 2026-2029 term was scheduled to take place, within the framework of the 55th Regular Session of the General Assembly of the OAS.

That, since then, Commissioner Carlos Bernal Pulido has abstained from hearing matters related to Peru.

That, at an internal session on July 2, 2025, the Plenary of the IACHR examined the scope of the temporary recusal presented, and Commissioner Carlos Bernal Pulido was able to present his observations in this regard.

That Commissioner Carlos Bernal Pulido explained that, during the campaign period, there could have been a conflict of interest because: “(i) the maintenance of the candidacy depended on the State of Peru; and (ii) he maintained close contacts with the Mission of Peru to the Organization of American States (OAS) for the purposes of the success of the candidacy.”

That, at an internal session on July 14, 2025, the Plenary of the IACHR again examined the matter and, at the suggestion of the Board of Directors, a majority of the IACHR decided to urge Commissioner Carlos Bernal Pulido to reevaluate the temporal scope of the recusal submitted, in order to extend it until the end of his term.

That Commissioner Bernal stated that “he does not recuse himself from participating in matters concerning Peru until the end of his term because (i) he no longer has any contact with the Mission of Peru to the OAS; and (ii) he considers that the grounds for disqualification and recusal, which prevent [persons] appointed as commissioners from performing their duties, are subject to (a) strict and (b) limited interpretation.” However, he clarified that “he will comply with the decision taken by the Plenary in relation to this matter.”

CONSIDERING:

That it is incumbent upon the Inter-American Commission, in order to fully comply with its functions of promoting the observance and defense of human rights, to ensure the impartiality of its members in all their actions.

That Articles 18.1b and 78 of the Rules of Procedure of the IACHR provide for the Commission's authority to resolve the scope of interpretation of its Rules of Procedure by an absolute majority of its members.

That the guarantee of impartiality requires the judge not only to be free from prejudice or interest, but also to be in a position to give an appearance of neutrality. Thus, the Inter-American Court has stated that this guarantee implies "appearing to act without being subject to influence, inducement, pressure, threat, or interference, direct or indirect, but solely and exclusively in accordance with—and motivated by—the law"¹.

That this understanding of the guarantee of impartiality is shared by other treaty monitoring bodies². Within the United Nations, the Chairs of the treaty bodies recognize in this regard the *Guidelines on the independence and impartiality of members of human rights treaty bodies*, which state that members "must not only be impartial and independent, but must also be perceived as such by the standard of a reasonable observer"³. To this end, the guidelines call for the avoidance of conflicts of interest that may be real or apparent.

In the case of the Inter-American Commission, Article 17 of the Rules of Procedure contains the system of disqualifications and impediments that prevent a commissioner from participating in the discussion, investigation, deliberation, or decision of a matter submitted to the Commission for consideration.

While Article 17.2 of the Rules of Procedure establishes specific cases in which a commissioner must recuse himself or herself from hearing a matter⁴; Article 17.3

¹ Inter-American Court of Human Rights, Case of López Lone et al. v. Honduras, Preliminary Objection, Merits, Reparations and Costs, Judgment of October 5, 2015, Series C, No. 302, para. 233.

² United Nations General Assembly, Resolution adopted on April 9, 2014, Sixty-eighth session, A/RES/68/268, April 21, 2014, resolution 36.

³ Office of the United Nations High Commissioner, Guidelines on the Independence and Impartiality of Members of Human Rights Treaty Bodies ("the Addis Ababa Guidelines," Document A/67/222, 2015, p. 1.

⁴ Specifically, Article 17 provides for the following cases: "a. if they are nationals of the State under general or specific consideration or if they are accredited or performing a special mission as diplomatic agents before that State; or b. if they have previously participated, in any capacity, in any decision on the same facts on which the case is based or if they have acted as advisers or representatives of any of the parties interested in the decision."

recognizes the Commission's authority to hear and decide on the merits of a request for recusal submitted by a commissioner. Finally, Article 17.4 refers to the power of each commissioner to request the recusal of another member on the grounds referred to in Article 17.2. Taken as a whole, this system of impediments must be interpreted in accordance with the principles of good administration, taking into account the reasons on which it is based, the purposes it serves, and the need to safeguard the impartiality of the body⁵ in accordance with the terms set forth above.

