DIALOGUES for TRANSPARENCY

The Nomination and Election processes for Commissioners and Judges to the Inter-American Court and Commission on Human Rights and the experience of the Independent Expert Panels

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Abbreviations

PACE	Parliamentary Assembly of the Council of Europe
ACHR	American Convention on Human Rights
ECHR	European Convention on Human Rights
IACHR	Inter-American Commission on Human Rights
ICJ	International Court of Justice
CCJ	Caribbean Court of Justice
AfCHPR	African Court on Human and Peoples' Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
NG-PCA	National Groups of the Permanent Court of Arbitration
UN	United Nations
OAS	Organization of American States
IAHRS	Inter-American Human Rights System
ECtHR	European Court of Human Rights

Executive Summary*

The work of the Inter-American Commission and the Inter-American Court of Human Rights is essential for the protection and advocacy of the human rights of the people inhabiting the region. When victims of human right violations do not receive proper protection and response from their States, these bodies are a forum of attention to assess said cases and obtain eventual reparation. Likewise, they serve as resources for the development of human rights standards for the entire region. The legitimacy of the work of the Court and the Commission depends, both on the capability and qualifications of their members, as well as on the independence with which they execute their activities, removed from undue influence by other actors, such as states or civil society.

The capability and qualifications of the members of the Inter-American bodies can only be ensured by transparent and open nomination and election processes. However, in the region, these processes are dominated by nomination and selection procedures with no participation by citizens and civil society and executed through political negotiations between States characterized by the practice of vote-trading, a practice heavily criticized by civil society organizations at regional[1] and international levels[2]. International instruments related to judicial independence identify vote-trading as detrimental[3] and the Inter-American independent panels that have engaged in the assessment of the nomination and selection processes have strongly discouraged the practice.[4]

Even though the Organization of American States has issued some resolutions[5] on transparency, representation, and participation in the nomination and election processes of candidates, these present generic formulas have not been implemented by the States in the region. Likewise, there are many international standards and recommendations formulated by civil society that are expanded on in sections IV and V, and section E, of this report. Despite this, States have not established transparent, open, and merit-based systems for nominating candidates and, subsequently, electing them within the framework of the General Assembly of the OAS. In consideration of this situation, since 2015, civil society organizations have convened independent panels composed of experts in the field, with the objective of evaluating nominations, issuing recommendations, and raising awareness of the situation.[6]

The general objective of this report is to analyze the working of the Independent Panels as assessment tools and to identify best practices that may be used as a guide while executing their future work. Likewise, as additional objective, the report assesses international aspects of nomination and selection processes of candidates, and it highlights a series of best and worst practices. In order to meet these objectives, this report:

*__Note on the use of inclusive language:__ In this document and, as long as the communicative understanding of the phrase does not demand the expression of a gender, the use of gender-neutral words was favored (i.e., people, population, staff, members). As a second strategy, to ease reading, the forward slash "/" was used as little as possible and followed by gender neutral nouns. Finally, as a reference to specific positions and offices exercised by women as well as men, the use of the female generic noun form was decided as inclusive for all gender identities. Hence, instead of "his/her", it will read "her".

a. Describes the general characteristics of the operation of the panels and the nomination and selection procedures, the regional legal sources, and the international standards framing the topic (sections III and IV);

b. Describes key concepts used to evaluate candidates and analyzes the main challenges arising from their use as evaluation standards (section V);

c. Compares existing general models of nomination and selection of candidates at the international level, with specific models of evaluation panels, (section VI);

d. Analyzes and systematizes the work conducted by past Inter-American independent panels and proposes specific guidelines to improve the work of future independent evaluation panels (section VII and Annex);

e. Identifies the main challenges that these processes face in the region (sections V and VII).

In order to meet these objectives, this report has combined diverse research strategies. Individual semi-structured interviews were conducted with experts in the field from academia and civil society. Likewise, with the objective of integrating the perspective of the States, interviews were conducted with representatives of the permanent missions to the OAS. In addition, two focus groups were formed, one with members of the organizations endorsing the independent panels and another with the experts who have comprised the 2018 and 2019 Independent Panels. Much of the content on challenges and recommendations is drawn from the valuable reflections obtained from conversations with these actors.

Additionally, intense surveying and analysis of diverse sources was carried out, such as publications by academia and civil society, and work done by international bodies and legal instruments at national, regional, and international levels. The analysis of these sources was crucial to adding a comparative perspective to the analysis, based on the practice and characteristics of other models of panels in effect at the international level. Finally, to prepare this report, the contents of four final reports published by the Independent Panels convened in 2015, 2017, 2018, and 2019 were analyzed and summarized, and said information is primarily presented in the Annex of this research, which serves as a practical guide for the work of future panels.

As stated, in the present research **specific challenges that independent panels face** in the Inter-American System are identified and summarized next:

- **The availability of resources to fund the work of the Panels.**

Even though panelists do not receive compensation for their work, convening independent panels leads to a series of expenses necessary to put the initiative in motion. The expenses include travel fees, promotional activities, and payment for translation, coordination, and secretariat assistants. As there is not a stable funding source, and as panels are convened “ad-hoc” for each election period, it is extremely difficult to find independent funding sources promptly.

- **Generate panels with legitimacy, credibility, independence, and representation.**

As described in section V and in the annex, panelist members have been jurists or academics with vast experience and knowledge on the Inter-American system. Their profiles of expertise should inspire trust and their legitimacy should be recognized by the different actors, whether they are representatives of civil society organizations or representatives of the States. It is fundamental to continue to generate panels composed of independent members with vast experience and knowledge on the IAHRS.

- **Work within the time frame established by the OAS schedule.**

The respective statutes of the IACtHR and of the IACHR establish that six months before the General Assembly in which judges and commissioners are elected by vote, the Secretary General will request the States, within a time frame of ninety days, to submit their list of candidates. This implies that from the moment the names of the persons appointed by the States are officially known, up until the judges and commissioners are elected, there is only a span of three months. Previous panels have done their work within this time frame, which is very limited, with the aim of sending questionnaires, conducting interviews, receiving and assessing information on the candidates, and issuing a final report that might influence the final decisions.

Likewise, **a series of global challenges in relation to national nomination and selection procedures of candidates** have been identified. Among them, we can underline the following:

- **The nomination and selection procedures for IAHRS bodies are more determined by political dynamics than by definitions of merit and qualifications.**

The procedures executed in the region are defined by the practice of vote-trading, persistently denounced by civil society in the Inter-American regional system and in other systems. Section IV on key concepts to assess a nomination process at the national level deals with this topic, which is also reflected upon in section VI on comparative models.

- **There is a lack of implementation of the guidelines established in the OAS resolutions and those drawn from international standards.**

The General Assembly of the OAS has issued diverse resolutions[7] with the intent of advocating for greater transparency, participation, and representation in the nomination and election processes of candidates. However, and even though said resolutions are voted on with the consensus of States Parties, the resolutions are not implemented and, more often than not, end up being nothing more than expressions of good intentions. In addition to said resolutions of the regional system, there are international standards on independence and judicial conduct detailed in section IV, which serve as guides for States. The region does not register national nomination models in line with said standards.

- **There is a lack of dialogue and coordination between the involved actors.**

Given the importance of relying on States committed to the mandate of these bodies, it is important to build dialogue between the States, civil society, and the IAHRS bodies. However, national nomination procedures do not include the perspectives of other interested sectors (academia, civil society organizations, and professional associations, among others).

- **Despite the standards, the compositions of the Inter-American bodies do not reflect the diversity of the region in terms of gender and population groups.**

Representation is a core aspect of the OAS resolutions and it is also present in the international instruments on the matter. In the Inter-American system, the compositions of the bodies reflect some degree of progress on gender, but there is still a huge gap in relation to persons of African descent and persons belonging to indigenous communities (see section V, item D).

The Report summarizes **recommendations** in relation to these dimensions , i.e., the specific work of the independent panels and, more globally, the nomination and selection processes of candidates (for a complete analysis of said recommendations, see Section VII on Final Observations and, for the practical aspects that should guide the working of future panels, see Annex).

Specific recommendations to improve the future performance of independent panels:

a. **Identify a stable funding source that may allow the panel's work to extend beyond the election periods.**

The effectiveness of the panels depends directly on continuous efforts of dissemination and advocacy with the different actors. This would enable, on one hand, for a wider audience of interested actors to know the relevance of the matter and, on the other hand, to work with States toward the implementation of existing standards and recommendations in matters such as transparency, participation, dissemination, and representation.

b. **Start the work of the panels in advance of the start of the nomination/election period.**

In the Inter-American System, the schedule of nominations and elections is designed by the States of the IACHR and IACtHR and, for that reason, a short-term modification is not expected. However, with the necessary funding, the panels may carry out preparatory work and function beyond the election period to speed their tasks and work on defining criteria, activities, and dates, in advance of the official announcement of the candidates' names. In comparison with the models studied in section VI, the Inter-American panels have one of the longest terms with the most limited time frame in which to work. Within the context of the ECtHR, for example, the Secretary General sends a letter inviting the States to submit the nominations a year before the elections.[8] Within the context of the ICC, the body in charge of evaluating the nominations has approximately 5 months to do their work.[9]

c. **Expand the group of civil society and academic organizations involved with the Initiative.**

Relying on a network of civil society organizations would enable the receiving of information on the advancements and regressions in each of the countries, as well as the dissemination of the work of independent panels as effectively as possible. Dissemination through these networks would also promote a more active participation of these organizations toward submitting information on each of the candidates.

d. **Work on defining evaluation criteria, considering the last debates undertaken in comparable bodies and updates of international standards.**

It would be extremely valuable to enrich the work of future panels with updated research on the use and interpretation of the definitions by the evaluation bodies for comparable international commissions, courts, and tribunals. The Inter-American panels should review the models and standards in effect and, if applicable, update the definitions of the criteria used for evaluation.

e. **Systematize the Panel's work.**

The systematization of the panel's work and its coordination with the work of its secretariat is fundamental to speeding up the evaluation times and providing objectivity, predictability, and trust for its work. In the Annex of this report, there is a practical guide for future panels with the goal of providing input.

From the analysis of comparative models and the information obtained from the conducted interviews, a series of **additional observations for states and civil society** are offered:

f. **Work on representation and diverse composition of the bodies.**

To this end, the best practices of some states comprising the ECtHR are underlined, specifically stating the need to incorporate women in the lists of candidates, as well as designing calls oriented toward historically marginalized groups (see section VI, item A3). The little historical presence of Afro-descendants and the nonexistent presence of indigenous people are aspects that require active work in the stage of seeking nominations.

g. **Think of the diversity of the bodies in terms of professional experience of its members.**

Currently, most candidates are drawn from the government sector and, while this does not necessarily negate their independence, it might influence their perception of working with victims and the way to approach them. Therefore, appointing candidates with experience working in civil society should be promoted.

h. **Develop, through civil society, specific campaigns against the practice of vote-trading.**

It is important to expose the practice of vote-trading to the public in general, with the objective of making it harder for the States to engage in it. The development of campaigns by the Coalition for the ICC is an interesting model in this regard (see section VI, item B).

I. Introduction

The Inter-American Human Rights System (IAHRS) is an essential tool for the protection and promotion of human rights in the region. The work of the Inter-American Commission on Human Rights (IACHR or Commission) and the Inter-American Court of Human Rights (I/A Court H.R..) has helped construct a culture of respect towards human rights through the formulating and disseminating standards, publishing reports, performing in situ visits, resolving individual requests, developing jurisprudence, and issuing advisory opinions. These bodies represent a mechanism of independent protection to safeguard victims when States do not fulfill their duties to prevent, investigate, sanction, and remedy human right violations.

The IAHRS exists within a delicate balance of State-promoted interests, civil society and the system's own bodies. The legitimacy of the Court and the Commission depends directly on their degree of independence and on the capability and qualifications of its members. Concurrently, the power of the Court and Commission stems from the voluntary and sovereign acceptance of its competence by the States. These circumstances obviously create a focal point of tension between these different actors. The work of the System's bodies has gone through different periods of critique mainly promoted by State groups and related, to great lengths, to the degree of independence and the weight, binding or not, of their decisions.[10] These debates have led to the development of the so-called IAHRS strengthening processes.[11]

In this situation, it is important to reflect on the characteristics that the judges and commissioners composing these bodies should possess. The quality of the Inter-American standards in the matter of human rights depends directly on the attributes of its members. The characteristics of the nomination and selection processes of candidates to exercise these offices unequivocally influences the quality of their decisions, effectiveness, and impact on the human rights of the persons inhabiting the region and the legitimacy of its work.[12] Despite this, in general terms, little is known about the characteristics of these procedures.

In the Inter-American context, States have not developed formal and democratic procedures to select judges and commissioners. As a result, it has been up to civil society, with the goal of promoting configurations of bodies that are truly committed to the human rights, to try to fill this void. Since 2015, a group of organizations has taken the initiative to convene panels composed of expert and independent persons (henceforth “panels” or “independent panels”) to evaluate the qualifications of candidates and advocate for transparent and inclusive nomination processes. So far, four panels have been convened for the election periods of 2015, 2017, 2018, and 2019.[13]

This initiative has had a very significant impact and has successfully elevated the issue among different relevant actors within the system. Successive panels have gained legitimacy and have delivered impartial reports with good reception from both government representatives, as well as civil society, regardless of whether they agree with its conclusions or not.

The general objective of this report is to analyze the work of the Independent Panels as evaluation tools and identify best practices that may be used as a guide while conducting this work. Likewise, as additional objective, international aspects of nomination and selection process of candidates are studied, and a

series of best and worst practices to inform the involved actors are recognized. In order to meet these objectives, this report:

a. Describes the general characteristics of the work of the panels and the nomination and selection procedures, the regional legal sources, and the international standards defining the topic;
b. Describes and analyzes key concepts to evaluate candidates and analyzes some of the challenges raised by their use as evaluation standards;
c. Compares existing selection models of candidates at an international level, as well as models of evaluation panels, in particular;
d. Identifies the main challenges that these procedures face in the region;
e. Analyzes and systematizes the work conducted by past Inter-American independent panels and proposes specific guidelines to improve the work of future independent evaluation panels.

This research is essential, at least in the short term, as it is not apparent that the States of the region issue official independent control mechanisms, either for national nomination mechanisms or for voting processes for the General Assembly of the Organization of American States (OAS). In this scenario, the independent panels will continue to occupy a leading role in the evaluation of candidates. Throughout the sections making up the main body of this report, we delve into theoretical aspects, challenges, and comparative models directed at a diversity of interested actors (mainly members of the academy, civil society, and States). In the annex, a systematization of the work conducted by the four Inter-American regional panels convened thus far is presented, and it establishes practical guidelines specifically designed for future panelists.

As analyzed in section V on comparative models and section VI on recommendations, the practice of comparing nomination and selection models from other international bodies shows us that it is possible to formalize procedures with state commitment and participation of key actors. At a global level, this type of discussion has given rise to extremely interesting models implemented by international courts that have strengthened their nomination and selection processes on the path toward transparency and greater involvement of these actors. The essential component to achieving the recommended changes is the willingness of the state to choose the most qualified, independent, and representative persons to exercise these offices.

II. Methodology

To conduct this research, semi-structured individual interviews were conducted with experts in the subject from academia and civil society. These individuals were asked to identify the main challenges in the nomination and election processes in the region, as well as those challenges that, in their opinion, independent panels face during their function. They were also asked about the evaluation criteria used and they were invited to issue recommendations to improve these processes.

With the objective of integrating the perspectives of States to the report, interviews were conducted with representatives of the permanent missions to the OAS. They were consulted on the nomination procedures at the national level, involved actors, and their consideration of essential requirements. Likewise, they were asked about the voting criteria for the General Assembly of the OAS and their assessment of the work of the independent panels.

Another very important component within this research were focus groups, one with members of the organizations endorsing the independent panels, and another with the experts who were members of the 2018 and 2019 Panels. An essential part of the discussion of the main challenges faced by the panels is drawn from these valuable discussions.

This research is also supported by the survey and analysis of diverse sources of information: academic and civil society publications and research made by international bodies and legal instruments at national, regional, and universal levels. Likewise, to prepare this report, the contents of the four final reports published by the 2015, 2017, 2018, and 2019 independent Panels were analyzed and summarized.

All aspects of research were approached from a comparative perspective, considering other panel models in place at an international level. To this end, information was collected from official websites, resolutions, and documents issued by the bodies, civil society reports, and academic publications. In some cases, such as the International Criminal Court, individual interviews with key informants within the body in question were conducted.

Using all of these tools allows us integrate the voices of relevant, diverse sectors and actors, with the objective of analyzing the topic from a plural perspective.

III. General characteristics of the nomination and election processes of candidates to the Inter-American System and of the operation of the Independent Panels of the Inter-American System

A. Nomination and election of candidates to the Inter-American System

The process of electing judges and commissioners to the IAHRS bodies is composed of two main phases: the phase of national nomination and the phase of election of candidates by the General Assembly of the OAS, the political body in charge.[14] This selection design is replicated in the three regional human rights system: European, African, and Inter-American.[15]

The process begins when the Secretary General of the OAS, six months in advance of holding the ordinary period of sessions of the General Assembly and prior to the end of the term for which judges of the Court are elected, issues a written request to States to submit a list of candidates within a time frame of ninety days.[16]

The rules and main characteristics for the composition of and access to offices of commissioners and judges of the Commission and the Court of Human Rights are established within the Inter-American regional legal instruments (American Convention on Human Rights and Statutes).

