



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

## NATIONAL NOMINATION OF JUDICIAL CANDIDATES FOR THE INTERNATIONAL CRIMINAL COURT (ICC)



## HANDBOOK FOR PARLIAMENTARIANS

June 2023

The International Criminal Court (ICC) is the first and only permanent independent court with the mandate to investigate and prosecute individuals responsible for committing international crimes, namely genocide, crimes against humanity, war crimes, and the crime of aggression.

Its 18 judges from around the world, elected for a nine-year term, play a key role in ensuring this expectation is lived up to through their primary mandate to render authoritative and high-quality jurisprudence and guarantee fair trials.



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Therefore, the quality of the judges has fundamental importance to the performance, efficiency, and effectiveness of the ICC, which is at the heart of the long-term success of the ICC and the Rome Statute system as a whole. The process for electing ICC judges consists of three phases:

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## Nomination

Nomination of Candidates by States

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## Review

A review of candidates by the Advisory Committee on Nominations of Judges (ACN)

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## Election

Their election by the Assembly of States Parties (ASP) based on the principle of “one State, one vote”.

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In accordance with the legal framework of the Rome Statute, judicial candidates to the ICC “*shall be chosen from among persons of high moral character, impartiality, and integrity who possess the qualifications required in their respective States for appointment to the highest judicial office.*”

Despite the clear legal framework provided by the Rome Statute on the qualifications of the judicial candidates, the political considerations arising during the domestic national nominations phase, and spilling into the election phase, have hindered the transparency of the process. As such, ensuring that the ICC judges are of the highest caliber starts at the domestic level, i.e., by guaranteeing that only the best candidates are nominated by States for the ICC judicial elections through a transparent and merit-based process.

Unfortunately, as revealed by the Open Society Justice Initiative (OSJI) 2019 Report<sup>1</sup>, formal processes for the national nomination of judicial candidates are often inadequate, leading to the ad hoc selection of candidates based on non-specified criteria. In the review process undertaken by the Independent Expert Review (IER)<sup>2</sup> - some of the Court's problems "may be in part the result of the standard of some of the Judges, in particular, that the ability and experience of some of the Judges who have been elected has not marked them out as Judges or jurists of the highest caliber sought by the Court."<sup>3</sup>

In this handbook, PGA sets forth specific criteria and recommendations for Parliamentarians to encourage their governments to improve national nomination procedures for ICC judicial candidates and adopt good practices and requirements to ensure these processes are fair, transparent, and merit-based. The goal of robust nomination procedures is to ensure that only candidate judges or jurists of the highest caliber make it on the ballot.

1 Open Society Justice Initiative (2019) *Raising the Bar: Improving the Nomination and Election of Judges to the International Criminal Court*.

2 In December 2019, the Assembly of States Parties (ASP) to the Rome Statute for the ICC established the Independent Expert Review. The overall mandate of the Experts was to 'identify ways to strengthen the ICC and the Rome Statute system in order to promote universal recognition of their central role in the global fight against impunity and enhance their overall functioning'. The Experts were tasked with making 'concrete, achievable and actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court and the Rome Statute system as a whole'. The Report, published on 30 September 2020, identified 384 recommendations, out of which 10 were focused on the improvement of the system of the nominations of the judges.

3 International Criminal Court (30 September 2020) *Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report*.

## ELIGIBILITY CRITERIA FOR ICC JUDICIAL CANDIDATES UNDER THE ROME STATUTE

According to article 36(3)(a)-(c) of the Rome Statute, candidates for Judges of the Court:

- ✓ Shall be chosen from among persons of high moral character, impartiality, and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.
- ✓ Have, alternatively:
  - a. Established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings (List A), or
  - b. Established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity, which is of relevance to the judicial work of the Court (List B).
- ✓ Have an excellent knowledge of and be fluent in at least one of the working languages of the Court: English and French.

Although PGA does not take a position on individual candidates nominated by States, we urge legislators to encourage States to consider additional criteria to elect candidates:

- ✓ The person shall serve independently and impartially from the State.
- ✓ The person shall have a proven understanding and experience of the fundamental rights of accused persons to fair trials.
- ✓ The person shall have a proven understanding and experience of victims' rights to remedies and reparations and to participate in criminal proceedings.