Commissioner Bernal Pulido, based on Article 17.3 of the Rules of Procedure, submitted for consideration by the Plenary of the Commission an assessment, to be made by June 27, 2025, of the existence of a conflict of interest in hearing matters concerning the State of Peru, which nominated him for a new term on the Inter-American Commission. In that regard, in accordance with the foregoing, it is incumbent upon the Commission to decide on the admissibility and scope of that request.

Based on Article 17.3 of the Rules of Procedure, the Commission has previously examined and defined the scope of requests for abstention for reasons other than those established in Article 17.2 of the Rules of Procedure⁶, considering the need to safeguard the impartiality of the body. Indeed, in this specific case, the Commission has deemed appropriate the request for abstention submitted by Commissioner Bernal Pulido, given that it is reasonable to understand that, although the commissioners act in their personal capacity, their participation in the consideration and deliberation of matters related to the State that nominated them may raise legitimate doubts about their impartiality. This is due to the perception that the State has a direct interest in their remaining in office and to the special institutional relationship established between the nominating State and the person appointed in that context.

This appearance of a conflict of interest and the need to preserve the appearance of neutrality, which Commissioner Bernal brought to the attention of this Plenary, reasonably does not end after the results of the election are known, but extends throughout the entire term of office.

That, in effect, the aforementioned link may compromise or, at least, raise reasonable doubts about the perception of impartiality of the person appointed in relation to any matter involving the State that nominated them, in view of the

⁵ The Inter-American Court has interpreted its rules on disqualification in these terms. See, in this regard, Inter-American Court, Case of Bedoya Lima et al. v. Colombia, Judgment of March 17, 2021, paragraph 3.

⁶ Thus, the Commission has accepted that commissioners may not hear cases involving countries of which they are not nationals when a conflict of interest may be perceived. For example, if they are residents of that State, perform a public professional activity, or involve alleged victims who are their fellow nationals.

institutional support or sponsorship received for their candidacy. In this regard, similar to the provisions of Article 17.2.a of the Regulations—which imposes an obligation of abstention on commissioned persons with respect to matters related to the State of their nationality—it is reasonable to consider the need for such abstention in situations where the commissioned person was nominated by any State, even if they do not hold its nationality. In both cases, there is reasonably a relevant link that may affect the perception of impartiality and, therefore, justify abstention.

That, consequently, in assessing the scope of the request for recusal submitted by Commissioner Bernal, in order to safeguard the appearance of impartiality and public confidence in the inter-American system, it should be understood that commissioners must abstain from hearing matters related to the State that nominated them for the entire duration of their term of office.

In light of the foregoing, The Inter-American Commission on Human Rights, in accordance with the provisions of Article 17 of its Rules of Procedure,

RESOLVES:

- I. To consider the request for abstention submitted by Commissioner Bernal to be admissible in accordance with recital XV of this resolution.
- II. To extend the abstention sought and obtained by Commissioner Bernal from participating in matters concerning Peru, to the entirety of his term of office, in accordance with recitals XVI to XIX of this resolution.
- III. To publish this resolution on the website of the Inter-American Commission.

DISSENTING VOTE OF COMMISSIONER EDGAR STUARDO RALÓN ORELLANA, IACHR RAPPORTEUR FOR PERU⁷

Introduction

The decision adopted by the majority of the members of the IACHR represents a flagrant attack on its own legality. The decisions that can be adopted by majorities within the IACHR are limited by the specific rules that guide its actions. From this perspective, not everything is permitted to the majorities that make up the IACHR.

The resolution adopted by the majority of four commissioners not only affects the rights of Commissioner Carlos Bernal Pulido as a member of the IACHR, whom they seek to prevent from hearing matters concerning Peru, without there being any regulatory impediment to doing so, but also seriously affects the functioning of the IACHR and its legitimacy. The IACHR's Rules of Procedure are drawn up by the Commission itself; they are not imposed or defined by the States. If the IACHR violates its own rules of procedure, there is clearly a problem with the rule of law that must be seriously evaluated.

Argumentation

1. The only grounds that could exclude a commissioner from participating in the discussion, investigation, deliberation, or decision of a matter submitted to the IACHR for consideration **are defined in Article 17.2 of its Rules of Procedure:**

2. The only grounds that could apply to a commissioner's incompatibility and the due process of hearing, evidence, and quorum for resolution are contained in Article 4 of the IACHR Rules of Procedure.