	Inter-American Commission on Human Rights	Inter-American Court of Human Rights
Number of members	7 (art. 34 ACHR)	7 (art. 52.1 ACHR)
Term duration	4 years (art. 6 Statute of the IACHR)	6 years (art. 5 Statute of the IACtHR)
Possibility for re-election	1 time (art. 6 Statute of the IACHR)	1 time (art. 5.1 Statute of the IACtHR)
Number of candidates	Each State may nominate up to 3 persons as candidates (art. 3 Statute of the IACHR)	Each State may nominate up to 3 persons as candidates (art. 7.2 Statute of the IACtHR)
Voting	The election is made in a personal capacity by the General Assembly of the Organization from a list with the nominations submitted by the governments of the member States (art. 36.1 ACHR). Voting is done in secret in the General Assembly of the OAS (art. 3 and 5 Statute of the IACHR).	The election is made in a personal capacity by the States Parties of the ACHR, by means of secret voting in the General Assembly of the OAS (art. 7.1 and 9 Statute of theIACtHR).
Required qualifications	• High moral authority • Recognized expertise in the field of human rights	• High moral authority • Recognized competence in the field of human rights

	(art. 34 ACHR and 2.1 of the Statute of the IACHR)	• Meeting the conditions required for the position of the highest judicial offices (art. 52.1 ACHR and 4 Statute of the IACtHR)
Incompatibilities	It is incompatible with activities that may affect her independence, impartiality, or the dignity or prestige of the office. (art. 18.1. Statute of the IACtHR)	Incompatible with the office of judge: a. Being members or high-rank officials of the Executive Branch; except for those offices that do not place them under direct subordination, as well as those of diplomatic agents who are not Chiefs of Missions to the OAS or any of its member States; b. Being officers of an international body; c. Exercising any other office or activity that prevents the judges from discharging their duties, or that might affect their independence, impartiality, dignity, or prestige of their office (art. 18 Statute of the IACtHR)

In addition to these minimum requirements, the General Assembly of the OAS has issued resolutions with the intent of advocating for greater transparency, participation, and representation in the processes of nominating and electing candidates.

- GA/RES. 2120 (XXXV-O/05), of June 7, 2005

  Inviting the member States to consult with civil society organizations in order to help propose the best nominations to exercise the offices in the Commission and in the Court of Human Rights.

- GA/RES. 2166 (XXXVI-O/06), of June 6, 2006

  Instructing the General Secretariat to publish the curriculum vitae of each candidate on its website and issue a press release announcing said publication.

- GA/RES. 2887 (XLVI-O/16) of June 14, 2016 and GA/RES. 2908 (XLVII-O/17), of June 21, 2017

Encouraging a gender-balanced integration with representation of the different regions, population groups, and juridical systems of the hemisphere, ensuring compliance with the requirements of independence, impartiality, and recognized competence in the field of human rights.

Instructing the Permanent Council that, prior to the election, candidates deliver a public presentation to the aforementioned Council, in order to describe in greater detail their vision, proposals, and initiatives.

- GA/RES. 2928 (XLVIII-O/18), June 5, 2018

Instructing the Committee of Juridical and Political Affairs to share best practices in the practice of nominating and selecting candidates to the IACHR and theIACtHR, when required, with the aim of advocating for gender parity and balance between the different regions and juridical systems of the hemisphere in the two bodies.

B. Working methods of independent panels of election monitoring of the Inter-American System

In the Inter-American System, given the absence of official independent evaluation mechanisms, a group of civil society organizations convened independent panels for the 2015, 2017, 2018, and 2019 elections dedicated to the evaluation of the candidates to exercise the office of judges and commissioners. The general characteristics of the panels are presented next:

WORKING METHODS
→ The individuals comprising the Panel act independently from endorsing organizations, States, and other organizations.[17] → They do not receive any economic compensation. → They design their methodology and evaluation criteria autonomously. For their evaluations, the Panels considered the following information: → Curriculum vitae of the candidates. → Questionnaires developed by the Panel.[18] → Written materials by the candidates, whether it be academic papers, presentations in international forums, judicial decisions, blog posts, and/or social media accounts. → The 2018 and 2019 Panels conducted interviews with the candidates.[19] → Starting with the 2017 Panel, public presentations of the candidates to the Permanent Council of the OAS were analyzed, as well as their participation in public forums, especially those endorsed by civil society organizations. → Information submitted by organizations and other interested actors.[20] Said information was sent to the persons involved to give them the opportunity of issuing a response.

The Secretariat of the 2015 and 2017 Panels was performed/enacted/conducted by Open Society Justice Initiative and the Secretariat of 2018 and 2019 was performed/enacted/conducted by American University Washington College of Law's Center for Human Rights & Humanitarian Law.

MAIN FUNCTIONS/MANDATE

- → To evaluate the qualifications of candidates nominated by States Parties;
- → To analyze the nomination processes at the national level in order to detect weaknesses and issue recommendations to improve them;
- → To disseminate the features of the nomination and election processes to civil society organizations and the media, with the objective of instilling more responsibility between the States.[21]

CRITERIA FOR EVALUATION[22]

For the office of judges:

Essential requirements (article 52.1 ACHR and 4 Statute of the IACtHR)

- → High moral authority.
- → Recognized competence in the field of human rights.
- → Meeting the required conditions for the exercise of the highest judicial offices.

Incompatibilities (article 18 Statute of the IACtHR).

- → Being members or high-rank officers of the Executive Branch; except for those offices that do not place them under direct subordination, as well as those of diplomatic agents who are not Chiefs of Mission to the OAS or to any of its member States;
- → Being officers of an international body;
- → Exercising any other office and activity that would prevent the judges from discharging their duties, or which might affect their independence, impartiality, dignity, or prestige of their office.

Other criteria considered by the Panel:

- → Bangalore Principles of Judicial Conduct (2002): Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence;

Other abilities:

- → Ability to work as part of a collegial body and ability to work in more than one of the official working languages of the Court;
- → Knowledge of the legal systems of the region;
- → Extensive exposure to and knowledge of the political, social, and cultural situations of the region.

For the office of commissioner:

Essential requirements (article 34 ACHR and 2.1 of the Statute of the IACtHR)

- → High moral authority.
- → Recognized competence in the field of human rights.

Incompatibilities. (art. 8.1. IACHR Statute)

- → Activities that might affect her independence, impartiality, or the dignity or prestige of her office.

Other criteria considered by the Panel:

- → Bangalore Principles of Judicial Conduct (2002): Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence;
- → Guidelines on the independence and impartiality of members of human right treaty bodies (Addis Ababa guidelines.2012): Independence and Impartiality.
- → Candidate's contribution to the balance of the Commission in terms of areas of expertise, gender, and other forms of diversity. Starting on the 2017 Panel, the OAS Resolution GA/Res. 2887 on "Integración equilibrada en género y con representatividad geográfica y de los distintos sistemas jurídicos" [Gender equity and balanced geographic and legal-system representation] was adopted as reference.[23]

Other abilities:

- → Ability to work as part of a collegial body, and ability to work in more than one of the official working languages of the Court;
- → Knowledge on the legal systems of the region;
- → Extensive exposure to and knowledge of the political, social, and cultural situations of the region.

IV. International Standards on Independence and Judicial Conduct

Originally, judicial independence standards were developed as a product of the intersection between domestic and international norms. The international norm, that is mainly the international law of human rights that has influenced the definition of judicial independence on the basis of the principles of due process of the right to be judged by an independent and impartial court. Likewise, standards developed by professional bar associations and members of the judicial sector have emerged, which have also contributed to both dimensions, domestically, as well as internationally.[24]

The competence, independence, and impartiality of the judiciary are essential requirements for the effective protection of human rights.[25] The international standards described next are completely applicable to the composition of international courts and tribunals and offer guidance parameters for the appointment of members to the IACtHR and members to quasi-judicial bodies, such as the IACHR.

A. BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY OF THE UNITED NATIONS (1985)[26]

These principles have been issued to assist member States in their task of securing and promoting the independence of the judiciary, and they stipulate that:

- The State has the duty of guaranteeing the independence of the judiciary.[27]
- The Judicial Branch shall decide matters impartially. Impartiality implies making decisions based on facts and the applicable law. There shall not be improper interferences in the judiciary procedures.[28]
- The judges shall be individuals of integrity with appropriate training in law. The design of the selection methods shall safeguard against judicial appointments for improper motives and discrimination on the grounds of race, color, sex, religion, political or other opinion, national or social origin, property, or birth status.[29]
- Promotions shall be based on objective factors, such as ability, integrity, and experience.[30]

B. BANGALORE PRINCIPLES OF JUDICIAL CONDUCT (2002)[31]

In April 2000, on the invitation of the UN, chief justices and representatives of the International Criminal Court were convened, along with the UN special rapporteur on the independence of judges and lawyers, with the purpose of creating the Judicial Group on Strengthening Judicial Integrity.[32] One of the main objectives of the group was to recognize the need for developing a universally acceptable statement of judicial standards. The Bangalore Principles were created within the context of said process and after subsequent meetings of judges, represented common law and civil law systems.[33]

This group of principles expand and complement the United Nations Basic Principles on the Independence of the Judiciary and establish standards for their members ethical conduct. The standards are grouped into six fundamental values that serve as guidelines for judicial conduct.

INDEPENDENCE

- Judges shall exercise their duty based on their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats, or interference.[34]
- A judge shall be independent in relation to society in general, in relation to the parties in a dispute[35] and to her judicial colleagues.[36]
- A judge shall be free from "inappropriate connections with the executive and legislative branches". Likewise, she shall "appear to a reasonable observer to be free therefrom".[37]
- The public confidence in the judiciary is fundamental to the maintenance of judicial independence.[38]

IMPARTIALITY

- Applies not only to the decision itself, but also to the process by which the decision is made.
- A judge shall avoid favor, bias, or prejudice.[39]
- A judge shall not make any comment that might affect the outcome of the proceeding or the fair trial of any person.[40]
- A judge shall disqualify herself from participating in any proceedings in which she cannot decide impartially or in which it may appear to a reasonable observer that she is unable to decide impartially.[41]

INTEGRITY

- The conduct of the judge shall be above reproach in the view of a reasonable observer.[42]
- Her behavior and conduct shall reaffirm the people's trust in the integrity of the judiciary.[43]

PROPRIETY

- A judge shall, in her personal relations or with members of the legal profession who practice regularly in her courts, avoid situations which might give rise to the suspicion of favoritism or partiality.[44]
- A judge shall not participate in the determination of a case in which any member of her family represents a litigant or is associated with the case.[45]
- A judge shall not allow her family or social relationships to improperly influence her judgment as a judge.[46]
- A judge shall not use her prestige to advance private interests.[47]
- Confidential information acquired by the judge in her judicial capacity shall not be used or disclosed.[48]

EQUALITY

Judges shall make an effort to understand diversity in society and shall not manifest bias or prejudice toward any person on irrelevant grounds.[49]

COMPETENCE AND DILIGENCE

- A judge shall take reasonable steps to maintain and enhance her knowledge, abilities, and qualities necessary for the proper performance of her judicial duties.[50]
- Judges shall keep themselves informed about relevant developments on international law.[51]

C. BURGH HOUSE PRINCIPLES ON THE INTERNATIONAL JUDICIARY OF THE INTERNATIONAL LAW ASSOCIATION (2004)[52]

These principles were developed by a group of experts from the Study Group of the International Law Association on the practice and proceedings of international courts and tribunals.[53] According to some authors, they are the most important attempt to systematize the rules related to the independence and impartiality of the international courts.[54] Among its proposals, they establish that judges shall act free from direct or indirect interference by any person or body[55] and also provide important guidelines on the processes of nomination, election and appointment:

> "…judges shall be chosen from among persons of high moral character, integrity and conscientiousness who possess the appropriate professional qualifications, competence and experience required for the court concerned".[56]

- Professional qualifications shall be the overriding consideration.
- Equitable representation of different geographic regions and the principal legal systems shall be considered, as appropriate, as well as the proportion of female to male judges.[57]
- Procedures for the nomination and election of judges shall be transparent and provide appropriate safeguards against nominations, elections, and appointments motivated by improper considerations.[58]
- Information regarding the process and information on candidates for judicial offices shall be made public, in due time, and in an effective manner, by the international organization or body responsible for the nomination, election, and appointment process.[59]

D. RHODES RESOLUTION OF THE *INSTITUT DE DROIT INTERNATIONAL* ON THE POSITION OF THE INTERNATIONAL JUDGE (2011)[60]

The *Institut de Droit International* was founded in 1873 by a group of professionals engaged in the study of international law.[61] The Rhodes resolution was adopted with the objective of serving as a guide to contribute to the authority and effectiveness of international justice considering the growing number of specialized courts and tribunals, both at universal and regional levels.[62]

Its articles establish that:

- The quality of international courts and tribunals depends, first of all, on the intellectual and moral character of their judges.[63]
- The States shall ensure an adequate geographical representation.[64]
- The elections of judges shall not be subjected to prior bargaining with vote-trading.[65]

- During their term of office, it would be desirable that judges be appointed for long terms of office in order to strengthen the independence, between 9 and 12 years and, likewise, such terms shall not be renewable.[66]
- The judges may not exercise political or administrative duties, or act as agents, counsel or advocates before any courts or tribunals.[67]

E. GUIDELINES ON THE INDEPENDENCE AND IMPARTIALITY OF MEMBERS OF THE HUMAN RIGHTS TREATY BODIES. ADDIS ABABA GUIDELINES (2012)[68]

These contain general principles to assist members of treaty bodies and other interested persons. Their impact was such that, by March 2015, most treaty bodies had approved them.[69] Being one of the few instruments not pertaining specifically to judicial activity, these were particularly important in assessing the conditions of the commissioners in the Inter-American regional system.

The Guidelines stipulate that members should not only be independent and impartial, but also be seen by a reasonable observer to be so.[70] Likewise, they specify that:

- Conflicts of interest and challenges to the requirements of independence and impartiality may be generated by many factors, such as a person's nationality or place of residence, current or past employment, membership of or affiliation with an organization. or family and social relations. Likewise, conflicts of interest may also arise in relation to the interest of a State of which a member is a national or resident.[71]
- These persons may not be subject to influence of any kind or pressure from the State of their nationality, nor any other State or its bodies, and they shall neither seek nor accept instructions from anyone concerning the performance of their duties.[72]
- In regards to the work of their treaty body, they shall avoid any action which might give the impression, or which might be interpreted by a reasonable observer, as unequal treatment between States.[73]
- The independence and impartiality of treaty body members can be compromised by their involvement with the executive branch of the State, given the political nature of this affiliation.[74]
- Conflicts of interest might also arise in situations in which individuals hold decision-making offices in any organization or entity, such as private corporations or entities, civil society organizations, academic institutions, or State-related organizations.[75]

V. Key concepts with which to evaluate candidates: Inter-American standards and comparative models

These key concepts arise from the diverse international standards on independence and judicial conduct previously described and are complemented by the regional instruments governing the work of the IACtHR and the IACHR. These concepts are fundamental to assessing both the candidates for the judge and commissioner, as well as for their nomination and election processes. The work of the independent panels convened in the Inter-American system was based on the guidelines provided by these instruments, both international and regional, and accordingly, set its pillars and assessment criteria. Comparing this practice with other assessment panels at a global level also serves as an essential component in assessing the nomination and election processes.

Within the scope of the Inter-American system, the independent panels have structured their assessment of candidates around five fundamental pillars: a. high moral authority, b. independence and impartiality, c. recognized competence/expertise in the field of human rights; d. contribution to the representative and balanced diversity of the body; and, d. nomination processes at national level.[76]

The first three pillars, as they have been described so far, arise from the international and Inter-American legal instruments (ACHR and Statutes) and it is important to note that these criteria, with its variations, are essential requirements also present in the principal regional[77] and universal courts and tribunals.[78] In turn, the evaluation pillar based on the contribution of the person to the body's representation also arises from international standards[79] and from OAS resolutions.[80] Finally, most standards on nomination and election processes arise from the international instruments described in section IV.[81]

Analysis of the key concepts and the study of its possible definitions are essential to providing strength, predictability, and objectivity to the work of the panels.

A. HIGH MORAL AUTHORITY

The concept of high moral authority, as established in the regional instruments, is extremely generic and that is why it is essential to build an appropriate definition. To meet this requirement, the panels convened at the Inter-American level have concretely analyzed if the candidate received any kind of sanction, warning, denunciation or if, on the contrary, received any awards or honors.[82]

There are some specific cases that present challenges and have to be assessed on a case-by-case basis, for example, when there is information involving a candidate’s criminal or amoral practices. In these cases, it is essential to assess the sources of information and analyze if the accusations are serious and if they have been formally presented to the justice system. Then, the panel would proceed to go more in depth to know the current state of the judicial process. The most common examples are usually linked to presumptive acts of corruption.

In 2015, the Panel analyzed the situation of a candidate nominated by the state of Ecuador, who had been accused of a supposed payment of bribes for a company's benefit. The case had been referred to the Constitutional Court of Ecuador, of which the candidate was president and, for this reason, the candidate

had recused himself from the case. In its conclusions, the panel expressed concern because, even though the candidate had extensive experience and knowledge of the human rights field, the panel could not gather more information on the judicial processes involving him and these elicit doubts related to his fulfillment of the high moral authority requirement. The candidate was ultimately elected as a judge of the IACtHR for the 2016-2022 period.[83]

That same year the Panel, while evaluating the nomination submitted by the state of Argentina, considered the existence of debates generated at the national level in relation to a candidate's "ethics and the origin of his earnings." However, in this case, the Panel concluded that there were testimonies of greater weight with respect to the high moral authority of the candidate and considered that his nomination came with 80% vote of support of the alumni of the Faculty of Law of Universidad de Buenos Aires.[84]

Another very important situation that should be evaluated is candidates with allegations of possible acts of sexual assault.

According to a research study by the International Bar Association on sexual harassment in juridical positions, 1 in 3 women has reported suffering sexual harassment in the work environment.[85] Diverse organizations, both national and international, have focused efforts and developed campaigns to raise awareness of this reality.

Although past panels have not analyzed, thus far, specific situations related to this subject, it is important to remark on the initiatives promoted by other bodies such as, for example, the International Criminal Court (ICC), and assess if these could be somehow adapted to complement the definitions of the evaluation pillars of candidates in the Inter-American system.

Within the context of the **election of the ICC Prosecutor**, numerous civil society organizations have issued a document[86] requesting that the Election Committee consider excluding those who have perpetrated or acquiesced to cases of sexual abuse. To that end, three concrete measures were proposed:

- Adopting a wider definition of the criterion of high moral authority, including a policy of zero tolerance for any record of sexual abuse by the candidates;
- The selection Committee shall request and share specific information of credible external sources on the records of the candidates;
- That, after the possibility of discharge and, in the case of verifying the records, the involved candidates might be excluded from the selection process.