## HOW TO ENSURE THAT THE ICC JUDICIAL CANDIDATES ARE THE MOST COMPETENT?

Other factors have superseded criteria on expertise and integrity when States have put forward nominees, including political ones. Nominations and elections of judicial candidates have devalued merit-based qualifications in favor of political interests. Two of the main consequences are that qualified individuals are discouraged from running, and States are reticent to put forward candidates.

Article 36(4)(a) of the Rome Statute provides that nominations of candidates for election to the ICC may be made by the State Party either:

- ✓ By the procedure for the nomination of candidates for appointment to the highest judicial offices in your State; or
- ✓ By the procedure provided for the nomination of candidates for the International Court of Justice (ICJ) in the Statute.

While your State might have other specific rules governing the nomination of candidates to international judicial organizations, PGA encourages Members of Parliament to enter into discussions and recommend<sup>4</sup> their respective governments to:

**1**

**Develop a national legal framework or, at a minimum, publish a set of fixed rules for nominating judges to the ICC. These should include a transparent and fair process for shortlisting, interviewing, and selecting candidates.**

- Advertising calls for applications widely to reach qualified candidates among the national judiciary and legal profession.
- Engaging professional associations, NGOs, and other civil society bodies to help disseminate the call for applications and ensure the transparency of the process.
- Ensuring that a public consultation period exists to afford individuals, associations, and civil society organizations reasonable time to submit views about candidates.
- Taking affirmative steps to ensure gender parity in the nomination of candidates, including by disseminating calls for application to underrepresented groups, communities, and professional associations.

4 These recommendations are taken from the OSJI Report “Raising the Bar: Improving the Nomination and Election of Judges to the International Criminal Court.”

## 2

**Establish an independent assessment body at the national level composed of members of the national judiciary, legal profession, and civil society, as appropriate, to carry out the national selection procedure and scrutinize applicants' qualifications. States should ensure that:**

- The panel or review body is empowered to conduct a thorough assessment of candidates, including by interviewing applicants.
- The panel composition should include a diverse set of members with relevant backgrounds, with consideration given to gender balance. To the extent possible, at least some members should have experience in international criminal law. Where such experience is lacking, States could consider inviting an international expert to be involved.

## 3

**Abstain from nominating candidates who have served as a government official, including in a diplomatic capacity, for at least the last five years preceding the nomination.**

States should ensure that qualified candidates who may lack political or government connections stand an equal chance. Requiring abstention from government service (other than in the judiciary) for a sufficient number of years prior to judicial nomination would further ensure independence and impartiality, as well as the perception thereof.

## 4

**Publicly pledge to elect candidates strictly based on merit and to refrain from engaging in vote trading for ICC judicial elections.**



# THE ELECTORAL PROCESS AT THE EUROPEAN COURT OF HUMAN RIGHTS (ECtHR)

The domestic nomination procedure applied at the European Court of Human Rights, established by the Council of Europe, has been identified by PGA as the most relevant benchmark with features of the domestic nomination procedure that could be effectively incorporated - with appropriate and necessary modifications - into the Rome Statute system.

There are **two phases** of the election process:

1. The **national selection procedure**, in which each member state chooses a list of three qualified candidates; and
2. The **election procedure undertaken by the Parliamentary Assembly** of the Council of Europe, in which the qualifications of the three candidates are assessed before the actual elections.

For this report, only the first process will be further explained.



## National selection procedures – transmission of a list of three candidates

States should ensure that their national procedure is fair and transparent when selecting their three candidates. They have to issue **public and open calls for candidates** with the **pre-established merit-based criteria for selecting the candidatures**. This entails that all candidates must have **appropriate legal qualifications and experience, an active knowledge of either English or French**, and at least a passive knowledge of the other language.

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.

The **Committee of Ministers** of the Council of Europe developed a [detailed guideline](#) for the Member States, which includes specific recommendations on how to proceed with the election of candidates and an [explanatory memorandum](#) containing good practices for each action point.