3. Commissioner Carlos Bernal Pulido **does not fall under any of the grounds specifically indicated in Article 17.2 of the Rules of Procedure, and five votes have not been obtained to declare his incompatibility and prevent him from hearing matters concerning Peru.**

4. Furthermore, **Commissioner Bernal has not exercised the right conferred upon him by Article 17.3 of the Rules of Procedure to recuse himself from hearing matters concerning Peru.** It is true that he exercised that right in the past, in certain specific cases, but today he does not seek to exercise it. This is a right that Article 17.3 recognizes for each commissioner, and it is up to each commissioner to

⁷ Commissioner Gloria De Mees joined the dissenting vote of Commissioner Stuardo Ralón.

decide whether or not to exercise it. It cannot be imposed by another commissioner or commissioners on a commissioner who does not wish to recuse himself;

5. That being the case, the majority of the IACHR cannot prevent Commissioner Carlos Bernal Pulido from exercising his functions as the Commissioner for Matters concerning Peru, the position for which he was elected by the OAS Member States, without having five votes and having carried out the entire procedure established in Article 4 of the Rules of Procedure. It is arbitrary to apply express provisions of the Rules of Procedure so that a normative interpretation can serve as the basis for a resolution, and therefore it is not a valid resolution that has a normative basis that **minimally** allows for this.

6. **So much so that Article 17.4 of the Rules of Procedure allows members of the IACHR to raise the recusal of a commissioner only on the basis of the cases indicated in Article 17.2.** However, the grounds on which the majority of the IACHR seeks to recuse Commissioner Bernal are not even contained in Article 17.2 of the Rules of Procedure. Article 4 allows members of the IACHR to raise issues of incompatibility if they consider that a commissioner is unable to hear certain matters, but this requires a specific process and a quorum of five members, which did not occur in this case.

7. All of this leads to the conclusion that the decision adopted by the majority of the IACHR, which seeks to exclude Commissioner Carlos Bernal Pulido from hearing cases related to Peru, **is completely contrary to law.**

8. **In fact, through its resolution, the majority of the IACHR seeks, by way of interpretation of Article 17 of the Rules of Procedure, to cease applying Article 4, and in particular paragraphs 1 and 2 of the Rules of Procedure.** The entire reasoning of the majority in its resolution has a specific procedure for resolution in Article 4 of the Rules of Procedure, which is an express rule whose application was circumvented and which was chosen not to apply. In its relevant part, Article 4 establishes: **"Article 4. Incompatibility 1. The position of member of the Inter-American Commission on Human Rights is incompatible with the exercise of activities that could affect their independence, impartiality, or the dignity or prestige of the position... 2. The Commission, with the affirmative vote of at least five members, shall determine whether a situation of incompatibility exists."** The reason for requiring five votes to establish a situation of incompatibility is to protect the integrity of the collegiate body of the IACHR Plenary and to ensure that the threshold for a Commissioner to be unable to hear a case due to incompatibility, or even to remain in office, requires at least five of the seven members of the Commission to vote in favor. If any of the Commissioners had doubts about a cause for incompatibility due to "appearances," as the text of the resolution itself states, they should have respected due process, the right to defense,

and the voting quorum of five members of the Commission, and not interpreted Article 17 in a way that clearly **represents a kind of regulatory fraud that cannot be silenced**, at the risk of seriously affecting the functioning of the regional human rights protection system.

9. It should also be noted that, through its resolution, the majority of the IACHR has effectively amended the Rules of Procedure with this measure, without respecting the rules established for that purpose by Article 79. This is because, in practice, what the resolution seeks to do is to add a new section to Article 17 of the Rules of Procedure, extending the grounds that would allow a commissioner to be recused. If the circumstantial majority of the IACHR that today disqualified the commissioner Bernal considered this necessary, it should have used the procedure established in Article 79 and not interpreted Article 17 in a way that **clearly represents, as I have already indicated, a kind of regulatory fraud that cannot be ignored**, at the risk of seriously affecting the functioning of the regional human rights protection system.