Within the scope of the **European Court of Human Rights (ECtHR)**, the Advisory Panel of Experts for the election of judges has analyzed the requirement of high moral authority considering the presence of certain attributes such as integrity, high sense of responsibility, dignity, diligence, honesty, discretion, respect for others and lack of conviction of offenses.[87]

B. RECOGNIZED COMPETENCE/EXPERTISE IN THE FIELD OF HUMAN RIGHTS

This requirement is related to the fundamental value of "diligence and competence" as established in the Bangalore Principles on Judicial Conduct.

The Inter-American panels have interpreted this requirement in the sense that candidates should possess recognized knowledge and experience while working within the IAHRS and its instruments.[88] Specifically, the panels have evaluated this requirement by means of a candidate's record of professional achievements, their academic publication record, or substantial experience working or litigating before the system.[89] Likewise, the panels have analyzed the knowledge of the candidate on the main challenges of the IAHRS and her commitment to the objective and purpose of the ACHR.[90]

Throughout interviews undertaken during this research, subject matter experts have ascertained the existence of challenges to evaluating those who demonstrate vast experience and knowledge of the system, yet maintain positions supporting to the weakening of the IAHRS. In this aspect, they recognized that the evaluation does not analyze the ideological positions of the candidates, but rather focuses on analyzing if the candidate maintains positions that promote the weakening of the IAHRS such as, for example, removing the bodies' legally binding force. Regarding this aspect, it would be necessary to assess whether the effectiveness of the ACHR and the IAHRS depends directly on the judges and commissioners advocating for compliance with the decisions of the IACHR and the IACtHR by the national authorities.

Another core aspect while analyzing the professional experience of the candidates is related to the governmental or non-governmental sector in which they have worked in the past. The bodies of the Inter-American system are mostly filled with individuals coming from the governmental sector. Their experience may not jeopardize their independence but it may influence their perspective of the system, of the best method of work, and how to make the system more accessible to the victims of human rights violations. A diverse composition that includes experienced individuals in non-governmental sectors would help build an IAHRS more oriented toward the needs of the system's users.

C. INDEPENDENCE AND IMPARTIALITY

The concepts of independence and impartiality represent two of the six core values outlined by the Bangalore Principles and are the central axis of the Addis Ababa Guidelines.[91]

These concepts are not identical. The first pertains to the capability of resisting possible external pressures and being able to make decisions free of influence from other actors; the second implies the capability of a judge to be as neutral as possible and is associated with the relationship of the judge with the parties of a dispute.[92]

As previously stated,[93] in the Inter-American legal system, aspects related to the independence and impartiality requirements are regulated by the establishment of a series of incompatibilities for the performance of duties of judges and commissioners.[94]

The Inter-American panels have used the guidelines and definitions outlined by the international instruments described, in particular, the Bangalore Principles and the Addis Ababa Guidelines.[95]

It is common for candidates to identify with a political affiliation in particular or that, throughout their career, they have worked with the Executive Branch in their respective countries. During their work, the panels evaluated several cases of individuals who had served as public officers, ministers, or ambassadors and had demonstrated a solid background in support of their impartiality and independence.

For example, the 2015 Panel, in their evaluation of the candidate submitted by the state of Panama, considered a public opinion that linked the candidate to the political party governing at the time of her appointment as judge; likewise, she had issued public statements in favor of removing the previous president from office. Despite different allegations of the candidate's political orientation and the lack of more detailed and trustworthy information, the Panel concluded that there was enough evidence supporting her integrity and impartiality.[96]

That same year, a candidate nominated by the State of Bolivia was also evaluated. The Panel assessed the candidate's work as a senator and considered their strong links to the "MAS" political party, party of then President Evo Morales. Likewise, they also considered public information indicating that, as a senator, she had issued strong statements against members of the opposite political party. The Panel expressed concern because, even though said circumstances were not enough *per se* to invalidate her nomination, the fact that the candidate had declined to answer the questionnaire supplied by the Panel with very few elements to assess possible conflict of interest and affairs relevant to her future independence and impartiality should she be elected.[97] Ultimately, the candidate was not elected, as she did not reach the minimum votes necessary in the General Assembly of the OAS.

In all of these cases, participation of the candidates through the questionnaires and in the interview is essential to explaining and demonstrating their position in light of public information that may not favor them.

There are other factors, which are structural relative to the legal design of the Inter-American system, which influence the independence of judges and commissioners; these are: the type of dedication -full or part-time-, the term duration, and the possibility for re-election.[98]

In the IAHRS, both judges and commissioners hold meetings and exercise their duties on a part-time basis,[99] as well as the judges and commissioners of the African Court and Commission of Human and Peoples' Rights. Out of the three regional human rights systems, the European System is the only one in which the judges exercise full-time duties.

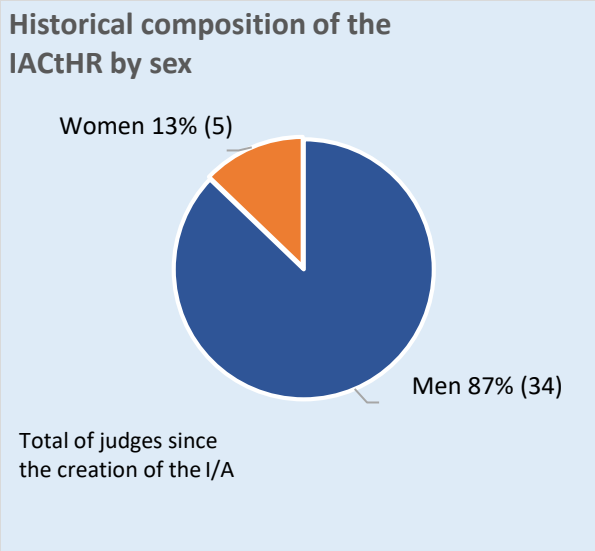
As a consequence of the part-time commitment regime, in many cases, the judges and commissioners continue to engage in other professional activities related to branches of the State. These circumstances entail challenges in analyzing the requirements of independence and impartiality.[100]

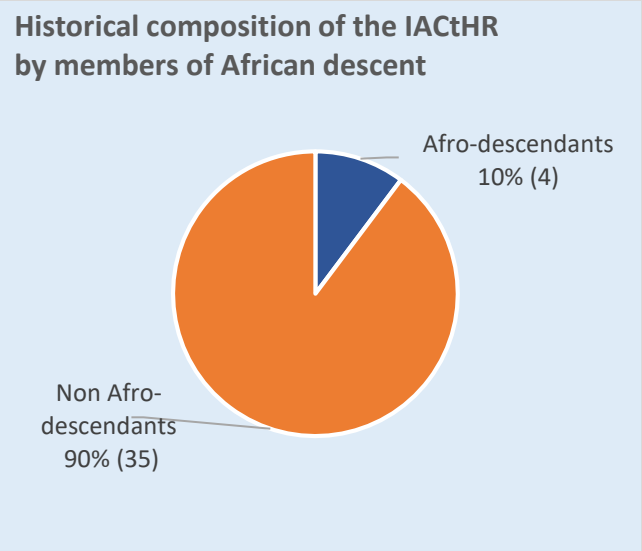
In relation to the term duration and the possibility for re-election, the judges of the IACtHR serve for six years, with possibility for one re-election.[101] As for the commissioners, they serve for a term of 4 years, with the possibility of one re-election, as well.[102] It has been stated that as States propose re-election of candidates, terms with longer durations and with no possibility for re-election might contribute to greater independence, as this prevents the commissioners and judges from working towards their re-election.[103] This is the model proposed in the Rhodes Resolution on the position of the International Judge[104] and the

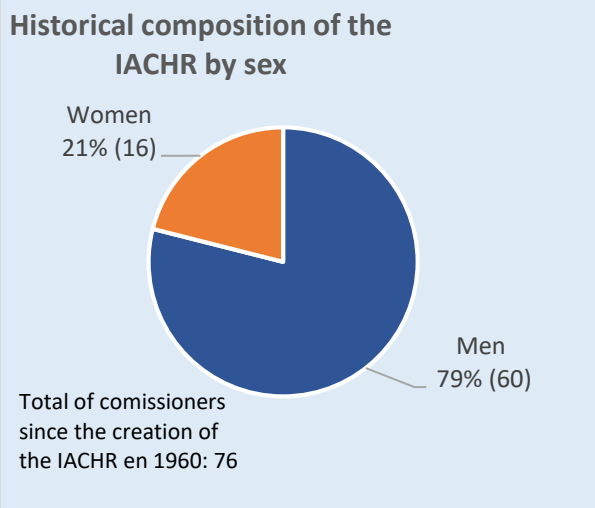
one adopted both in the ICC[105], as well as the ECtHR,[106] in which terms of nine years of duration are established, with no possibility for re-election.

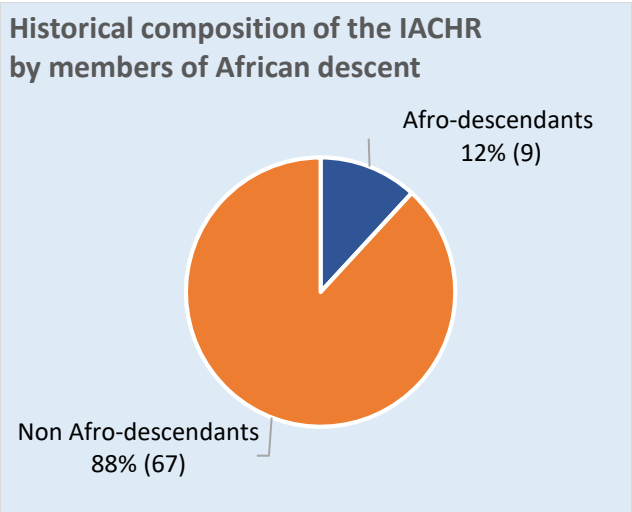
D. REPRESENTATION

Representation of the bodies is an essential aspect that has gained more relevance in most of the comparable international bodies.[107] In the Inter-American context, the General Assembly of the OAS has approved diverse resolutions advocating for "a gender-balanced integration with representation of the different regions, population groups and juridical systems of the Hemisphere".[108] Despite this, said resolutions are not implemented by the States and, as shown in the following graphs, achieving representative compositions of the diversity in the region, is still a pending task.









Source: Data on composition obtained in Official websites ofIACtHR and IACHR. See https://www.corteidh.or.cr/composicion.cfm?lang=en and http://www.oas.org/en/iachr/mandate/composition.asp

In the graphs above, the little historical presence of women and persons of African descent throughout the diverse compositions of the IACtHR and the IACHR can be observed. There is also a clear deficiency when it comes to the inclusion of members belonging to indigenous communities.[109]

During their work, each panel carefully analyzed the contribution of the candidate to the balanced and representative composition of the body, while at the same time maintaining the criteria of suitability, independence, and impartiality.[110]

E. IDEAL NATIONAL NOMINATION PROCESSES

In the Inter-American regional context, several civil society organizations have worked intensively to make the weaknesses of the system visible and to advocate for transparent, participatory, and merit-based nomination and selection processes.[111] The nomination phase at the national level is especially important, as it is the instance in which the possibilities of having the most qualified persons joining the bodies are determined.

Currently, political connections are the decisive factor in these procedures.[112] First, within the countries, proximity of the candidate to the Executive Branch is the circumstance that defines, more often than not, who is nominated. Then, the election process in the General Assembly of the OAS is usually defined several months in advance of the election due to the practice of vote-trading, by which the ability and political weight of the countries surpasses the capability and qualifications of the candidate as the main reference criteria.

> "There are currently no OAS guidelines setting out minimum standards or requirements for member states to consider when selecting candidates to the court or the commission, nor is any OAS body empowered to review the process or qualification of candidates once the states submit their candidates. The convention, as well as the statues of the court and the commission, is silent on national nomination procedures...".
>
> OSJI, Fortaleciendo desde Adentro: Marco legal y práctica en la selección de Jueces/zas y Comisionados/as de Derechos Humanos, p. 43.

Civil society organizations have analyzed the national nomination processes through two key concepts: transparency and participation. [113] It is understood that a participatory and transparent process should include a "group of mechanisms aimed at safeguarding the democratic participation of the civil society, the public execution of the national selection processes, the equal conditions and treatment of the candidates and rigorous scrutiny toward identifying the most quialified candidates".[114]

The independent panels convened in the Inter-American system, for their part, have analyzed the national nomination processes with the understanding that processes which are transparent, participatory, and based on the merits and competence of those selected as candidates, serve as guarantees of their independence, impartiality, and qualifications. These models decentralize the power of the States in the

selection processes and lets other actors be involved in them.[115] Outlining a set of pre-established and known rules on calls, interviews, and selection in general is an essential component to safeguard transparency.[116]

The four independent panels convened so far have included a series of recommendations to improve the nomination process at national level:

- Each State should possess a formal and independent body to select the nominated persons.
- The States should put forward at least two persons, accounting for the representation of diverse groups.
- The call to exercise the office should be made in a public announcement with details about the office, requirements, and steps of the nomination process. The call should be published on the websites of the Commission and the IACtHR
- The candidate selection should be carried out with the participation of all the key interest groups (civil society organizations, academic institutions, and professional associations).
- The candidates should offer evidence of meeting the requirements established in the ACHR and the respective Statutes, samples of their publications, opinions, or activism.
- The candidates should provide information on the activities that they plan to conduct in parallel with their activities as commissioners or judges.
- Bilingualism, in relation to the official languages of the OAS, should be requested; proficiency in one language and at least passive knowledge of another one.
- The interviews should be an essential part of the process.

S should submit nominations, which, in addition to meeting the requirements of suitability, independence, and impartiality, contribute to a diverse and representative composition of the body.

Unfortunately, the region does not show significant progress in this aspect and local processes are still not transparent and participatory enough.[117] As a result, throughout the interviews undertaken during this research, some of the experts interviewed considered that the evaluation of candidates under local processes has not been a relevant component of the final evaluation, as most are drawn from closed and opaque procedures. However, it is fundamental to continue working on strengthening these procedures and it is necessary to reflect on the best way to do it, for example, through the development of promotional activities with members of the permanent missions and chancelleries, in advance of the publication of the final report of the panel.

VI. Comparative models: evaluation mechanisms for candidacies to International Courts and Tribunals

Evaluation panels composed of experts represent a tool to ensure the transparency of nomination and selection processes of candidates to exercise their offices in international bodies. In some cases, States have taken the lead in creating official panels for nomination or election phases. In other cases, such as the Inter-American System, civil society actors have taken the lead in creating independent panels to analyze nominated individuals.

To compare, it is within the purview of the European Court of Human Rights (ECtHR), as well as in the International Criminal Court (ICC), where the most progress has been made toward establishing guidelines of transparency and participation for States and in formulating best practices that guide the work of evaluation panels. This section analyzes these two models (ECtHR and ICC) in depth and includes an analysis, in a more superficial manner, of other models of evaluation panels that offer interesting elements of comparison with the Inter-American model.

A. EUROPEAN COURT OF HUMAN RIGHTS (ECtHR)

The ECtHR is an international court, which receives and adjudicates litigation centered on violations of the rights established in the European Convention on Human Rights (ECHR). The Court is composed of 47 judges, one for each member State. The judges are elected by majority vote of the Parliamentary Assembly of the Council of Europe (PACE), among a roster of candidates presented by each member State of the Council of Europe. They are elected to 9-year terms, with no possibility for re-election.[118]

> *The quality and effectiveness of the protection system established in the European Convention on Human Rights ("the Convention") owes much to its control mechanism, the European Court of Human Rights ("The Court"). The authority and credibility of the Court and, therefore, the conventional system as a whole, depends on the quality of its judges.*
>
> Guidelines of the Committee of Ministers on the selection of candidates for judges of the European Court of Human Rights- Explanatory memorandum CM(2012)40, 29 March 2012, para. 1.

The essential requirements that individuals nominated for the office of judge to the Court should possess are stated in article 21 of the ECHR[119]:

- "judges shall enjoy the highest moral character and garner the conditions required for the exercise of high-rank judicial offices or being jurisconsult of recognized competence".[120]
- "judges shall not exercise any activity that is incompatible with the demands of independence, impartiality or availability needed for an activity exercised full time…".[121]

The process is begun at least a year in advance of the election to the Parliamentary Assembly, by an official letter that the Secretary General submits to the governments inviting them to present a list of candidates[122] and ends when the Assembly elects, by secret voting, one of the candidates nominated from the rosters submitted by the States. Like the Inter-American system, the process is comprised of two stages: the first is the selection process of candidates at national level and, the second, occurs within the scope of the PACE.

> *"The process of the nomination of candidates shall reflect democratic principles, and be transparent and free from discrimination."*
> *Resolution of the Parliamentary Assembly 1646(2009), para. 2*

The system of nominating and selecting judges to the ECtHR has the support of **two bodies of evaluation of candidates**, these are:

- The **Experts Advisory Panel**, which acts during the process of nomination of candidates at the national level and has the main mandate of providing counseling to States in evaluating if the nominated individuals comply with the previously detailed requirements established in Article 21 of the ECHR.
- The **Committee on the Election of Judges**, which acts during the stage of the Permanent Assembly once the States have submitted their list of candidates.

1. Experts Advisory Panel at the stage of National Nomination.

CHARACTERISTICS OF THE EXPERTS ADVISORY PANEL AT THE STAGE OF NATIONAL NOMINATION
BACKGROUND
→ Established in 2010 by the Committee of Ministers of the Council of Europe with the objective of ensuring the impartiality and quality of the court.[123]
COMPOSITION[124]
→ Seven members from different member States and elected among judges and ex-judges of the highest-rank courts, national and international, as well as among jurists of recognized competence. → Acting on a personal basis. → The Panel should demonstrate geographical and gender diversity.

