



Parliamentarians for Global Action
Parlamentarios para la Acción Global
Action Mondiale des Parlementaires
برلمانيون من أجل التحرك العالمي

***Improving the system for the nomination and elections of Judges:
Can the “ICC system” learn from the European Court of Human Rights?***

COMPARATIVE PROCEDURES FOR THE NOMINATION OF JUDICIAL CANDIDATES FOR THE EUROPEAN COURT OF HUMAN RIGHTS AND THE INTERNATIONAL CRIMINAL COURT (ICC)

Webinar organised by Parliamentarians for Global Action (PGA) in partnership with the Parliamentary Assembly of the Council of Europe (PACE)

Date: **1 December 2020**

Time: **13:15 – 14:15**

Venue: *virtual (Zoom)*

I. Agenda

- Moderator:* **Ms. Petra Bayr, MP (Austria)**, Convenor, PGA International Law & Human Rights Programme, & Board Member, PGA; Chairperson, PACE Committee Equality and Non-Discrimination, & Member, PACE Committee on the Election of Judges to the European Court of Human Rights
- 13:15- 13:30** **Mr. Wojciech Sawicki**, Secretary General, Parliamentary Assembly of Council of Europe (PACE)
- 13:30- 13:45** **H.E. Mr. Stefan Barriga**, Deputy Permanent Representative of Liechtenstein to the EU; *Former Legal Advisor to the President of the Assembly of States Parties and the Kampala Review Conference to the Rome Statute; Former Legal Advisor of the Liechtenstein’s Mission to the UN*
- 13:45- 14:00** **Ms. Angela Mudukuti**, Open Society Justice Initiative; *Former Legal Advisor, Southern Africa Litigation Center*
- 14:00- 14:15** **Dr. David Donat Cattin**, Secretary General, PGA
- 13:45- 14:15** *Open discussion/ questions and answers session*

II. Objectives of the Event

This year is of great significance for the ICC. At the 19th Assembly of States Parties (ASP) to the Rome Statute of the ICC, States Parties will elect six new judges who are charged with upholding the ICC’s mandate to end impunity and deliver impartial justice. It is paramount that nominees for ICC judicial positions be of the highest caliber. The Rome Statute contains certain requirements that candidates must fulfill. However, despite this clear legal framework, the political considerations arising during member countries’ nominations, and spilling into the election process, hinder the transparency of the process. Nominations and elections of judicial candidates often overlook merit-based considerations in favor of political interests and the practice of vote-trading. This political aspect of the ICC’s judicial elections discourages many qualified individuals from running and many States from putting forward candidates.

During the 2018 Conference on the 20th Anniversary of the Rome Statute of the ICC, organised by PGA in *the Sala della Protomoteca* of the City Hall of Rome, the reform of the elections of Judges at the ICC was identified by almost all high-level participants as one of the most important things that could be done to make the ICC more effective

and efficient in the future. Based on this outcome, PGA has proposed a reform to the ICC process of national nominations of judicial candidates that incorporated some of the essential features of the nomination processes for the European Court of Human Rights (ECtHR), especially the requirement for States to make a public call for applications at domestic level that would be able to engage with all possible qualified applicants, to be followed by a merit-based and transparent selection process resulting in a ranking-list to be delivered to the Advisory Committee on Nominations set up by the Assembly of States Parties (ASP) to the Rome Statute.

At the 18th session of the ASP, the 123 States Parties to the Statute adopted a resolution that included only in minimal part the PGA recommendations, but it incorporated language calling for the sharing of "best practices" with the ASP in order to better address in the future the subject-matter of judicial nominations.

As the current ICC judicial election process is reaching its final phase – with 20 candidates proposed by States Parties, reviewed by the Advisory Committee on Nominations and now up for election by States at the 17-23 December 2020 (tentative) session to be held at the UN in New York –, it is an appropriate time to critically reflect on the strengths and shortcomings of this process and discuss ideas to improve it.

It has to be noted that the ICC has 18 Judges only and 123 States Parties to the Rome Statute, while each member state of the Council of Europe has the right to elect one Judge in the ECtHR. While respecting and emphasising this intrinsic difference between these two systems, this Panel Discussion will offer a comparison between the reformed ECtHR system of nomination and election of Judges and the ICC system of nomination by States, identifying a way forward to ensure merit-based and transparent elections.

III. Compared practice at the ECtHR

There are two phases to the election process:

1. National selection procedure, in which each state party chooses a list of **three** qualified candidates
2. The election procedure undertaken by the Assembly, in which parliamentarians assess the qualifications of the three candidates before voting to decide which one should become judge.

A) National selection procedures – transmission of a list of three candidates

When selecting their three candidates, states should ensure that their national procedure is fair and transparent, for example by issuing public and open calls for candidates. All candidates must have appropriate legal qualifications and experience and must have an active knowledge of either English or French – the languages in which Court judgments are drafted – and at least a passive knowledge of the other language.

To ensure *gender-balance* on the Court, states are also asked to put forward at least one candidate from "the under-represented sex" unless exceptional circumstances exist which permit them not to do so. As a result, around a third of the judges on today's Court are women.

To help ensure candidates are *fully qualified*, an international panel of Council of Europe experts offers governments confidential advice on potential candidates before the final list of three is sent to the Assembly.

B) Election by the Assembly – choosing one judge from the list

Once the Assembly has received the list of candidates, a special committee of parliamentarians with legal experience interviews each of the three in person and scrutinises their CVs, in a standardised format, before recommending whether or not to accept the list. If the list is not accepted, states are asked to submit a fresh list.

The Assembly – made up of 324 parliamentarians – then proceeds to vote on the candidates in a secret ballot, held during plenary sessions, based on the committee's recommendations. An absolute majority of votes cast is required in the first round. If this is not achieved, a second round is held and the candidate with the most votes is duly elected to serve on the Court for a single term of nine years.