10. As a commissioner, **I hereby state that I will assert this illegality in any vote in which I participate in cases involving Peru and that Commissioner Carlos Bernal Pulido should be prevented from participating in the plenary session, which would result in an irregular and illegitimate composition.** I warn that excluding Commissioner Bernal from resolutions concerning that State could render them null and void.

11. I formally and respectfully request that the plenary, in compliance with the Rules of **Procedure** of the IACHR, **publish** the dissenting vote that I submitted in a timely manner, in the same form and at the same time as the majority resolution is published. Otherwise, I will report its content to the OAS General Secretariat and the States through alternative channels, in order to fulfill my responsibility as a member of the IACHR to respect the Commission's Rules of Procedure and the work entrusted to me when I was elected to office.

July 15, 2025.

CONCURRING VOTE OF COMMISSIONER ANDREA POCHAK

1. On July 15, 2025, the IACHR approved Resolution 1/25, which stated: "To consider the request for abstention submitted by Commissioner Bernal... to be admissible," and "to extend the abstention requested and obtained by Commissioner Bernal from participating in matters concerning Peru to the entirety of his term of office." In reaching this decision, the majority of the inter-American body took into account that Commissioner Carlos Bernal Pulido had acknowledged a possible conflict of interest and had requested his own abstention from matters concerning Peru when he was nominated by that country for reelection to the IACHR. However, it was also considered that, despite the exhortation made due to the reasonable fear of partiality, once the election process was over, Commissioner Bernal had refused to extend his recusal until the end of his term. Consequently, through Resolution 1/25, the IACHR was compelled to interpret the scope, object, and purpose of Article 17 of its Rules of Procedure, which provides for the grounds for recusal or disqualification of commissioners in the event of a potential conflict of interest. It did so in accordance with the powers conferred by Articles 18.1.b and 78 of the Rules of Procedure, which provide for the IACHR's competence to interpret the scope of its Rules of Procedure by an absolute majority of its members.

2. On the same date, Commissioner Stuardo Ralón announced his dissenting vote, which was joined by Commissioner Gloria Monique De Mees. The content of this dissenting vote indicates that the main reason for his opposition to the majority of the Commission is that "the only grounds that could exclude a commissioner from participating in the discussion, investigation, deliberation, or decision of a matter submitted to the consideration of the IACHR are defined in Article 17.2 of its Rules of Procedure"; and that "the only grounds that could apply to a commissioner's incompatibility and the due process of hearing, evidence, and quorum for resolution (sic) are contained in Article 4 of the IACHR Rules of Procedure." Two grounds for dissent can therefore be inferred: on the one hand, the grounds for recusal and challenge in the IACHR Rules of Procedure must be interpreted strictly; and, on the other hand, broadening the grounds for removal or exclusion of a commissioner is a form of personal reproach, and therefore the disciplinary procedure for incompatibilities must be applied.

3. The purpose of this concurring opinion is to reaffirm the importance of ensuring the impartiality of those who exercise judicial functions—in this case, those of us who are members of the Inter-American Commission on Human Rights—as a guarantee for those who seek justice—in this case, victims of human rights violations, OAS member states, and the inter-American community in general; and to highlight its central role in safeguarding public confidence in the Inter-American Human Rights System. At the same time, this concurring opinion seeks to clarify that, contrary to the views of my dissenting colleagues, the preservation of the guarantee of impartiality

through the system of recusals and/or challenges regulated in Article 17 of the Rules of Procedure of the IACHR allows for an evolutionary, systematic, and teleological interpretation, in order to ensure impartiality and the appearance of impartiality, in accordance with the dynamism of the Inter-American System. It should be made clear that Resolution 1/25 in no way implies any fault in the performance of Commissioner Bernal or incompatibility with the position, the regime for which is provided for in Article 4 of the Rules of Procedure.

1) The relevance of the guarantee of impartiality and the mechanism for recusal of the judge to preserve it

4. The guarantee of impartiality is a pillar of any justice system, and as such is expressly recognized in the American Convention (Art. 8.1), the American Declaration (Art. XXVI), all international human rights instruments, and all the constitutions of our region. Regarding its scope, the Inter-American Court of Human Rights emphasized that the principle of impartiality requires that "the judge involved in a particular dispute approach the facts of the case without any subjective prejudice and, likewise, offer sufficient objective guarantees to dispel any doubts that the defendant or the community may have regarding the absence of impartiality⁸".