APPOINTMENT[125]
→ Appointed by the Committee of Ministers, with prior consultation with the President of the European Court of Human Rights. State parties may submit individuals as candidates.
TERM DURATION[126]
→ Three years, with possibility of one re-election.
SECRETARIAT[127]
→ The Panel's Secretariat shall be controlled by the General Secretariat of the Council of Europe.
MAIN FUNCTIONS/MANDATE
→ Prior to the submission of the list of candidates to the Permanent Assembly, the Panel analyzes the names and curriculum vitae[128] of the nominated individuals. On that basis, the Panel may ask questions to the State.[129] → Its evaluations are based on the information provided by the State and shall be carried out within a time frame of 4 weeks. No interviews are undertaken. → If the Panel determines that one of the nominated candidates does not meet the requirements, it will confidentially notify the State. The State will send its comments and may submit another person for consideration to the Panel.[130]
FUNDING
→ Funding shall be provided by the Council of Europe[131].

2. Committee on the Election of Judges to the Parliamentary Assembly.

CHARACTERISTICS OF THE COMMITTEE ON THE ELECTION OF JUDGES TO THE PARLIAMENTARY ASSEMBLY
COMPOSITION
→ The Committee is composed of 22 members nominated by the different political groups proportional to their representation in the Assembly.[132] → They shall possess legal expertise and experience.
APPOINTMENT

→ They are appointed by the Committee of Ministers with prior consultation with the President of the European Court of Human Rights. States parties may submit individuals as candidates.

MAIN FUNCTIONS/MANDATE

→ Interviews the candidates.[133]
- The interview lasts half an hour (free-form presentation by the candidate, formulation of one or two standardized questions and in both official languages, with the possibility to use an interpreter).

→ Evaluates the curriculum vitae and issue recommendations to the Permanent Assembly.

→ In its evaluations, the committee considers the confidential assessment that the Advisory Panel has done on the list.

→ Evaluates the nomination procedure at national level, which is based on[134]:
- Minimum requirements of impartiality of transparency. For example, the absence of a public call would be a breach of this requirement;
- The interview processes;
- The interaction of States with the Advisory Panel.

→ Approves or rejects lists submitted by the States
- The rejection might be based on the candidate's non-compliance with substantive requirements such as, for example, the requirements of art. 21 ECHR, the areas of competence, or the proficiency of the official languages. Likewise, a nomination might be denied due to reasons related to the process if, for example, it was exclusively composed of individuals of the same sex, unless it was the sex underrepresented in the Court or that the State had tried all necessary steps to ensure the presence of persons of the two sexes in the submitted nomination.[135]
- In cases of approval, the order of preference is established among the nominated members and it is communicated to the Assembly.[136]

3. Good Practices underlined by the Committee of Ministers in the member States of the ECtHR

With the objective of improving the transparency of the procedures and orienting the States in their nomination processes, the Parliamentary Assembly has issued several resolutions and the Committee of Ministers has prepared a document with valuable guidelines.[137] The Committee of Ministers has identified a series of good practices for their implementation within countries.[138]

a. In regards to the individual requirements to practice as judge:

To evaluate the **highest moral authority** (Article 21.1 ECHR), in the United Kingdom and in Poland, candidates are asked to provide written statements informing if, in the past, they have declared, written, or done any act, which would be capable of bringing the Court into disrepute.[139]

To evaluate the **conditions required for the exercise of the highest judicial offices or be jurisconsult of recognized competence** (article 21.1 ECHR), in Slovenia, candidates are asked to meet the same requirements required to exercise the office of judge in the Constitutional Court or Supreme Court. In Poland and the United Kingdom, candidates must meet the requirements requested for the higher national Courts or be of equivalent professional standing.[140]

Candidates shall, at a minimum, **be proficient in one official language of the Council of Europe (English or French) and also possess, at a minimum, a passive knowledge of the other.** Even though this requirement is not established in the ECHR, it arises from Statements[141] of the States parties and Resolutions of the Parliamentary Assembly.[142] It has been accepted to issue written commitments to take intensive classes should they be elected. Many countries have designed their procedures to evaluate this requirement.[143]

To evaluate whether possible **activities are incompatible with the independence, impartiality, and availability requirements that the full-time office demands[144]**, in Poland and Russia, candidates sign a form stating that there are no obstacles to executing their duties. In Slovakia, those who accept their official nomination declare their willingness to cease any incompatible activities. In the United Kingdom, during the process of interviewing the candidates, they are asked about possibly engaging in activities that are incompatible with the office and, if so, their willingness to cease said activities.

b. In regards to **representation:**

Lists of nominated persons shall contain at least one person of each sex.[145] Lists entirely composed of persons of the same sex will only be considered if said sex is underrepresented in the Court (less than 40%), or if there are exceptional circumstances and the State has tried all necessary steps to ensure the presence of persons of both sexes in the submitted list that meets the requirements of article 21.1 of the ECHR.

In Belgium, the call specifically mentions women.[146] In Czech Republic, Denmark, Hungary, and the United Kingdom, it is established that every list shall contain candidates of both sexes.[147]

At the national level, measures shall be adopted **to encourage the application of persons belonging to ethnic or other minorities historically less likely to participate as candidates**[148]

c. In regards to the development of processes for eliciting candidates at the national level[149]:

The nomination process shall be regulated by a code or an established administrative practice. This may be a standing procedure for all nomination procedures, or a procedure designed for the specific call. Its details and rules shall be made public.[150]

In countries such as Czech Republic, Finland, Netherlands, Poland, Romania and Slovenia, the procedure for calls and nominations is regulated. In compliance with each internal system, these are regulated by decrees or other types of governmental resolutions or dispositions by the Ministry of Foreign Affairs.[151]

An example of highest standard on this practice is the Republic of Slovakia, where the procedure is regulated in article 141ª, Section 4d of the Constitution. The Judicial Council is given standing to submit a list to the government, along with the selection criteria and requirements established by law.[152] The Judicial Council is the highest-rank body of the Slovakian judicature and is independent of the legislative and executive branches.[153]

In regards to the **announcement of the procedures**, best practice suggests that the details and information be disseminated in the call, either on the government website or in corresponding legal texts. In addition, **the call should be widely, publicly available** in such a manner that it comes to the attention of all potentially qualified candidates for the office.[154] The publication of the call may be done by diverse means such as: official bulletins or other similar official publications, the government website, national or regional newspapers, and specialized legal press. Likewise, it may be disseminated by the judicial bodies or professional bar associations, the Ombudsman, national human right institutions, universities, and civil society organizations.

A reasonable amount of time shall be given to present the call and selection of nominated applicants.[155]
In Czech Republic, a minimum period of two months following the call is allowed for applications.

The body responsible for recommending individuals as candidates shall be of a balanced composition. Its members shall have sufficient technical knowledge, be drawn from a variety of professional backgrounds and, although they may support their work with information from outside sources, they shall be free from undue influence.[156]
The national selection bodies are generally established under the authority of the Executive Branch and, as a result, cannot be considered independent in the strict sense of the word. However, it is necessary to ensure that they are free from undue influence and that the lists of candidates are not a result of political negotiations.

Depending on the national institutional design, members of the selection bodies may be drawn from diverse sectors, such as[157]: Office of the Prime Minister[158], Ministry of Justice[159], Ministry of Foreign Affairs[160], Office of the Prosecutor General[161], Government Agency[162], Parliament members[163], highest national courts or judicial councils[164], academics or human rights experts[165], Ombudsmen[166], members of professional legal

associations or senior practicing lawyers[167], or members of non-governmental organizations.[168]

B. INTERNATIONAL CRIMINAL COURT

The International Criminal Court (ICC) is a court of last resort for the trials of individuals accused of the crimes of genocide, against humanity and war.[169] The Court may exercise its jurisdiction in three ways: (1) when a State party refers to the prosecutor of the Court in a situation in which one or more of such crimes appear to have been committed; (2) when the Security Council of the UN refers a situation; or, (3) when the Prosecutor initiates an official investigation.[170]

The ICC is composed of 18 judges who serve a term of nine years, with no possibility for re-election.[171]

The essential requirements to exercise this office are listed in article 36.3 of the Rome Statute:

- Being persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices;
- Having established competence in criminal law and procedure (List A) or competence in relevant areas of international law, such as international humanitarian law and the law of human rights (List B). According to the composition requirements, at least nine candidates shall be elected from the areas of expertise grouped as "List A" and at least five candidates shall be elected from the areas of the "List B";
- Being proficient in, at least, one of the working languages of the Court.

The nomination and selection process of candidates to the ICC begins with an invitation by the Secretariat of the Assembly of States.[172] The period for submission of applications opens 32 weeks in advance of elections and lasts 12 weeks.[173] Each State party may put forward one person who need not necessarily be a national of that State party, but shall, in any case, be a national of a State party.[174]

The Rome Statute establishes that the States parties may choose one of two procedures to nominate a candidate for the office of judge of the Court. The first procedure is the one established to nominate candidates for appointment to the highest judicial offices in the State in question. The second procedure is established in the Statute of the International Criminal Court (ICC) to nominate candidates to said Court through the members of the Permanent Court of Arbitration.[175] The nominations shall be accompanied by a detailed exposition on the degree to which the candidate meets the requirements listed in the Rome Statute.[176]

Article 36.4(c) of the Rome Statute stipulates that the Assembly may establish an **Advisory Committee on Nominations**. The Committee was created in 2011 with the objective of having an evaluation process that is fair and independent from the qualifications of the candidates. The Committee analyzes the qualifications of the candidates and, subsequently, the judges are elected by a majority of two thirds by secret vote by the Assembly of the States Parties.[177] Every three years, the Assembly elects six new judges for a term of nine years and that are not eligible for re-election. The Assembly also appoints those who will act as prosecutor and deputy prosecutor for a term of nine years and who are also not eligible for re-election.

The example of the ICC is extremely interesting due to the crucial role that civil society has played in the execution of its standards of transparency and its participation in processes of nomination and selection of candidates for judges and prosecutors. The Coalition for the ICC was founded in 1995 with the mission of advocating for the adoption of the Rome Statute and, later, the creation of the ICC[178] in 1998. The Coalition grew rapidly and, in 2003, the Assembly of States Parties officially recognized the participation of the Coalition in its annual sessions. In 2011, they initiated a campaign demanding that States nominate and select individuals who are best qualified to meet the requirements of the Rome Statute and other transparent procedures. The campaign included a strong rejection against the practice of vote-trading.

> *Vote-trading, a destructive practice seen in other international systems, runs contrary to the fair and effective working of international justice and must be prevented at the ICC. For this reason, we advocate for informed and merit-based elections. These types of situations, vote-trading or other forms of politicization, cannot occur when it comes to electing leaders in the Rome Statute system of international justice.*
>
> Coalition for the International Criminal Court. Campaign on ICC Elections. See: https://www.coalitionfortheicc.org/icc-election-2020-subpage

Currently, the Coalition works as a global network composed of more than 3,000 civil society organizations around the world and continues to work intensively to achieve fair, transparent, and merit-based nomination and selection processes.

1. Advisory Committee on the nominations of judges of the ICC

CHARACTERISTICS OF THE ADVISORY COMMITTEE ON NOMINATIONS FOR JUDGES
BACKGROUND
→ The possibility of establishing an Advisory Committee on nominations is stipulated in article 36 of the Rome Statute. However, the Assembly of States parties have not implemented this mechanism. → In 2010, the Coalition for the ICC created an Independent Panel to raise awareness and evaluate the qualifications of the candidates for judges to the ICC.[179] → In 2011, with the objective of strengthening the ICC, the Assembly of States parties approved the mandate of the Advisory Committee on nominations for judges of the ICC.[180]
COMPOSITION[181]
→ 9 members with high moral character, with competence and experience in criminal or international law.[182] → Nationals of State parties, but they must act independent of the interests of the State of which they are nationals.[183] → They shall reflect the principal legal systems of the world and ensure an equitable, geographical representation and a fair representation of both genders.[184]
APPOINTMENT[185]
→ Appointed by the Assembly of States parties by consensus on the recommendation of the Bureau of the Assembly.
TERM DURATION[186]
→ 3 years, with possibility of one re-election
WORKING
For its evaluations, the Advisory Committee considers the following information: → Documents submitted by States: statement of qualifications and curriculum vitae of each candidate. → Personal interviews, including aspects on their professional experience, qualifications, and analysis on how they meet the requirements as established in the Rome Statute.[187]
MANDATE/MAIN FUNCTIONS[188]

→ To facilitate the appointment of the most qualified persons as judges of the ICC.
→ The Committee bases its evaluation strictly on the requirements of paragraphs 3 a), b) and c) of article 36 (high moral character, impartiality, integrity, qualifications for the highest judicial offices, competence in relevant areas of law, and language proficiency).
→ In regards to their qualifications, the Committee can contact every candidate, even undertaking interviews, both verbal and written.
→ Once its work is finished, the Committee prepares a technical analysis of the qualifications of the candidates. Subsequently, with enough time prior to the subsequent review by the Assembly of States parties, it submits its analysis and puts itself at the disposal of the States parties and observers.
→ The objective of the information and analysis submitted by the Committee is to enable the States parties to make well-founded decisions. The report is non-binding for the States and the Assembly.

Once the candidates are evaluated by the Committee, those who have been preselected will be sent a questionnaire and are subjected to a series of public interviews with civil society. For example, in 2017, elections for six offices for judges of the ICC were carried out and the twelve preselected candidates took part in a public discussion panel.[189]

Despite the progress and importance of the Committee's duty, so far none of the evaluated persons have been considered unqualified to exercise the office of judge. The Committee faces the challenge of serving an extremely limited mandate that does not allow it to analyze the qualifications, abilities, and background of the candidates beyond the information provided by the States.

> *"Our research found scant evidence that the reports of the Advisory Committee play a substantial role in facilitating that the highest-qualified individuals are appointed. One significant impediment in this regard is the Committee's failure to identify candidates as unqualified"*
> Open Society Justice Initiative, "Raising the Bar: Improving the Nomination and Election of Judges to the International Criminal Court", 2019, p. 47.

2. Evaluation bodies for the election of the next Prosecutor of the ICC

In December 2020, after a process of approximately 18 months, the States parties of the Rome Statute will elect the next Prosecutor of the ICC.

In compliance with the Rome Statute, the Prosecutor and the deputy prosecutors shall meet the following requirements:[190]:

- High moral character;

- Being highly competent;
- Have extensive practical experience in the prosecution or trial of criminal cases;
- Possess excellent knowledge of and proficiency in at least one of the working languages of the Court.

This vacancy announcement was published on the website of the Court on August 2, 2019 and fleshes out, in more detail, the requirements of the call and expected qualifications to exercise the office.[191]

> *The vacancy announcement was sent to the States parties and it included a request from the President of the Assembly for its dissemination at national levels by relevant professional or institutional channels, in order to reach the widest audience of professionals in criminal justice possible throughout all the regions. The vacancy announcement was also disseminated to other interested parties.*
> Interim report of the Committee on the Election of the Prosecutor, 13 November 2019. Available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-INF4-ENG.pdf

For the first time, nominations will be analyzed by a **Committee on the Election of the Prosecutor**, established by the Bureau of the Assembly of States parties and assisted by a **Panel of Experts.**[192]

CHARACTERISTICS OF THE COMMITTEE ON THE ELECTION OF THE PROSECUTOR/ ICC[193]
COMPOSITION
→ 5 members; → They act independently, on a personal basis, and do not receive instructions from any external source; → There shall be a balanced composition regarding gender and geography, as well as adequate representation of the principal legal systems of the world.
APPOINTMENT
→ The Bureau of the Assembly shall appoint a representative for each regional group (Africa, Oriental Europe, Latin America and the Caribbean, Asia and the Pacific, Occidental Europe, and other States).
WORKING
→ The administrative and technical Secretariat is overseen by the Secretariat of the States parties. → In June 2019, the Committee members were elected. In February 2020, the Committee members met to evaluate the applications and the recommendations of the Panel of Experts. In July 2020, the public interviews with the four final candidates were held.[194]

MAIN FUNCTIONS/MANDATE[195]

- → To facilitate the nomination and election of the Prosecutor, in compliance with the rules of the Rome Statute applicable to procedures for the nomination and election of judges, prosecutors, and deputy prosecutors.[196]
- → To receive applications directly from the candidates for the office of Prosecutor. The procedure, in this stage, is not mediated by States, and nominations or endorsements of individuals by States are discouraged.
- → To review applications in light of the criteria described in the vacancy and undertake competency-based interviews.
- → To create a "shortlist" of the most highly qualified candidates to the office.
- → Where a candidate has the same nationality as a member of the selection committee, or where there are any other grounds, real or perceived, for a conflict of interest, that panel member shall recuse him-/herself from participation in said evaluation.
- → The evaluation shall consider the contribution of each candidate to gender and geographical balance and the representation of the diverse legal systems.
- → To prepare the Final Report specifying, in detail, the grounds on which the shortlisted candidates were selected.
- → In order to ensure TRANSPARENCY, the Committee shall[197]:
    - Regularly brief the Bureau of the Assembly of States parties on its activities and applications received for the office;
    - Inform States parties of all relevant discussions during the process;
    - Provide an Interim Report[198]in advance of the final report.

CHARACTERISTICS OF THE EXPERTS ADVISORY PANEL ON THE ELECTION FOR THE PROSECUTOR/ ICC

COMPOSITION

- → 5 members
- → Extensive experience in criminal investigations, prosecution, and judicial experience at national or international level.
- → There shall be a balanced composition regarding gender and geography, as well as adequate representation of the principal legal systems of the world.

APPOINTMENT

- → The Bureau of the Assembly shall appoint a representative for each regional group. However, the Panel cannot appoint a member of the same nationality as a member of the Selection Committee.
- → States Parties and civil society may submit individuals as candidates.

MAIN FUNCTIONS[199]
→ To recommend a draft vacancy announcement for the office of Prosecutor, including the requirements for the office. → To assist the Committee in analyzing the applications, preparing and undertaking the interviews, and sharing their assessment of the candidates. → Where a candidate has the same nationality as a member of the Panel of Experts, or where there are any other grounds, real or perceived, for a conflict of interest, that panel member shall recuse him-/herself from participation in said evaluation.

C. CARIBBEAN COURT OF JUSTICE

The Caribbean Court of Justice (CCJ) is a regional court that works, on one hand, as a court of last resort and, on the other hand, as an international court with compulsory jurisdiction to resolve matters in relation to the interpretation and application of the Treaty of Chaguaramas.[200]

The Court is currently composed of seven judges.