## HOW WOULD THIS BE APPLICABLE AT THE ICC TO ENSURE TRANSPARENT AND MERIT-BASED PROCEDURES?

The main points, incorporating the above ECtHR criteria to the domestic nomination would make it obligatory for States to:

- ✓ Publish an open call for applications that lay down the requirements of eligibility under List A and/or List B of Article 36 of the Rome Statute;
- ✓ This should be followed by a thorough and transparent technical assessment of the qualification and competencies of the candidates to serve as senior judges, including their abilities to adjudicate complex crimes.
- ✓ A State Party that has fulfilled these conditions may submit a proposed nomination of three candidates (if feasible- States with less than 5 million inhabitants could be exempted from the requirement) to the Advisory Committee on Nominations at least four months before the official term of presentation of judicial candidates. In addition, the selection committee of the State Party would produce a ranking list of the candidates that should be delivered to the Advisory Committee on Nominations.

## WHAT CAN YOU ASK YOUR GOVERNMENT?

Besides calling on your respective government to convene a transparent, pre-established, and merit-based national-level procedure (open call for nominations), legislators are encouraged to:



Pose a parliamentary question on the nomination process.



Write a letter to the Ministry of Foreign Affairs or the appropriate government official in your country.



Make an oral or written statement.

PGA has prepared the following questions, which focus on whether your State has established any formal procedures or regulations for nominating candidates for judicial positions at the ICC and, if so, how these procedures or rules are implemented to ensure transparency, impartiality, and merit-based nomination and election of candidates. These questions also address how the government ensures that nominated candidates have the necessary expertise, qualifications, and commitment to the values and principles of the ICC and undergo rigorous vetting and screening processes to ensure their suitability for judicial positions at the Court.

1. Are there any national laws /regulations/formal procedures/guidelines that govern the process of nominating candidates for judicial positions at the ICC?
2. If so, can the government provide details if the nomination is made by the procedure for nomination of candidates to the highest offices in the State, the process for nomination of candidates for the International Court of Justice (ICJ) according to the ICJ Statute, or a different one?
3. What criteria does the government use to evaluate potential nominees for judicial positions at the International Criminal Court?
4. How does the government ensure the nomination process is transparent and free from political interference or bias?
5. What steps does the government take to ensure that the nominated candidates understand the mandate and objectives of the ICC and are committed to upholding the values and principles of the Rome Statute?
6. What steps does the government take to ensure that the nominated candidates have a strong track record of upholding the rule of law and defending the independence of the judiciary?
7. How does the government ensure that the nominated candidates undergo rigorous vetting and screening processes to ensure their suitability for judicial positions at the ICC?
8. How does the government ensure that the nominees for judicial positions at the ICC are independent, impartial, and of high moral character?
9. What consultation process does the government undertake with the judiciary, legal profession, and civil society organizations in nominating candidates and determining the suitability of potential nominees for judicial positions at the ICC?

## HOW CAN PGA SUPPORT YOU?

Establishing a national procedure for the nomination of Judges for the ICC provides a transparent and standardized process for selecting candidates and ensures that they have the necessary expertise, qualifications, and commitment to the values and principles of the ICC. By establishing clear criteria and procedures for nominating candidates, States will promote the independence, impartiality, and integrity of the ICC.

The ICC is a global institution that relies on the cooperation and support of States Parties to fulfill its mandate effectively. Having national nomination procedures for judicial positions at the ICC and ensuring that the nominated candidates have been selected through a transparent, impartial, and merit-based process is essential for the Court and enhances its legitimacy and credibility in the eyes of the international community. This, in turn, can strengthen the Court's ability to carry out its work effectively, particularly in the face of political pressure or criticism.

Parliamentarians have an essential role to play in this process. PGA is of the view that with these practices, legislators can assist their governments in guaranteeing that the Court is composed of highly qualified and impartial judges committed to upholding the Rule of Law and ensuring justice for victims of international crimes.

### THE PGA SECRETARIAT OFFERS ITS ASSISTANCE BY:

- ✓ Sharing concrete models of judicial appointment processes that have been characterized as fair, transparent, and based on merit-based competitions at the national level.
- ✓ Sharing procedures that have been identified by other judicial institutions as good practices, including the reformed procedure for national nominations to the European Court of Human Rights (ECtHR), which compels Member States to publish open calls for applications for judicial positions.
- ✓ Drafting statements or parliamentary actions following the above criteria (see, for instance, the public letter we addressed to our members in [English](#), [French](#), and [Spanish](#)).







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