5. In the 1982 "Piersack" case, the European Court of Human Rights recognized that there are subjective and objective factors that affect the impartiality of the judge. While subjective factors are personal circumstances that require the judge to recuse himself in a specific case, objective factors are circumstances that are in principle unrelated to the specific case but that may affect the judge's decision⁹. Although the subjective impartiality of the judge in the specific case is presumed until proven otherwise, objective impartiality requires that the court or judge offer sufficient guarantees to eliminate any doubt about the impartiality observed in the proceedings.

6. For its part, the institution of recusal, disqualification, and/or challenge "is a procedural instrument designed to protect the right to be judged by an impartial body¹⁰". It is not a guarantee in itself, but a mechanism to protect the right to an impartial court, removing or excluding the judge who is suspected of bias. That is why, in general, procedural systems provide for non-exhaustive grounds for removal, precisely in order to allow for the different circumstances of the specific case that

⁸ Inter-American Court of Human Rights, Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C, No. 182, para. 56.

⁹ ECHR, Case of Piersack v. Belgium, Judgment of October 1, 1982, para. 30. See also Bovino, Alberto, Problemas del derecho procesal penal contemporáneo [Problems of Contemporary Criminal Procedural Law], Editores del Puerto, Buenos Aires, 1998, p. 55.

¹⁰ Inter-American Court of Human Rights, Case of Apitz Barbera et al. (First Court of Administrative Disputes) v. Venezuela, Preliminary Objections, Merits, Reparations, and Costs, Judgment of August 5, 2008, Series C, No. 182, para. 64.

could give rise to reasonable doubt on the part of the parties as to the impartiality of the decision-making body. "No abstract regulation can cover all the possible grounds that, in future cases, may give rise to a specific suspicion of bias on the part of a judge¹¹". Consequently, comparative legislation tends to contemplate, on the one hand, the usual, most frequent grounds for recusal, streamlining the recusal process and avoiding discussion by listing the grounds. On the other hand, it includes an open clause that adds the possibility of requesting the recusal of a judge when a circumstance arises that is not provided for in the legislation but that gives rise to reasonable suspicion of bias.

7. As a body with quasi-judicial powers (with contentious functions, but also promotion and monitoring functions), the IACHR is obliged to preserve the principle of impartiality of its members; and, to this end, the system of recusal or exclusion of commissioners is provided for in Article 17 of its Rules of Procedure. Is this system of recusals and challenges exhaustive, or does it allow for broad interpretations in the case of grounds not listed? Let's take a look.

2) Evolutionary, systematic, and teleological interpretation of the mechanism for removing commissioned persons

8. Although Article 17.2 of the Rules of Procedure appears to contemplate only two grounds for the removal of a commissioned person¹², the truth is that, following the pattern of most comparative legislation, Article 17.3 extends the grounds to non-exhaustive cases¹³. In fact, it was Commissioner Bernal himself who cited Article 17.3 of the Rules of Procedure to request the IACHR to remove him from cases involving Peru after his nomination; and it is this same provision that allows him to recuse himself from cases involving the United States, the country where he resides but of which he is not a national. Other commissioners—as in my case—have invoked Article 17.3 of the Rules of Procedure to excuse themselves from intervening in cases involving alleged victims of their own nationality, even when third countries may be responsible. There are many other grounds for recusal not specified in the Rules of Procedure: a commissioner should not participate in a case in which the alleged victim is a relative or someone with whom they have a close

¹¹ Maier, Julio B.J., *Criminal Procedural Law, Volume I. Fundamentals*, Editores del Puerto, Buenos Aires, 1996, p. 754.

¹² IACHR Rules of Procedure, art. 17.2. "Members of the Commission may not participate in the discussion, investigation, deliberation, or decision of a matter submitted for the Commission's consideration in the following cases: a. if they are nationals of the State under general or specific consideration or if they are accredited or on special mission as diplomatic agents to that State; or b. if they have previously participated, in any capacity, in any decision on the same facts on which the matter is based, or if they have acted as advisers or representatives of any of the parties interested in the decision."

¹³ IACHR Rules of Procedure, Art. 17.3. "If a member considers that he or she should abstain from participating in the examination or decision of the matter, he or she shall communicate this circumstance to the Commission, which shall decide whether the recusal is appropriate."

relationship (even if they do not have the same nationality), or if they could receive some kind of financial benefit from the case, among other hypothetical examples.