The essential requirements to be appointed as judge of the CCJ are in articles 4, 10, and 11 of the Agreement establishing the Caribbean Court of Justice:

- At least five years of experience working as judge in the civil or criminal jurisdiction, or at least fifteen years of experience in the teaching of law;
- High moral authority;
- Intellectual and analytical ability;
- Solid criteria/sound judgment;
- Integrity;
- Understanding of people and the society.

The CCJ is an interesting model of analysis and comparison as it has a **Regional Judicial and Legal Services Commission**, which among other tasks, is responsible for the evaluation and nomination of candidates for the office of judge to the CCJ. In compliance with its Code of Ethics, the Regional Judicial Commission shall work in compliance with the principles of integrity, impartiality, equality, prudence, independence, and transparency.[201]

Regional Judicial and Legal Services Commission

CHARACTERISTICS OF THE REGIONAL JUDICIAL AND LEGAL SERVICES COMMISSION/ CCJ
COMPOSITION AND APPOINTMENT[202]
It is composed of: → The President of the CCJ, who shall also act as chairman of the Commission.

- → Two persons nominated jointly by the Organization of the Commonwealth Caribbean Bar Association and the Organization of Eastern Caribbean States Bar Association;
- → The Chairman of the Judicial Services Commission of one of the States parties, appointed in rotation in alphabetical order, for a term of three years;
- → The Chairman of a Public Service Commission of one of the States parties, appointed in rotation, in alphabetical order;
- → Two persons from civil society, nominated after consultations with regional non-governmental organizations, the person exercising as Secretary General of the Community and the Director General of the Organization of Eastern Caribbean States Bar Association;
- → Two distinguished jurists, nominated jointly by the Dean of the Faculty of Law of the University of the West Indies, the Dean of the Faculty of Law of other universities of the contracting parties and the Chairman of the Council of Legal Education;
- → Two persons nominated jointly by the bar associations of the States parties.

TERM DURATION[203]

- → 3 years, with possibility of one re-election.

OPERATIONS

- → The Secretariat of the Commission is overseen by the same Secretariat of the CCJ.[204]
- → In the exercise of their duties, members of the Commission shall neither seek nor receive instructions from any person outside the Commission.[205]
- → The Commission shall have power to regulate its own procedure.[206]

MAIN FUNCTIONS[207]/MANDATE

- → To appoint judges of the Court and exercise disciplinary action over them, except for the president of the Court. Said exception is because the president of the Court also acts as the chairperson of the Commission.
- → Other responsibilities include, for example, appointing CCJ employees, determining salaries and conditions of service.

FUNDING[208]

- → The work of the Commission is funded by State parties in such proportions as agreed by them;
- → The members of the Commission receive pay.

There is not more information on the process of recruiting and appointing judges to the Court because, even though the Regional Judicial Commission publishes annual activity reports[209], these do not include detailed information on said procedures and it is also not available on the official website of the CCJ.

D. INTERNATIONAL COURT OF JUSTICE

The International Court of Justice (ICJ) is the principal judicial body of the United Nations. The ICJ undertakes a dual mission: (1) resolution of disputes between States in compliance with international law and (2) issuing advisory opinions on juridical matters referred by the bodies of the United Nations system that are authorized to do so.

The ICJ is composed of 15 members[210], elected by an absolute majority in the voting of the General Assembly of the United Nations and the Security Council. Voting is conducted simultaneously, but separately.[211] The elected persons exercise their office for a term of nine years and may be re-elected.[212]

The members of the Court are independent judges whose first task, before taking up their duties, is to make a solemn declaration in open court that they will exercise their powers impartially and conscientiously.[213]

The essential requirements to exercise the office of a member of the ICJ are established in article 2 of its Statute:

- Persons of high moral character.
- Possessing the qualifications required for appointment to the highest judicial offices in their respective countries, or jurisconsult of recognized competence in international law.
- Elected with no regard for their nationality. However, no two members may be of the same nationality.

Likewise, it is established that the composition of the ICJ shall represent "the main forms of civilization and of the principal legal systems of the world."[214]

The nomination procedure begins at least three months in advance of the election, with an invitation submitted by the Secretary General of the United Nations.[215]

In comparison with other systems, the nomination and selection process of candidates for Court members is one of the most complex to analyze. This is because **the applicants are not directly set forth by the States parties, but rather act through the National Groups that work within the scope of the Permanent Court of Arbitration.** In the case of countries not represented in the Permanent Court of Arbitration, candidates are appointed by national groups established for that function and under the same parameters as the National Groups of the Permanent Court of Arbitration.

The nominations of the National Groups are submitted to the Secretary General of the United Nations, who prepares a list, in alphabetical order, of all the appointed persons and then submits it to the General Assembly and the Security Council.

National Groups of the Permanent Court of Arbitration

A National Group of the Permanent Court of Arbitration is composed of four persons that States have the right to appoint and shall include:

- recognized competency in questions of international law;
- the highest moral reputation; and,
- willingness to accept the duties of the arbitrators.

In terms of independence and impartiality, it is established that no member of the Court may exercise any political or administrative duty, nor engage in any other occupation of a professional nature. No member of the Court may act as agent, counsel, or advocate in any case. Neither will they be able to participate in any case in which they had previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, a commission of inquiry, or in any other capacity.[216]

The Statute of the ICJ recommends that, before formally nominating a person as candidate, each National Group "consult its highest court of justice, its legal faculties and schools of law, its national academies and national sections of international academies devoted to the study of law."[217]

There is no recent literature providing information on the composition of National Groups and analyzing their working in terms of transparency and independence in putting forward nominations. However, in previous research, some authors have stated that members are generally appointed by the Minister of Foreign Affairs and, in some cases, by the President or First Minister him/herself.[218] Likewise, these researchers recognize that procedures vary from country to country and that, while some have put a greater emphasis on the transparency and independence of National Groups, in others, their composition and working are closely tied to the willingness of the current government.[219]

VII. Final Observations and Recommendations

The Inter-American model of nomination and selection of judges and commissioners to theIACtHR and IACHR possesses unique characteristics. Inter-American legal instruments are silent on the method by which nominations should be executed at a national level and, unlike the other models studied, no evaluation mechanisms have been institutionalized with regard to national nomination or election processes within the OAS. This scenario leads to these nominations procedures being mostly controlled by the States and exempt from the possibility of an official audit by other actors. As described throughout this research, exclusive control by the States have led to procedures that are mainly defined by the criteria of political weight and connections, rather than an assessment of the qualifications and competence of the candidates.

Silence on these regional norms is not the main problem, as there are OAS resolutions[220] providing -non-binding- guidelines for the States on transparency, representation, and participation. There are also, as seen in section IV, a series of international standards that provide valuable parameters for the execution of these procedures. The comparative models studied in section VI provide, likewise, numerous guidelines of good practices with the potential to be applied in the Inter-American system. Finally, as seen in section V, item E, part of the research executed by the four independent expert panels convened thus far, is focused on formulating solid recommendations for the States. However, these resolutions, guides, standards, and recommendations are barely implemented, and the practice of vote-trading continues to dominate the process. Hence, it is evident that the main problem is the lack of political willingness by the States to formalize adequate nomination and selection procedures.

In comparative terms, the model of the Inter-American panels proves to be one of the most valuable because they are absolutely independent and do not rely on governmental entities, they possess a wide mandate, and they may express themselves freely and objectively to evaluate the candidates. Despite this, the panels face two main obstacles: the lack of a permanent funding source for its activities and the extremely limited time-frame as a consequence of the OAS election schedule. This report and, in particular, the annex section, provide a relevant contribution in regards to the systematization of the work of the Inter-American independent panels. It intends to help speed the evaluation times and provide objectivity, predictability, and trust in its exercise.

One of the main recommendations issued by the expert panels in the Inter-American context, is the need to implement formal independent bodies for evaluation at the national level, as well as within the OAS.[221] However, as long as these evaluation bodies continue to be a pending task, the independent expert panels will continue to fulfill a fundamental role to evaluate the qualifications of the candidates, raise awareness of the relevance of the matter, and protect the integrity of the IAHRS bodies.

As a result, the following **specific recommendations** are proposed to improve its future work:

a. **Work on searching for a stable funding source that may allow the panel's work to extend beyond the election periods.** The effectiveness of the panels depends directly on continuous dissemination and advocacy efforts. To improve the impact of the panel's work, it is necessary to prepare dissemination activities and to undertake public forums

with the different stakeholders. This would allow, on one hand, for a wider audience of interested actors to know the relevance of the subject and, on the other hand, to work with the States toward the implementation of the existing standards and recommendations in matters such as transparency, participation, dissemination, representation.

b. **Start the work of the panels prior to the opening of the nomination/election period.** As described in the introduction and annex of this research, the Inter-American independent panels have a very limited amount of time to execute their evaluations (three months).[222] The drafting of the final report ends barely a week before the General Assembly of the OAS where the voting is exercised. In comparative terms with the models reviewed in section VI, the Inter-American panels have one of the longest terms and offer the most limited working time frame. Within the scope of the ECtHR, for example, the Secretary General sends the letter inviting the States to submit the nominations a year in advance of the elections.[223] Within the scope of the ICC, the body in charge of evaluating the nominations has approximately 5 months to do their work.[224] Within the scope of the Inter-American System, the schedule of nominations and elections is designed by the states of the IACHR and IACtHR and, for that reason, a short-term modification to it is not expected. However, if the necessary funding was available, the panels might carry out preparation work and operate beyond the election period to speed their tasks and work on defining criteria, activities, and dates, in advance of the official announcement of the candidates' names.

c. Expanding the group of civil society and academic organizations involved with the Initiative. In order to safeguard the independence necessary for the proper working of the panels, it would be extremely valuable to possess a permanent regional support network composed of organizations and academic institutions in the different countries. This network would enable the receiving of information on advancements and regressions in each of the countries, as well as the dissemination of the work of the independent panels as effectively as possible. Dissemination through these networks would also encourage a more active participation of the organizations in submitting information on each of the candidates.

d. **Continuing to work on defining the evaluation criteria to log the last debates undertaken in comparable agencies and the updates on international standards.** This report contributes directly to this objective. However, to continue producing high-quality independent panels, it is necessary to implement a regular practice of updates on international standards and comparative models. The comparative practice demonstrates similar evaluation criteria to analyze the qualifications of the candidates (i.e., high moral authority, independence, recognized expertise in the fields of human rights or international law, and representation). Even though the panels have formulated their definitions of criteria, the constantly changing dynamics place these definitions in constant revision and, for that reason, it would be extremely valuable to continue enriching the work of future panels with updated research on the use and interpretation of these definitions by the evaluation bodies for the comparable international

commissions, courts, and tribunals. For example, as analyzed in sections V and VI, the requirement of high moral authority is very wide, and its definition offers grounds for diverse interpretations. Within the scope of the ICC, civil society organizations have proposed that this requirement encompass an evaluation on sexual harassment records that might weigh on the candidate.

Analysis of the independence is also susceptible to deeper scrutiny. The bodies of the Inter-American system, as described in section V, possess a design for the exercise of the duties of judges and commissioners in which, part-time dedication, term duration and the possibility for re-election influence the possibility of the candidates' independence. Although these are structural matters with no likelihood of being modified in the short term, it is necessary to reflect on them and analyze other options proposed by the rest of the models of international Courts and Tribunals analyzed in section VI.

The Inter-American panels should review the models and standards in effect and, if applicable, update the definitions of the assessment criteria employed.

e. **Systematizing the work.** The systematization of the panel's work and its coordination with the work of its secretariat is essential to speeding the evaluation times and providing objectivity, predictability, and trust in its work. The Annex of this report offers a practical guide for future panelists, with the objective of adding input in this sense.

In addition to the recommendations for **the stages of national nomination and election to the OAS** formulated by the Inter-American independent panels in their final reports[225], a series of **additional observations for states and civil society** are drawn from the analysis of the comparative models and the information obtained from the interviews undertaken:

f. **Working on representation and diverse composition of the bodies.** To this end, the good practices of some States composing the ECtHR are recognized, specifically stating the need to incorporate women in the lists of candidates, as well as designing calls oriented toward historically marginalized groups (see section VI, item A3). The little historical presence of persons of African descent and the nonexistent presence of indigenous persons are aspects that require active work in the stage of scouting nominations.

g. Likewise, it is important to **think of the diversity of the bodies in terms of professional experience of its members.** Currently, most candidates are drawn from the government sector and, although this does not necessarily negate their independence, it does influence their perception of working with victims and the ways to approach them. Therefore, appointing candidates with experience working within civil society should be encouraged.

h. **Developing, from civil society, specific campaigns against the practice of vote pairing.** It is important to expose the practice of vote pairing for the knowledge of the general public and with the objective of making it harder for States to get away with it. The development of campaigns by the Coalition for the ICC is an interesting model in this regard (see section VI, item B).

ANNEX: Practical Guide for the Independent Expert Panels of the IAHRS

Objectives

This Annex organizes the work, methodology, and activities carried out by the four independent panels, composed of experts and convened for the 2015, 2017, 2018 and 2019 election periods, with the mandate of evaluating the candidates to exercise duties of commissioners and judges of the IACHR and IACtHR, respectively.[226] It is a guide providing a description of practical aspects of and inputs to the work of future panelists. This annex complements the information presented in the body of the paper, so future panelists can access complete information on the nomination and election procedures, the legal instruments, universal and regional standards, practices of other similar panels at global level, and, finally, practical information on the work carried out by the Inter-American panels.

Background

→ In 2013, a public forum with the candidates to the IACHR was held for the first time. The forum was organized by the Permanent Council of the OAS and opened a very valuable space of participation for civil society organizations.[227]

→ In 2015, four new members were elected to the IACHR and three to the Court. Despite this, the public forum was not convened, and this led civil society organizations to convene the first Independent Expert Panel of the region.[228]

→ The 2015 Panel was endorsed by Open Society Justice Initiative, with the support of an extensive group of non-governmental organizations and regional universities.[229] The 2017, 2018, and 2019 Panels were endorsed jointly by the Center for Justice and International Law (CEJIL), Due Process of Law Foundation (DPLF) and Open Society Justice Initiative (OSJI).

Year	IAHRS body to which candidates were nominated
2015	IACHR andIACtHR
2017	IACHR
2018	I/A Court H.R.
2019	IACHR

Panel Independence

The most important characteristic of the expert panels is their independence. It is essential that their members act independently of the organizations endorsing the Initiative. The organizations' support for the Initiative is grounded in a joint commitment of strengthening the IAHRS through the principle of fair and transparent elections.[230] The organizations issuing the call, as well as those complying with it, hold diverse opinions and attitudes in relation to the candidates, the nomination and selection procedures,

and the working of the IAHRS in general. However, such circumstances should not influence the evaluations of the Panel and this has been specifically anticipated since the inception of the Initiative.[231]

The panel members are expected to be independent of the endorsing organizations, the States, and any other body or organization which may have specific interests in the results of the elections. Likewise, Panel members do not receive any economic remuneration for their work.

The panels design their work methodology and evaluation criteria autonomously and based on the Inter-American legal instruments.

Likewise, the panels should ensure that the channels to exchange information with the interested actors (civil society organizations, academic institutions, and candidates) are transparent, participatory, and autonomous. To promote this objective, it is important that the secretariat of the panel is exercised by academic institutions and that these, in turn, centralize the communication between panel members, civil society, and the representatives of the States.

Mandate and objectives of the Panel

Throughout its exercises, the panels have maintained the purpose of improving visibility, transparency, consistency, and legitimacy of the IACHR and the IACtHR.[232] To that end, they have worked under the mandate of evaluating the qualifications of the candidates to the bodies of the IAHRS; identifying the procedures by which such persons are nominated at the national level and formulating recommendations on that matter. Likewise, they have worked with the objective of raising awareness of civil society and the media of the selection procedures, in order to encourage the accountability of the involved States where the expected transparency and participation standards are not followed.[233]

Profile of the panelists

The four panels convened so far (2015, 2017, 2018, and 2019) have been composed of five members each. Some panelists have participated in more than one panel.

The persons composing the panel should possess extensive experience and knowledge on human rights and, in particular, the IAHRS.[234] The Panel members have been recognized professors and researchers in universities; members or directors of organizations, groups or commissions investigating and/or advocating for human rights; or counselors for this type of entities. Many of them are authors of books, articles, or book chapters on human rights, international law, or international criminal law. Only a minority of the experts convened have exercised public offices in the past.[235] The panels should be of the most representative composition possible, in terms of gender, nationalities, and professional experience.

Work Schedule

The design of the work schedule is one of the main challenges of exercising the activities of the panels. It represents a structural challenge as the tasks executed by the panel are unavoidably determined by the work schedule of the OAS.

According to this schedule, the election of candidates is done by secret voting during the ordinary period of sessions of the General Assembly of the OAS. The respective statutes of the IACtHR[236] and the IACHR[237] establish that the Secretary General, six months in advance of the voting, will ask the States to, within a

time frame of ninety days, submit the list of candidates. This formula implies that, from the moment the names of the persons nominated by the States are officially known, up until the definitive judges and commissioners are elected, there is only a period of three months. Considering that voting is done during the ordinary sessions of the General Assembly of the OAS in June, the process of evaluations executed by the panel must unavoidably take place from March to June.

During these three months, the panel must execute all of its activities and submit the final report with the conclusions of its evaluations.

The schedule model followed by the 2019 panel to organize its activities is presented next:

2019 schedule
Submit e-mail to permanent missions informing them of the establishment of the panel and its mission: **March 26, 2019.**
First media report informing the public of the establishment of the Panel: **April 1, 2019.**[238]
E-mail with attached copy of the questionnaire sent to permanent missions with nominated candidates: **April 26, 2019.**
Contact with candidates and questionnaire submission: **between April 9 and 23, 2019.**[239]
Undertaking of interviews with the candidates: **between May 13 and 17,2019**.
Deadline to receive information from the interested actors: **April 26, 2019.**
Public presentations by the candidates to the Permanent Council: **May 21, 2019.**
Public forum convened by civil society organizations in Washington, D.C.: **May 21, 2019.**
Final Report presentation in private events with States: **June 6, 2019.**
Final Report presentation in public event in Washington, D.C.: **June 7, 2019.**
General Assembly of the OAS and voting: **June 26-28, 2019.**

The next panels should define if maintaining a similar schedule or opting to modify it. An alternative that may help speed the work of the panel would be to start its meetings in advance of the official announcement of the candidates' names. This would help getting a jump start on defining the evaluation criteria, the information sources, and the rest of the activities, regardless of who are elected.