9. Furthermore, as we have already seen, the institution of recusals and challenges is not an autonomous guarantee, much less a "right" of those who exercise jurisdictional (or quasi-judicial, in the case of the IACHR) functions, as argued in the dissenting opinion of my colleagues, which could be "exercised or not" at their own discretion¹⁴. Rather, it is a mechanism designed to preserve the right of users of the Inter-American System to enjoy an impartial decision-making body; and, of course, aimed at protecting the legitimacy of the Inter-American Commission.

10. That is why it is valid and even absolutely necessary to admit an evolutionary, systematic, and teleological interpretation of Article 17 of the Rules of Procedure. Evolutionary, because it must allow for grounds for recusal and challenge in a non-exhaustive manner, whenever there are reasonable grounds to doubt the impartiality of a person appointed to a particular matter. Systematic, because it is clear that Article 17 contains a "system" of recusals and challenges, and the interpretation must seek articulation or consistency between the different paragraphs of the article, that is, between the different components of that system. And teleological, because the interpretation of the rule must aim to preserve its purpose, which in this case is to guarantee the impartiality of the body.

11. The "system" of recusals and challenges established by Article 17 of the Rules of Procedure gives the Plenary of the IACHR the authority to rule on grounds for recusal other than those specified in paragraph 2. However, the Commission's power under paragraph 3 is not unlimited and must be applied with restrictive and transparent criteria to avoid arbitrariness. In this regard, Resolution 1/25 seeks to ensure due publicity of the grounds justifying the recusal of Commissioner Bernal Pulido in this case; that is, the reasonable grounds for doubting his impartiality.

12. The Inter-American System for the Protection of Human Rights is a dynamic, living system that faces dilemmas that require quick responses, always with the goal of reinforcing its legitimacy and thus strengthening the effective protection of human rights, which is its main purpose and goal. There is no doubt that neither the American Convention nor the current Rules of Procedure can contemplate all the debates or circumstances that may arise. In this particular case, it is the first time that a person already appointed as a commissioner has been nominated for reelection by

¹⁴ "Furthermore, Commissioner Bernal has not exercised the right conferred upon him by Article 17.3 of the Rules of Procedure to recuse himself from hearing cases concerning Peru. It is true that he exercised that right in the past, but today he does not seek to exercise it. This is a right that Article 17.3 recognizes for each commissioner, and it is up to the commissioner to decide whether or not to exercise it. It cannot be imposed by another commissioner or commissioners on a commissioner who does not wish to recuse himself" (emphasis added).

a country other than that of his nationality. It is also the first time that, in the same electoral process, the commissioner candidate from a third country is competing with a candidate proposed by their country of nationality. And it is the first time that the commissioner has invoked the application of Article 17.3 of the Rules of Procedure during the campaign.

13. Fifteen years ago, the Inter-American Court itself had to face the dilemma of broadly interpreting Article 55 of the American Convention in light of the principle of impartiality and equality of arms. In fact, in its Advisory Opinion 20/09, it decided to adapt the interpretation of Article 55.3 (on ad hoc judges) and 55.1 (on the intervention of national judges of the respondent State) of the American Convention. It unanimously resolved: "1) That, in accordance with Article 55(3) of the American Convention on Human Rights, the possibility for the States Parties in a case submitted to the Inter-American Court to appoint an ad hoc judge to sit on the Court when there is no judge of their nationality on the Court is restricted to contentious cases arising from inter-State communications (Article 45 of that instrument), and that it is not possible to derive a similar right in favor of the States Parties in cases arising from individual petitions (Article 44 of that treaty). 2) That the national judge of the respondent State should not participate in the hearing of contentious cases arising from individual petitions."

14. Of course, it is desirable that when new dilemmas arise, progress be made in regulatory reforms that provide greater certainty in procedures. However, until that happens, it is up to the organs of the Inter-American System to resort to the interpretation of existing rules to find the appropriate solution. This interpretation must take into account the means of interpretation recognized by customary international law and set forth in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties; and it must consider the dynamic interpretation of international human rights instruments, which place the defense of individual rights in a privileged position. This is what the Inter-American Court did in Advisory Opinion 20/09, and what the IACHR did in its Resolution 1/25.

3) The error of confusing fear of bias with personal reproach

15. The dissenting opinion of my colleagues confuses fear of bias with poor performance or lack of personal honesty, transforming the institution of recusal into a personal accusation or reproach which, if it existed, would justify the incompatibility procedure contemplated in Article 4 of the Rules of Procedure. However, the "incompatibility" procedure aims to resolve situations in which, due to certain circumstances, the person can no longer continue to be commissioned. On the contrary, the system regulated in Article 17 of the Regulations is aimed at resolving situations in which the commissioned person cannot understand certain matters.

16. The core of the error lies precisely in failing to understand that the guarantee of impartiality rests with the recipient of justice and not with the judge. And it is this same mistaken position that leads my dissenting colleagues to consider more broadly the possibility of recusal of the appointed person in the face of the power of challenge in a restrictive manner. "This practice implies the consolidation of the idea of recusal as a personal reproach to the judge and, what is worse, leaves the decision on his own impartiality to the discretion of the suspected judge himself, to the detriment of the defendant¹⁵". Can it be left to the discretion of a commissioned person not to recuse themselves from a matter involving a family member or close person because it is not explicitly stated as grounds for recusal? The answer is obviously no. For this very reason, it cannot be left to the discretion of a commissioned person to recuse themselves or not from a matter in which there may be reasonable suspicion of bias, even if it is not explicitly stated in the Regulations.

17. If the purpose and goal of the Inter-American System is the protection of human rights, then the guarantee of impartiality must be understood as a right of the litigant and not as a prerogative of the person appointed. Therefore, it is not acceptable to leave the decision on their own impartiality to the discretion of the person appointed. This is even less acceptable when there are well-founded suspicions of bias that were even acknowledged by Commissioner Bernal himself.

4) The scope of the dissenting vote

18. Finally, it is necessary to clarify the scope of the dissenting vote in Resolution 1/25. This is Commissioner Ralón (and, by extension, Commissioner De Mees) has warned that he will "assert this illegality (sic) in any vote in which he participates in cases involving Peru and that Commissioner Carlos Bernal Pulido (sic) is prevented from participating in the plenary session, which would result in an irregular and illegitimate composition. I warn that excluding Commissioner Bernal from resolutions concerning that State could lead to their nullity."

19. Although I completely disagree with the dissenting opinion, my colleagues have every right to freely express their disagreement with the majority decision of the Commission. However, in order to ensure transparency and defend the legitimacy of the IACHR, it is important to make some clarifications. First, it should be noted that the dissenting opinion of my colleagues—one of whom is currently the Rapporteur for Peru—is a dissenting opinion that is totally with Resolution 1/25, reflecting their disagreement with the view that a commissioner who has been nominated by a country other than his or her country of nationality cannot continue to hear cases

¹⁵ Bovino, Alberto, *Problems of Contemporary Criminal Procedural Law*, Editores del Puerto, Buenos Aires, 1998, p. 67.

from that country because his or her appearance of impartiality is affected. If the disagreement had been one of form rather than substance (because, for example, the procedure set forth in Article 4 of the Rules of Procedure had not been followed), the dissenting vote could have been partial.

20. However, the dissenting vote in Resolution 1/25 also anticipates future disagreement with the possible formation of a quorum of the IACHR to resolve matters concerning Peru without Commissioner Bernal Pulido. This is the future disagreement that is made explicit in the dissenting votes of Commissioner Ralón and Commissioner De Mees, and it should be recorded as such.

21. This is a general disagreement, looking ahead, about the involvement of the IACHR in these matters, and not about the content of each specific report or decision on Peru that the IACHR must resolve in the coming months, and on which it has not even deliberated yet. These matters may concern a request for precautionary measures; the admissibility or inadmissibility of a petition; Peru's responsibility or lack thereof in a case at the merits stage; the referral of a case to the Inter-American Court of Human Rights or the granting of an extension to continue implementing the recommendations; the general human rights situation in Peru for evaluation in the next annual report; or even a press release. It is therefore a disagreement about the future quorum of the IACHR on these matters, which cannot be considered a dissenting vote on each possible matter concerning Peru that has not even been debated yet, as that interpretation would violate the guarantee of impartiality and due process.

Buenos Aires, Argentina, August 24, 2025.