Meetings/ Debates

The 2019 panel held regular meetings throughout the entire process of receiving information and undertaking interviews. Once the procedure ended, the panel undertook a debate session and a session for the final sign off of the document.[240]

All panels reached their decisions by consensus.

The first meeting of the panel is fundamental to the definition of the essential work aspects and the activity schedule. As previously stated, this first meeting can be held in advance of the official announcement of the candidates' names. Considering the experience of the previous panels, the first meeting of experts should define the following aspects:

→ Designing the **work schedule**. To this end, the model of the 2019 panel can be used as an orientation guide.

→ Defining the **information sources and criteria used to evaluate the candidates**. To this end, it is suggested to consult the information sources and the criteria formulated further in this annex, which systematize the work of the previous panels.

→ Defining the **questionnaire model for candidates to the IACHR and the IACtHR.** It is suggested to use the models employed by the previous panels as a guide, presented in the following items.

→ Establishing if **interviews with the candidates** will be undertaken and, if so, defining objectives, methods, and dates.

→ Defining the **activities to disseminate the work** of the panel and the **means of communication** with the relevant actors of the process.

→ Defining the **distribution of responsibilities** between the diverse panelists and the secretariat of the panel. The panelists should select between a divided or joint work method. In the first case, determined panelists are assigned an interim evaluation of specific candidates, and then share their conclusions with the rest of the panel and subject them to consideration. In the second case, all the panelists evaluate all the candidates. Likewise, it is important to define who is mainly responsible for writing the evaluations, either the panelists or the members of the secretariat under the supervision of the panelists.

Information Sources

For their evaluations, the panels have considered the following information sources:

a. **Curriculum vitae of the candidates.**
b. **Questionnaires prepared by the Panel.** The panels considered the replies of the candidates to the submitted **questionnaires**.
c. **Interviews with the candidates.** The 2018 and 2019 panels decided to undertake interviews.
d. **Information submitted by civil society and other interested actors.** The 2017, 2018, and 2019 panels invited civil society organizations[241], academic actors and the general public to submit information on the candidates.

The 2019 Panel used a **specific form for information submission**[242] by the civil society organizations and gave an approximate time frame of three weeks for its return. In that form, information on the following aspects was requested:

→ Suitability. In that regard, information on the candidate's background and competence in the field of human rights was requested.

→ Independence and conflict of interests.

→ Non-discrimination. Information on the person's capability to exercise her duty respecting the principle of non-discrimination was requested.

→ The individual's contribution to the balanced composition of the body in terms of gender, representation of different regions, population groups, and juridical systems of the hemisphere, in compliance with the resolutions of the General Assembly of the OAS.[243]

→ Relevant information on the nomination process by which the nomination was decided at national level.

In order to safeguard the transparency and due process of the evaluation procedure, it had been agreed to forward all the information received by the panels on specific nominations to the involved person as to give them the opportunity for a response.

e. **Written statements by the candidates**, whether it be in academic papers, presentations in international panels, expositions or forums, resolutions issued as officers, judicial decisions, information on the candidates' blog posts and/or social media accounts[244] and any other public information that may come from an official source or from the person herself.[245] Outside of these sources, the panels decided not to include generic information obtained from web searchers.

The 2015 Panel specifically clarified that, due to the lack of time and resources to verify the information, it decided not to use specific information coming from news reports or other secondary sources.[246]

f. **Public Presentations by the candidates in the meeting of the Permanent Council of the OAS**. (held on April 30, 2018, May 5, 2017, May 21, 2019). Likewise, the statements of the candidates in the public forum convened for that same day in Washington, D.C. were considered.

In relation to the standards of information verification and source validation, the 2017 and 2018 panels specified that information which could not be validated or verified due to time or resource constraints was not used. [247] The 2019 panel validated the information received by direct communication with the candidates. Likewise, it indicated that where it was necessary to complement or crosscheck the information received, the information available in the press was consulted, but information which could not be verified in public sources and/or validated with the candidate was not used.[248]

Questionnaires

Most of the information used to evaluate the candidates is obtained from their responses to the questionnaires submitted by the Panel. Next, the two last questionnaire models used for each IAHRS body are shown.

a. Questionnaire model used for the 2019 Panel[249] and designed for nominations to the IACHR. The questionnaire covers the following areas:

(I) Background and recognized competence.
1. Professional background.
2. Reasons for wanting to be a commissioner.
3. Areas of knowledge and work experience in the field of human rights.
4. Challenges of the IAHRS and impact on the work of the commissioner in the case of being elected.
5. Measures he/she would take in relation to the procedural delay in matters of individual requests and the difficulty to follow-up on recommendations.
6. Evaluation by the candidate on the Strategic Development Plan 2017/2021.
7. Assessment by the candidate on his/her contribution to the current composition of the IACHR in terms of his/her professional development and the personal characteristics he/she identifies with.
8. Knowledge or work experience with diverse legal systems.
9. History of participation in civil society movements in favor of human rights.

10. Record of exercise as public officer.
11. Proficiency in languages.
12. Request of URLs of his/her most significant writings in the field of human rights, underlining those that identify a critical posture. If applicable, request of information (title, conclusion, or main hypothesis) of the professional thesis to obtain his/her academic degree(s).
13. Request of details on the application of human rights or humanitarian law standards, especially if coming from the ACHR, or the candidate's professional work.
14. Request of record of advocating for the adoption or implementation of treaties or other human rights or humanitarian law instruments.
15. Request of the curriculum vitae.
(II) Conflict of interest, impartiality, non-discrimination, and contribution to the composition of the body.
1. Potential conflicts of interest which might influence the independence and impartiality of the candidate in relation to his/her professional trajectory.
2. Other offices or activities that he/she plans to exercise during his/her term as commissioner.
3. History of sanctions due to inadequate professional behavior.
4. Disagreement or difficulty in conducting himself/herself in his/her role of commissioner without expressing nor condoning bias or prejudice based on reasons such as age, race, beliefs, color, gender, gender identity, sexual orientation, religion, national origin, disability, political opinion, marital status, socioeconomic status, criminal records, alien status or citizenship, or that the persons under his/her responsibility and charge abstain from expressing this type of statements or showing this type of behavior.
(III) Nomination procedures.
1. Information on the nomination procedure and specific characteristics in relation to its format, announcement, and participation of actors of the civil society, academic institutions, and others.

The structure of the questionnaires remained very similar for the four panels. The questionnaire prepared by the 2015 panel had less questions and was not divided in thematic sections. The questionnaire used in 2019 had an additional specific question on professional background in general, record as public officer, in particular, and added the request for the candidate to state specific measures and proposals in dealing with the challenges faced by the IACHR in relation to the follow-up of recommendations.

b. Questionnaire model used for the 2018 Panel[250] designed for nominations for the IACtHR The questionnaire covers the following areas:

(I) Background and recognized competence.
1. Reasons for wanting to be a judge or re-elected, as such.
2. Areas of knowledge or experience in the field of human rights.
3. Challenges of the IAHRS and impact on the work of the commissioner in the case of being elected.
4. Main contributions of the IACtHR in the last years. Jurisprudence elements that he/she considers relevant and aspects which shall be strengthened.
5. Candidate's contribution to the composition of the IACtHR in terms of his/her professional development and personal characteristics.

6. Knowledge or work experience with diverse legal systems. Measures he/she would take in relation to the procedural delay in matters of individual requests and the difficulty to comply with recommendations.
7. History of participation in civil society movements in favor of human rights.
8. Record of exercise as public officer.
9. Proficiency in languages.
10. Request the candidate's URLs of his/her most significant writings in the field of human rights, opinions or (advocacy) in the field of human rights, *amicus curiaes*, statements or particular votes.
11. Request of information on the candidate's professional thesis, if such is related to the international law of human rights, details on its title and conclusion or main hypothesis.
12. Candidate's experience in relation to the concrete application of the ACHR or other international law treaties of human rights or humanitarian law, jointly with the jurisprudence of the IACtHR.
13. Description of record of advocating for the adoption or implementation of human rights or humanitarian law treaties or other instruments.
14. Description of record of advocating for the adoption or implementation of the standards established in theIACtHR jurisprudence.
15. Request of the curriculum vitae.
(II) Conflict of interest, impartiality, and non-discrimination.
1. Potential conflicts of interest which might influence the independence and impartiality of the candidate in relation to his/her professional trajectory.
2. Other offices or activities that he/she plans to exercise during his/her term as judge.
3. Record of sanctions due to inadequate professional behavior or as judge or officer of the State.
4. Consultation with the candidate to ascertain if he/she is in disagreement or finds it difficult to conduct himself/herself in his/her role in relation to the following expectation: "A Judge is expected not to, in his/her behavior or verbally, express nor condone bias or prejudice based on reasons such as age, race, beliefs, color, gender, sexual orientation, religion, national origin, disability, political opinion, marital status, socioeconomic status, criminal records, alien status or citizenship. He/she is also expected to demand of the persons under his/her responsibility and charge to abstain from expressing this type of statements or demonstrating this type of behavior".
(III) Nomination procedure.
1. Information on the nomination procedure and specific characteristics in relation to whether it was a pre-established procedure, with announcement and participation of actors of the civil society, academic institutions, and others.

In comparison with the questionnaire used by the 2015 Panel, the questionnaire used in 2018 was divided into three thematic sections and included more questions. However, unlike the 2019 questionnaire, the 2015 questionnaire, had a specific question on the requirements in place to be appointed for the office of judge of the highest judicial offices of the country of national origin of the candidate.

Interviews

The 2015 and 2017 panels decided not to undertake interviews. In particular, the 2017 panel decided not to undertake them due to lack of time and availability.

The 2018 Panel held interviews with three out of the four candidates[251] and the 2019 Panel agreed to undertake virtual or in-person interviews. The objective of the interviews was to expand on the information collected by the questionnaires. The 2019 panel intended to participate in the interviews of at least two panel members and a member of the secretariat and for these to be recorded and shared with the rest of the panel for their consideration.[252] According to the information provided by the 2019 panel in the evaluation detail, the interviews were held between May 13-17, 2019 and most lasted approximately one hour.[253]

Criteria of Evaluation of the candidates.

Criteria used by the 2015 and 2018 panels for the evaluation of candidates for the office of judge

a. Minimum essential requirements (article 52.1 of the ACHR and 4.1 of the Statute of the IACtHR):

→ Jurists of the highest moral authority;

For the analysis of moral authority, the panels examined the record of sanctions, warnings, or denunciations in the professional exercise that may affect the ethics of the duties of the candidate. Likewise, it was considered if the person has obtained honorable mentions, awards or honors that accredit her high moral authority.[254]

→ With recognized competence in the field of human rights.

→ Meeting the required conditions for the exercise of the highest judicial offices.

b. Incompatibilities. The office is incompatible with other activities that might affect his/her independence or impartiality. (article 71 of the ACHR). Specifically:

→ Being a member or high-rank officer of the Executive Branch; except for those offices which do not place them under direct control, as well as those of diplomatic agents that are not Chiefs of Mission to the OAS or to any of its member States (article 18 of the Statute of the IACtHR);

→ Being an officer of an international body (article 18 of the Statute of the IACtHR);

→ Exercising any other office and activity that prevents the judges from discharging their duties or affecting their independence, impartiality, dignity, or prestige of their office (article 18 of the Statute of the IACtHR).

c. Availability: Judges are at the disposal of the Court and shall travel to its venue or the place where the sessions are conducted (article 16 of the Statute of the IACtHR).

d. Other criteria:

→ Bangalore Principles of Judicial Conduct (2002): defining the values of independence, impartiality, integrity, propriety, equality, competence, and diligence.

To evaluate the competence of the candidates, their knowledge and work experience in the field of human rights in general and, with the Inter-American system specifically, was considered.[255]

Diligence is bound to the requirement of availability and it has been evaluated in relation to the compatibility of the preexisting duties and commitments of the candidate with the responsibilities that he/she shall assume in the case of being elected. Likewise, in this aspect, the panels considered the candidate's record of professional achievements.[256]

→ OAS Resolutions on "Integración equilibrada en género y con representatividad geográfica y de los distintos sistemas jurídicos"[257]: Starting in 2017, the expert panels started to consider the OAS resolutions on balanced composition of the bodies. Said resolutions advocate for a gender-balanced integration with representation of the different regions, population groups, and juridical systems of the hemisphere, ensuring that they comply with the requirements of independence, impartiality and recognized competence in the field of human rights.

e. Additional or complementary qualities

Even though these are not essential, a candidate garnering the following characteristics is considered beneficial to the work of the Court:

→ Ability to work as part of a collegial body;
→ Ability to work in more than one of the official languages;
→ Knowledge of the diverse legal systems of the region;
→ Extensive exposure to the political, cultural, and social environment of the region;
→ Contribution to the composition of theIACtHR, in relation to area of expertise (i.e., children, migrants, women, persons deprived of liberty, among others), gender, professional trajectory (i.e., judicial ambit, public ministry, diplomacy, academics or non-governmental organizations, among others) and other forms of diversity.[258]

Criteria used by the 2015, 2017, and 2019 panels for the evaluation of candidates for the office of commissioner:

a. Minimum essential requirements (article 34 of the ACHR and 2.1 of the Statute of the IACHR):

→ Persons of the highest moral authority;

In order to evaluate moral authority, the 2019 Panel shared previously used criteria related to the analysis of the record of sanctions or complaints, on one hand, and awards and/or honors, on the other hand.[259] In addition to continuing this line, the 2019 Panel associated moral authority with the values of integrity and propriety formulated in the Bangalore Principles.[260] Integrity implies that the member of the body in question shall "ensure that her conduct is above reproach in the view of a reasonable observer".[261] The integrity of the candidate is also linked to public trust in the integrity of the judiciary.[262] Likewise, it is essential for the member of the body in question to exercise with propriety, and appearance of propriety, all her activities.[263]

→ With recognized expertise in the field of human rights;

It is understood that recognized expertise implies having recognized knowledge and experience in the field of human rights, either in the knowledge of Inter-American human rights instruments, handling of

the principal standards issued by the IAHRS bodies, understanding of internal procedures and relationships of the IAHRS with outside actors, and all other working dynamics.[264] Likewise, the 2019 Panel assessed the knowledge of the candidate in relation to the main challenges of the IAHRS, her commitment to the objective and purpose of the ACHR and to the mandate of the IACHR.[265]

b. Incompatibilities: The office is incompatible with the exercise of activities which might affect her independence, impartiality, or the dignity or prestige of her office in the Commission. (article 8.1 of the Statute of the IACHR).

The 2019 Panel stated that to evaluate the independence and impartiality of the candidates, it relied on the responses provided by the candidates in this regard, in information provided by the civil society, and in information available in the online press, where necessary to validate the previous information.[266]

c. Availability: The commissioners shall attend, unless there is due cause, the ordinary and special meetings held by the Commission; engage, unless there is due cause, in the Special Commissions which the Commission agrees to form for the exercise of in situ observations, or to carry out any other of its pertinent duties; maintain confidentiality on all the affairs that the Commission considers confidential; maintain, in the activities of her public and private life, a behavior in line with the high moral authority of her office and the importance of the mission mandated to the Commission (article 9 of the Statute of the IACHR).

d. Other criteria:

→ Bangalore Principles of Judicial Conduct (2002): Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence;

As is the case of candidates for the office of judge, the evaluation panels of candidates for the office of commissioners, interpreted that competence as possessing knowledge and work experience in relation to the IAHRS. In this aspect, the record of professional achievements was assessed as well. To analyze diligence, the panels considered the ability of the candidate to execute her mandate given his/her commitments and responsibilities.[267]

→ Guidelines on the independence and impartiality of members of human right treaty bodies (Addis Ababa guidelines of 2012): The Guidelines establish extremely valuable criteria, to contextualize as well as to define the requirements of independence and impartiality, which the candidates shall garner, as well as recognizing potential conflicts of interest, which may arise. These indicate that independence and impartiality shall not only imply the duty of avoiding bias and real control by other actors, but also avoiding the appearance of lack of independence in the view of a reasonable observer. Likewise, the Guidelines establish that the participation of the members of the bodies in the Executive Branch should be avoided as it may compromise their independence and impartiality.[268]

→ OAS Resolutions on “Integración equilibrada en género y con representatividad geográfica y de los distintos sistemas jurídicos”.

e. Additional or complementary qualities: [269]

→ Ability to work as part of a collegial body;
→ Ability to work in more than one of the official languages;
→ Extensive exposure to and understanding of the political, social, and cultural environment of the region;
→ Contribution of the candidate in relation to her areas of expertise, gender, and other forms of diversity.

The 2019 Panel grouped the evaluation criteria of the candidates in five fundamental pillars summarizing the lists of requirements employed by the previous panels[270]; these are: a. High moral authority, b. recognized expertise in human rights, c. Independence, impartiality and conflict of interest, d. contribution to the representative and balanced integration of the body, and d. nomination procedures at national level.

f. Nomination procedures at national level:

The panels have considered that the legitimacy of the candidates grows from transparent and participative nomination procedures, designed with the objective of selecting the best out of the possible profiles. This type of procedure would ensure the nomination of candidates with the highest levels of independence, impartiality, knowledge, and experience.[271] However, the panels have concluded that non-compliance of the States with procedures of these characteristics does not invalidate the candidate directly.[272]

Activities related to the dissemination of the work of the Panel. Communication with stakeholders.

The dissemination activities are an essential element of the work of the panel, as these make the execution of its activities known and invite different actors to communicate and participate through the channels enabled for that end.

The panels have issued **press releases** to inform the public about their establishment, mission, and members.[273] Likewise, they have communicated their activities through their website and social networks, managed by its Secretariat.

To establish **communication with the permanent missions to the OAS**, the 2019 Panel submitted an email informing them about the establishment of the panel and its mission. Subsequently, a second communication was sent asking about the procedures of candidate nominations at national level and attaching a copy of the questionnaire to the permanent missions that nominated candidates.[274] Finally, the Panel held a closed event with the representatives of the permanent missions presenting the report for the first time.

Communication with the candidates was conducted based on the contact information provided by the permanent missions. The 2019 panel maintained targeted communications with the evaluated persons with the objective of sending them the evaluation questionnaires and scheduling virtual or personal interviews to expand on the information received in the questionnaires.[275]

Likewise, notifications were sent to **civil society organizations, academia and other interested actors,** inviting them to take part in the procedure by sending any information involving the candidates. The deadline established for the submission of that information was three weeks. The channel selected for information submission was by e-mail.

Final Report

The final report presents the execution of the work of the panel and is written by the secretariat of the panel, under the supervision of the panel members.

Throughout its four iterations, the panels have maintained a similar structure in their reports. All of them present the work methodology used by the panel, the evaluation criteria, the information sources, a section with the individualized evaluation of each candidate, and another dedicated to offering recommendations, both specific to the present elections, as well as general for future nomination and election procedures. The reports also include annexes with the biographies of the panel members, the questionnaire model, and the list of organizations supporting the work of the panel.

The section on the evaluation of the candidates is the essential part of the report. In it, the nominations are introduced one by one and the degree to which the person meets each of the established requirements is analyzed, based on the information sources employed. The 2019 Panel structured its evaluations under the following titles:

- **a.** Panel Procedures (information of when the evaluated person was contacted, date when she answered the questionnaire, date and duration of the interview, and details of the information received, either in favor or against the nomination);
- **b.** High moral authority (record of sanctions, warnings, undue professional conduct or awards and honors);
- **c.** Recognized expertise in the field of human rights (academic background and professional history, knowledge of the challenges of the IAHRS and proceedings and other relevant abilities);
- **d.** Independence, impartiality, and conflict of interests;
- **e.** Contribution to the representation and balanced integration of the Panel;
- **f.** Nomination procedure at national level:
- **g.** Conclusion (information on if the panel considers that the candidate meets the requirements for the office or not, analyzing her potential contribution to the work of the body and her contribution to the balanced and representative integration. It also underlines any aspects of the nomination that raise doubts on her qualifications and ability to perform her duties.

The 2019 Panel presented the results of the final report in a private event in Washington D.C. on June 6 in the presence of the Permanent Representatives of the States to the OAS, representatives of the endorsing organizations, and representatives of the secretariat of the panel. On June 7, 2019, a public presentation of the report was held on the premises of American University Washington College of Law.[276]

End Notes

[1] See, for example, Center for Justice and International Law (CEJIL), *Aportes para el proceso de selección de miembros de la Comisión y Corte Interamericanas de Derechos Humanos* [Inputs to the selection process of committee members of the Inter-American Commission and Court of Human Rights], 2005, p.9; Katya Salazar and Naomi Roht-Arriaza, *Democracia y Transparencia en el SIDH: una experiencia en marcha* [Democracy and Transparency in the IAHRS: an experience in progress]. Revista Direito y Praxis, Vol. 08, N.2, 2017, pp. 1652-1681, p. 1655, ISSN-2179-8966, Spanish version available at: https://www.redalyc.org/pdf/3509/350951354024.pdf (consultation date 29 May 2020).

[2] See Coalition for the International Criminal Court. Campaign on ICC Elections: https://www.coalitionfortheicc.org/icc-election-2020-subpage

[3] Rhodes Resolution of the *Institut de Droit International* on the position of the international judge. Institute of International Law. Session of Rhodes, 09 September 2011, article 1.6, available at: https://www.idi-iil.org/app/uploads/2017/06/2011_rhodes_06_en.pdf

[4] Final Report of the 2015 Independent Panel, p.44, available at: https://www.justiceinitiative.org/uploads/34b476e4-dd7b-431e-acd4-e25fbff100cc/iachr-panel-report-eng-20150603.pdf

[5] See GA/RES. 2120 (XXXV-O/05) of 07 June 2005, GA/RES. 2166 (XXXVI-O/06), of 06 June 2006, GA/RES. 2887 (XLVI-O/16), of 14 June 2016, GA/RES. 2908 (XLVII-O/17) of 21 June 2017, and GA/RES. 2928 (XLVIII-O/18), 05 June 2018.

[6] The final reports of each panel are available at: https://www.justiceinitiative.org/uploads/34b476e4-dd7b-431e-acd4-e25fbff100cc/iachr-panel-report-eng-20150603.pdf (2015 Panel)
http://www.dplf.org/sites/default/files/iachr_panel_2017_final_report_eng_0.pdf (2017 Panel)
https://www.wcl.american.edu/impact/initiatives-programs/center/documents/independent-panel-final-report-2018/ (2018 Panel)
https://www.wcl.american.edu/impact/initiatives-programs/center/documents/2019-informe-del-panel-independiente-de-expertos/ (Spanish version of the 2019 Panel).

[7] See GA/RES. 2120 (XXXV-O/05) of 07 June 2005, GA/RES. 2166 (XXXVI-O/06), of 06 June 2006, GA/RES. 2887 (XLVI-O/16), of 14 June 2016, GA/RES. 2908 (XLVII-O/17) of 21 June 2017, and GA/RES. 2928 (XLVIII-O/18), 05 June 2018.

[8] Procedure for the election of judges to the European Court of Human Rights. Memorandum prepared by the Secretary General of the Parliamentary Assembly. SG-AS (2019) 05, 15 April 2019, para. 4, available at: http://www.assembly.coe.int/LifeRay/CDH/Pdf/ProcedureElectionJudges-EN.pdf

[9] Amended by Resolution ICC-ASP/3/Res.6 in relation to the procedure for the nomination and election of judges, Resolution ICC-ASP/12/Res.8, available at: https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP12/ICC-ASP-12-Res8-ENG.pdf

[10] For more detail on this discussion within the ambit of the Inter-American System of Human Rights, consult Camila Barreto Maia et al. *Desafíos del sistema interamericano de derechos humanos. Nuevos tiempos, viejos retos* [Challenges of the Inter-American System of Human Rights. New Times, Old Challenges], Dejusticia, Bogotá, 2015, Introduction, pp. 11-19.

[11] For more details on the development of the IAHRS strengthening processes, consult the website of the Organization of American States (OAS). Permanent Council. "Process to Reflect on the Workings of the IACHR with a View to Strengthening the IAHRS", available at http://www.oas.org/en/iachr/mandate/strengthening.asp and Center for Justice and International Law (CEJIL), *"Los Debates sobre el rol de la Comisión Interamericana de Derechos Humanos en Democracia. Memoria Histórica del Proceso de Reflexión del Sistema Interamericano de Derechos Humanos 2011/2014*" [Debate on the Role of the Inter-American Commission on Human Rights in Democracy. Historical Memory on the Reflection Process of the Inter-American System of Human Rights 2011/2014], Buenos

Aires, 2014, Spanish version available at: https://www.cejil.org/sites/default/files/legacy_files/Documento%20de%20Coyuntura%20N%C2%BA%209%20con%20fotos%20color.pdf

[12] These aspects are fully-fledged in Burgorgue-Larsen, Laurence. *Between Idealism and Realism: A Few Comparative Reflections and Proposals on the Appointment Process of the Inter-American Commission and Court of Human Rights Members*, Notre Dame Journal of International & Comparative Law: Vol. 5, 2015, p. 31, available at: http://scholarship.law.nd.edu/ndjicl/vol5/iss1/3

[13] *Supra* note 6.

[14] See the Statute of the IACtHR, articles 7, 8 and 9 and Statute of the IACHR, articles 3, 4 and 5.

[15] On the European regional system see article 22 of the ECHR, available at https://www.echr.coe.int/documents/convention_spa.pdf. On the African regional system see articles 12, 13 and 14 of the Protocol to the African Charter on Human & Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights, available at https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_e.pdf

[16] Statute of the IACtHR, article 8. Statute of the IACHR, article 4.

[17] Final Report of the 2019 Panel, *supra* note 6, p. 5.

[18] The questionnaire model can be consulted in the Final Report of the 2015 Panel, *supra* note 6, Annexes I and II.

[19] The 2017 Panel did not undertake interviews with the candidates due to lack of time and availability. See the Final Report of the 2017 Panel, *supra* note 6, p. 6. The 2018 Panel undertook interviews with three of the four candidates. See Final Report of the 2018 Panel, p.11.

[20] The 2015 Panel decided not to use specific information on the candidates that came from press reports or other second-hand sources, see the Final Report of the 2015 Panel, *supra* note 6, p. 5.

[21] Final Report of the 2017 Panel, *supra* note 6, p. 3.

[22] Final Report of the 2015 Panel, *supra* note 6, pp. 3-5.

[23] GA/RES. 2887 (XLVI-O/16), of 14 June 2016, p.13, available at https://www.oas.org/en/sla/dil/docs/AG-RES_2887_XLVI-O-16.pdf (last visit 26 May 2020).

[24] Shimon Shetreet, *The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National and International Jurisprudence and Contemporary Practical and Conceptual Challenges*, Chicago Journal of International Law. Vol. 10. No. 1. Article 13, 2009, pp. 275, 277 and 298, available at https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1308&context=cjil

[25] See Value 4 of the Bangalore Principles of Judicial Conduct, adopted at the Round Table Meeting of Chief Justices held at The Hague (Judicial Group on Strengthening Judicial Integrity), 2002, and annex to resolution 2006/23 of the ECOSOC.

[26] Basic Principles on the Independence of the Judiciary of the United Nations, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 06 September 1985 and endorsed by the General Assembly in their resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, available at https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx

[27] *Ibid*., Principle 1.

[28] *Ibid*., Principle 2.

[29] *Ibid*., Principle 10.

[30] *Ibid*., Principle 13.

[31] Bangalore Principles of Judicial Conduct, 2002, *supra* note 25.

[32] Commentary on the Bangalore Principles of judicial conduct. United Nations Office on Drugs and Crime. 2013, p. 2, available at: https://www.unodc.org/res/ji/resdb/data/220/2007/commentary_on_the_bangalore_principles_of_judicial_conduct_html/Bangalore_principles_English.pdf

[33] For a detailed description on the process of developing the code and the consulted source material, consult the Commentary on the Bangalore Principles of judicial conduct, *ibid*., p. 3.

[34] Bangalore Principles, *supra* note 25, para. 1.1.
[35] *Ibid.,* para. 1.2.
[36] *Ibid.,* para. 1.4.
[37] *Ibid.,* para. 1.3.
[38] *Ibid.,* para. 1.6.
[39] *Ibid.,* para. 2.1.
[40] *Ibid.,* para. 2.4.
[41] *Ibid.,* para. 2.5.
[42] *Ibid.,* para. 3.1.
[43] *Ibid.,* para. 3.2.
[44] *Ibid.,* para. 4.3.
[45] *Ibid.,* para. 4.4.
[46] *Ibid.,* para. 4.8.
[47] *Ibid.,* para. 4.9.
[48] *Ibid.,* para. 4.10.
[49] *Ibid.,* paras. 5.1 and 5.2.
[50] *Ibid.,* para. 6.3.
[51] *Ibid.,* para. 6.4.
[52] Burgh House Principles on the International Judiciary, adopted by the Study Group of the International Law Association on the Practice and Procedure of International Courts and Tribunals, in association with the Project on International Courts and Tribunals (2004), available at: https://www.ucl.ac.uk/international-courts/sites/international-courts/files/burgh_final_21204.pdf
[53] To consult the list of participating experts, see Burgh House Principles, *ibid*., pp. 6 and 7.
[54] Petrova Georgieva, Virginia. *El Principio Nemo Iudex in causa sua ante los tribunales internacionales. Un estado de la cuestión* [The Nemo Judex in Causa Sua Principle to the international courts. A state of affairs], in Revista Tribuna Universal, Vol. 4. No. 7, Faculty of Law, Universidad de Chile, 2015, p.135, Spanish version available at: https://tribunainternacional.uchile.cl/index.php/RTI/article/view/36983/38561
[55] Burgh House Principles, *supra* note 52, principle 1.1.
[56] *Ibid*., principle 2.1.
[57] *Ibid*., principle 2.2.
[58] *Ibid*., principle 2.3.
[59] *Ibid*., principle 2.4.
[60] Institute of International Law. Session of Rhodes, 09 September 2011, article 1.6, available at: https://www.idi-iil.org/app/uploads/2017/06/2011_rhodes_06_en.pdf
[61] The list of founding members and the history of the *Institut* are available at their official website available at: https://www.idi-iil.org/en/histoire/
[62] Rhodes Resolution, *supra* note 60, Preamble.
[63] *Ibid*., article 1.1.
[64] *Ibid*.
[65] *Ibid*., article 1.6.
[66] *Ibid*., article 2.
[67] *Ibid*., article 3.2.
[68] Guidelines on the independence and impartiality of members of the human rights treaty bodies ("Addis Ababa guidelines"), UN. Doc. A/67/222 [Guidelines], available at: https://www.ohchr.org/Documents/HRBodies/TB/AnnualMeeting/AddisAbebaGuidelines_en.doc
[69] Handbook for human rights treaty body members. United Nations, 2015, p.35, available at: https://www.ohchr.org/Documents/Publications/HR_PUB_15_2_TB%20Handbook_EN.pdf
[70] Addis Ababa Guidelines, *supra* note 68, para. 1.
[71] *Ibid.,* para. 3.
[72] *Ibid.,* para. 5.

[73] *Ibid.,* para. 7.
[74] *Ibid.,* para. 12.
[75] *Ibid.,* para. 14.
[76] See the Final Report of the 2019 Panel, p.9.
[77] African Court on Human and Peoples' Rights, see the Protocol to the African Charter on Human & People's Rights on the establishment of an African Court on Human and Peoples' Rights, articles 11, 17 and 18, available at: https://au.int/sites/default/files/treaties/36393-treaty-0019_-_protocol_to_the_african_charter_on_human_and_peoplesrights_on_the_establishment_of_an_african_court_on_human_and_peoples_rights_e.pdf. European Court of Human Rights, see article 21 of the ECHR.
[78] International Criminal Court, Rome Statute, article 36.6. Statute of the International Court of Justice, articles 2, 16 and 17.
[79] Burgh House Principles, principle 2.2 and Rhodes Resolution, article 1.1.
[80] GA/RES. 2887 (XLVI-O/16), of 14 June 2016, GA/RES. 2908 (XLVII-O/17) of 21 June 2017 and GA/RES. 2928 (XLVIII-O/18), 05 June 2018.
[81] Basic principles on the Independence of the Judiciary of the United Nations, *supra* note 26, principle 10; Burgh House Principles, *supra* note 52, principles 2.2, 2.3, 2.4; Rhodes Resolution, *supra* note 60, article 1.1.
[82] Final Report of the 2018 Panel, *supra* note 6, p. 9.
[83] See the complete evaluation of the candidate in the Final Report of the 2015 Panel, p. 25.
[84] See the complete evaluation of the candidate in the Final Report of the 2015 Panel, p. 33.
[85] International Bar Association, *Us Too? Bullying and Sexual Harassment in the Legal Profession,* 2019, p.8, available at https://www.ibanet.org/bullying-and-sexual-harassment.aspx
[86] See https://www.ijmonitor.org/2020/02/open-letter-to-committee-on-the-election-of-the-icc-prosecutor-zero-tolerance-must-be-shown-towards-sexual-harassment/, also see https://www.ijmonitor.org/2019/11/electing-the-next-icc-prosecutor-assessing-sexual-misconduct-as-part-of-the-high-moral-character-requirement/
[87] Advisory Panel of Experts of Candidates for Election as Judge to the European Court of Human Rights. Fourth activity Report, 31 July 2019, para. 40, available at: https://rm.coe.int/4th-activity-report-en/168097a742
[88] Final Report of the 2017 Panel, p. 6.
[89] Final Report of the 2017 Panel, p. 6.
[90] Final Report of the 2019 Panel, p. 13.
[91] See detail in section IV of this report on International Standards.
[92] Dictionnaire de droit international public [Dictionary of Public International Law], pp. 562, 570–72, Jean Salmon ed., 2001.
[93] See Section III of this report on "General characteristics of the nomination and election processes of candidates for the Inter-American System and of the working of the Independent Panels of the Inter-American System".
[94] Statute of the IACHR, article 8.1 and Statute of the IACtHR, article 8.
[95] See Final Report of the 2019 Panel, pp. 10 and 11.
[96] Final Report of the 2015 Panel, p. 6.
[97] Final Report of the 2015 Panel, p. 20.
[98] Chester Brown, *The Evolution and Application of Rules Concerning Independence of the International Judiciary*, Law and Practice of International Courts and Tribunals 2, No. 1, April 2003, 63-96, p. 65.
[99] Statute of the IACtHR, article 16.
[100] See Héctor Fáundez Ledesma, *El Sistema Interamericano de Protección de los Derechos Humanos. Aspectos Institucionales y Procesales* [The Inter-American System for the Protection of Human Rights. Institutional and Procedural Aspects]*,* Inter-American Institute of Human Rights, 2004, pp. 200 and 201, Spanish version available at: http://www.oda-alc.org/documentos/1374531644.pdf. See also Judith Schönsteiner*, Alternative appointment procedures for the commissioners and judges in the Inter-American System of Human Rights,* Revista IIDH, No 46, 2007, p. 201.
[101] Statute of the IACtHR, article 5.1.
[102] Statute of the IACHR, article 6.

[103] Dinah Shelton, *Legal Norms to Promote the Independence and Accountability of International Tribunals*, Law and Practice of International Courts and Tribunals, 2, No. 1, 2003, 27-62, p. 38.
[104] See article 2.
[105] Rome Statute, article 39.9 a).
[106] ECHR, article 23.
[107] The ICC establishes that the composition of judges in regards to principal juridical systems of the world, an equitable geographical distribution, and a balance between men and women (article 36. 8. A of the Rome Statute). In the case of the AfCHPR, it is stipulated that, in the process of nomination, appropriate gender representation should be considered (article 12.2 of the Protocol to the African Charter on human & peoples' rights on the establishment of an African Court on human and peoples' rights). In the case of the ECtHR, the text of the ECHR does not require a gender-balanced composition. However, per resolution of the Parliamentary Assembly, it is requested that the list of candidates submitted by the States includes, at least, one person of each sex (Resolution 1366 of 2004, modified by resolutions 1426 of 2005, 1627 of 2008 and 1841 of 2011). Likewise, the Committee of Ministers advises the State to take steps to encourage the interest of individuals belonging to ethnic minorities, or other minorities which have historically provided less candidates (Resolution of the Committee of Ministers CM (2012)40 of 29 March 2012, para. 42.
[108] GA/RES. 2887 (XLVI-O/16) of 14 June 2016 and GA/RES. 2908 (XLVII-O/17) of 21 June 2017.
[109] See Alejandra Vicente, CEJIL, *Por una representación adecuada en la Comisión Interamericana de Derechos Humanos* [For suitable representation in the Inter-American Commission on Human Rights], 02 June 2017, available at https://www.cejil.org/en/suitable-representation-inter-american-commission-human-rights.
[110] Final Report of the 2019 Panel, p. 16.
[111] See, for example, Open Society Justice Initiative and International Commission of Jurists, *Fortaleciendo desde adentro: Marco legal y práctica en la selección de Jueces/zas y Comisionados/as de Derechos Humanos*[Strengthening from within: Law and practice in the selection of Human Rights Judges and Commissioners], 2017, available at https://www.justiceinitiative.org/uploads/aa5f4a53-85aa-4863-990c-1fc5609635ed/strengthening-from-within-20171102_0.pdf; see also CEJIL, *Aportes para la reflexión sobre posibles reformas al funcionamiento de la Comisión Interamericana y la Corte Interamericana de Derechos Humanos* [Contributions to the debate on possible reforms to the function of the Inter-American Commission and Court of Human Rights], No. 5, 2008, Spanish version available at https://www.cejil.org/sites/default/files/legacy_files/Documento_5_sp_0.pdf (last visit 28 May 2020); Katya Salazar and Naomi Roht-Arriaza, *Democracia y Transparencia en el SIDH: una experiencia en marcha, supra* note 1.
[112] Open Society Justice Initiative and International Commission of Jurists, *Fortaleciendo desde adentro: Marco legal y práctica en la selección de Jueces/zas y Comisionados/as de Derechos Humanos*, *ibid*., p. 83
[113] See Open Society Justice Initiative and International Commission of Jurists, *Fortaleciendo desde adentro: Marco legal y práctica en la selección de Jueces/zas y Comisionados/as de Derechos Humanos, supra note 111*, p. 15, CEJIL, *Aportes para la reflexión sobre posibles reformas al funcionamiento de la Comisión Interamericana y la Corte Interamericana de Derechos Humanos*, supra note 111, p. 18 and Katya Salazar and Naomi Roht-Arriaza, *Democracia y Transparencia en el SIDH: una experiencia en marcha.* Revista Direito y Praxis, *supra* note 111, p. 1655.
[114] Center for Justice and International Law, *Aportes para el proceso de selección de miembros de la Comisión y Corte Interamericanas de Derechos Humanos,* 2005, p. 14, Spanish version available at https://www.cejil.org/sites/default/files/legacy_files/Documento_1_sp_0.pdf
[115] Final Report of the 2019 Panel, p. 15.
[116] *Open Society Justice Initiative* and International Commission of Jurists, *Fortaleciendo desde adentro:* Marco legal y práctica en la selección de Jueces/zas y Comisionados/as de Derechos Humanos, *supra* note 111, p. 17.
[117] See Katya Salazar and Naomi Roht-Arriaza, *Democracia y Transparencia en el SIDH: una experiencia en marcha.* Revista Direito y Praxis, *supra* note 1.
[118] ECHR, article 23.
[119] European Convention on Human Rights, adopted by the Council of Europe on 04 November 1950. Effective date 03 September 1953. Complete text available at: https://www.echr.coe.int/documents/convention_eng.pdf
[120] ECHR, Art. 21.1.

[121] ECHR, Art. 21.3.
[122] Procedure for the election of judges to the European Court of Human Rights. Memorandum prepared by the Secretary General of the Parliamentary Assembly. SG-AS (2019) 05, *supra* note 8, para.4.
[123] CM Resolution/Res (2010)26, adopted by the Committee of Ministers of the Council of Europe on 10 November 2010, available at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805cdf91
[124] CM Resolution/Res(2010)26, article 2.
[125] CM Resolution/Res(2010)26, article 3.
[126] CM Resolution/Res(2010)26, article 3.
[127] CM Resolution/Res(2010)26, article 4.
[128] The Parliamentary Assembly has outlined a standard curriculum vitae model which will be requested of the candidates. Model available at: http://assembly.coe.int/CommitteeDocs/2009/ModelCVEN.doc
[129] SG-AS (2019) 05, 15 April 2019, *supra* note 8, para. 5.
[130] CM Resolution/Res(2010)26, article 5.
[131] CM Resolution/Res(2010)26, article 6.
[132] SG-AS (2019) 05, 15 April 2019, *supra* note 8, para. 14.
[133] SG-AS (2019) 05, 15 April 2019, *supra* note 8, paras. 13 and 21.
[134] SG-AS (2019) 05, 15 April 2019, *supra* note 8, para. 17.
[135] SG-AS (2019) 05, 15 April 2019, *supra* note 8, para. 18.
[136] SG-AS (2019) 05, 15 April 2019, *supra* note 8, para. 25.
[137] See Guidelines of the Committee of Ministers CM(2012)40 on the selection of candidates for judges of the European Court of Human Rights, adopted on 28 March 2012. Complete text available at: *https://rm.coe.int/16805cb1ac#_ftn1*. See also Explanatory Memorandum of the CM(2012)40, complete text available at: https://www.coe.int/t/dgi/brighton-conference/documents/Guidelines-explan-selection-candidates-judges_en.pdf
[138] Explanatory Memorandum CM (2012) 40, *ibid*.
[139] *Ibid.,* para. 21.
[140] *Ibid.,* para. 23.
[141] Interlaken Declaration, 19 February 2020, see section E, item 8, available at: https://www.echr.coe.int/Documents/2010_Interlaken_FinalDeclaration_ENG.pdf
[142] Resolution of the Parliamentary Assembly 1366(2004).
[143] See the list in Explanatory Memorandum, *supra* note, 137, para. 26.
[144] ECHR, article 21.3
[145] Resolutions of the Parliamentary Assembly 1649(2004), 1426(2005), 1627(2008) and 1841(2011) and Advisory Opinion of the European Court of Human Rights on the lists of candidates submitted with a view to the election of judges, 12 February 2008.
[146] Explanatory Memorandum, *supra* note, 137 para. 36.
[147] *Ibid*.
[148] *Ibid.,* para. 42.
[149] *Ibid.,* paras. 37 to 47 and SG-AS (2019) 05, *supra* note 8, para 7
[150] Explanatory Memorandum, *supra* note, 137 para. 37.
[151] *Ibid.,* para. 38.
[152] *Ibid.,* para. 38.
[153] Open Society Justice Initiative and International Commission of Jurists, "Fortaleciendo desde Dentro: Marco legal y práctica en la selección de Jueces/zas y Comisionados/as de Derechos Humanos", *supra* note 111, p. 58.
[154] Explanatory Memorandum, *supra* note, 137 para. 40.
[155] *Ibid*., paras. 46 and 47.
[156] *Ibid*., para. 48.
[157] *Ibid.,* para. 50.
[158] Finland, Lithuania and Poland.

[159] Croatia, Cyprus, Czech Republic, Estonia, Finland, Greece, Lithuania, Republic of Moldova, Poland, Russia, Sweden, Republic of Macedonia and Ukraine.
[160] Cyprus, Czech Republic, Estonia, Finland, Greece, Lithuania, Republic of Moldova, Poland, Russia, Serbia, Sweden, Republic of Macedonia and Ukraine.
[161] Finland, Ireland, Republic of Moldova, Norway and Portugal.
[162] Belgium, Czech Republic, Republic of Moldova, Poland, Russia.
[163] Belgium, Lithuania, Croatia, Switzerland, Republic of Macedonia and Ukraine.
[164] Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, Greece, Lithuania, Republic of Moldova, Netherlands, Norway, Portugal, Romania, Slovakia, Switzerland, Republic of Macedonia and Ukraine.
[165] Croatia, Finland, Republic of Moldova, Netherlands and Russia.
[166] Czech Republic, Estonia, Norway and Ukraine.
[167] Czech Republic, Finland, Ireland, Republic of Moldova, Norway, Portugal, Russia.
[168] Republic of Moldova, Russia and Ukraine.
[169] Rome Statute, article 5.1.
[170] *Ibid*., article 13.
[171] *Ibid*., article 36. 9 a).
[172] Procedure for the nomination and election of judges of the International Criminal Court, Resolution ICC-ASP/3/Res.6, available at: https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-ASP3-Res-06-ENG.pdf
[173] Resolution ICC-ASP/12/Res.8, *supra* note 9.
[174] Rome Statute, article 36.4(b).
[175] Rome Statute, article 36.4.
[176] Resolution ICC-ASP/3/Res.6, *supra* note 172.
[177] Rome Statute, article 36.6 (a).
[178] The founding members include Amnesty International, Pro-Human Rights Association, the International Federation for Human Rights, Human Rights First, Human Rights Watch, No Peace Without Justice, Parliamentarians for Global Action and Women's Initiatives for Gender Justice, see the official website of the Coalition for the ICC at: http://www.coalitionfortheicc.org/
[179] *Coalition for the International Criminal Court*, website http://iccnow.org/?mod=electionjudges
[180] Strengthening the International Criminal Court and the Assembly of States parties, Resolution ICC-ASP/10/Res.5 of 21 December 2011, para. 19, available at: https://asp.icc-cpi.int/iccdocs/asp_docs/asp10/resolutions/icc-asp-10-res.5-eng.pdf
[181] Report of the Bureau on the Establishment of an Advisory Committee on nominations of judges of the International Criminal Court, 20 November 2011, ICC-ASP/10/31. See Annex item a.3, available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-36-ENG.pdf
[182] *Ibid.*, annex a.2.
[183] *Ibid.*, annex a.1.
[184] *Ibid*, annex a.1.
[185] *Ibid.*, annex a.1.
[186] *Ibid*., annex b.6.
[187] *Open Society Justice Initiative*, "Raising the Bar: Improving the Nomination and Election of Judges to the International Criminal Court", 2019, p. 44, available at https://www.justiceinitiative.org/publications/raising-the-bar-improving-the-nomination-and-election-of-judges-to-the-international-criminal-court
[188] Annex of the Advisory Committee Report, *supra* note 181, items B and C.
[189] The Panel videos and the questionnaire models are available at the website of the Coalition for the ICC, see: http://www.coalitionfortheicc.org/webcast-ICC-judicial-elections-panel-2017 (last visit 03 June 2020).
[190] Rome Statute, article 42.3.
[191]The announcement is available at: http://www.coalitionfortheicc.org/sites/default/files/cicc_documents/ICC%20CEP%20Prosecutor%20VA%202Aug2019.1500bis%20ENG.PDF

[192] See announcement at https://www.coalitionfortheicc.org/icc-prosecutor-elections-2020
[193] Document of the Bureau of the Assembly of States parties. Election of the Prosecutor. Reference terms, 11 April 2019, available at: https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-INF2-ENG-11Apr19-1600.pdf
[194] Official ICC website: https://asp.icc-cpi.int/en_menus/asp/elections/prosecutor/Pages/Prosecutor2020.aspx
[195] ICC. Election of the Prosecutor. Reference terms, *supra* note 193, section IV.
[196] See specifically article 42 of the Rome Statute and Resolution ICC-ASP/1/Res.2, adopted by the Assembly of States parties on 09 September 2002, available at: https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-ASP1-Res-02-ENG.pdf (last visit 04 June 2020).
[197] ICC. Election of the Prosecutor. Reference terms, *supra* note 193, section V.
[198] Interim report of the Committee on the Election of the Prosecutor, 13 November 2019, available at: *https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-INF4-ENG.pdf*
[199] ICC. Election of the Prosecutor. Reference terms, *supra* note 193, section IV.
[200] Official Caribbean Court of Justice website: https://www.ccj.org/about-the-ccj/
[201] Regional Judicial and Legal Services Commission of the Caribbean Court of Justice. Code of Ethics available at: https://ccj.org/wp-content/uploads/2019/07/Code-of-Ethics.pdf
[202] Agreement establishing the Caribbean Court of Justice, article V, available at: https://ccj.org/wp-content/uploads/2011/09/ccj_agreement.pdf
[203] *Ibid*., article V 4.
[204] *Ibid*., article V 11.
[205] *Ibid*., article V 12.
[206] *Ibid*., article V 14
[207] *Ibid*., article V 3
[208] *Ibid*., article XXVIII 1 and 4
[209] Regional Judicial and Legal Services Commission of the Caribbean Court of Justice. Annual reports available at: https://www.ccj.org/rjlsc-annual-reports/
[210] Statute of the ICJ, article 3(1), available at: https://www.icj-cij.org/en/statute
[211] *Ibid*., article 4.
[212] *Ibid*, article 13(1).
[213] *Ibid*., article 20.
[214] *Ibid*., article 9.
[215] *Ibid*., article 5.
[216] Statute of the ICJ, *supra* note 210, articles 16 and 17.
[217] *Ibid*., article 6.
[218] Philippe Sands et al, Selecting International Judges: Principle, Process, and Politics, 2010, p. 69.
[219] *Ibid*, p. 64.
[220] See GA/RES. 2120 (XXXV-O/05) of 07 June 2005, GA/RES. 2166 (XXXVI-O/06), of 06 June 2006, GA/RES. 2887 (XLVI-O/16), of 14 June 2016, GA/RES. 2908 (XLVII-O/17) of 21 June 2017, and GA/RES. 2928 (XLVIII-O/18), 05 June 2018.
[221] See, for example, Final Report of the 2019 Panel, pp. 75 and 79.
[222] See the Statute of the IACtHR, articles 8.1 and Statute of the IACHR, article 4.1.
[223] SG-AS (2019) 05, *supra* note 8, para.4.
[224] Resolution ICC-ASP/12/Res.8, *supra* note 9.
[225] Said recommendations are summarized in section V, item E of this paper.
[226] Final reports of the four panels available at: https://www.wcl.american.edu/impact/initiatives-programs/center/programs/human-rights-education/independent-panel-for-election-of-judges/
[227] Katya Salazar and Naomi Roht-Arriaza, *Democracia y Transparencia en el SIDH: una experiencia en marcha, supra* note 1*,* p. 1668*.*
[228] *Ibid*, p.1669.
[229] Final Report of the 2015 Panel, p. 2*.,* available at: https://www.justiceinitiative.org/uploads/34b476e4-dd7b-431e-acd4-e25fbff100cc/iachr-panel-report-eng-20150603.pdf

[230] Final Report of the 2015 Panel, p. 3.
[231] *Ibid*., p. 2, footnote 1.
[232] *Ibid*., p.3.
[233] Final Report of the 2017 Panel, p. 3 and Final Report of the 2018 Panel, p. 5.
[234] Final Report of the 2015 Panel, p. 3.
[235] The complete biographies of the panelists can be found in the Annex sections of the final reports of each Panel.
[236] Statute of the IACtHR, article 8.1.
[237] Statute of the IACHR, article 4.1.
[238] See Spanish version of the announcement at: https://www.wcl.american.edu/impact/initiatives-programs/center/programs/human-rights-education/candidatos-as-a-la-corte-interamericana-de-derechos-humanos/
[239] The contact dates can be found in the candidate evaluation section of the Final Report of the 2019 Panel. See evaluations starting on p. 18.
[240] Final Report of the 2019 Panel, p. 8.
[241] Final Report of the 2017 Panel, p. 6 and Final Report of the 2018 Panel, p. 10.
[242] See the complete model of the form in the Final Report of the 2019 Panel, p. 87; Spanish version available at: https://www.wcl.american.edu/impact/initiatives-programs/center/documents/2019-informe-del-panel-independiente-de-expertos/
[243] GA/RES. 2887 (XLVI-O/16), of 14 June 2016, p.13, available at: http://www.oas.org/en/iachr/lgtbi/docs/ag-res-2887-humanrights-sexualorientation-genderidentity-expression.pdf
[244] Final Report of the 2015 Panel, p. 6; Final Report of the 2017 Panel, p. 6; and Final Report of the 2018 Panel, p. 10.
[245] Final Report of the 2017 Panel, p. 6 and Final Report of the 2018 Panel, p. 10.
[246] Final Report of the 2015 Panel, p. 5.
[247] Final Report of the 2017 Panel, p. 7 and Final Report of the 2018 Panel, p. 11.
[248] Final Report of the 2019 Panel, pp. 5 and 8.
[249] Spanish version of the complete questionnaire in Final Report of the 2019 Panel, Annex 2, is available at: https://www.wcl.american.edu/impact/initiatives-programs/center/documents/2019-informe-del-panel-independiente-de-expertos/
[250] Spanish version of the complete questionnaire in the Final Report of the 2018 Panel, Annex 1, available at: https://www.wcl.american.edu/impact/initiatives-programs/center/documents/informe-panel-2018/
[251] Final Report of the 2018 Panel, p. 6.
[252] Final Report of the 2019 Panel, p. 7.
[253] Final Report of the 2019 Panel, Part II on Evaluation of candidates, p. 18.
[254] Final Report of the 2018 Panel, p. 9.
[255] Final Report of the 2015 Panel, p. 4.
[256] Final Report of the 2015 Panel, p. 5.
[257] GA/RES. 2887 (XLVI-O/16) of 14 June 2016 and GA/RES. 2908 (XLVII-O/17), of 21 June 2017.
[258] Final Report of the 2018 Panel, p. 9.
[259] Final Report of the 2019 Panel, p. 12.
[260] *Ibid.*, p. 12.
[261] Bangalore Principles, *supra* note 25, Value 3, Art. 3.1.
[262] *Ibid*, Value 3, Art. 3.2.
[263] *Ibid.*, Value 4.
[264] Final Report of the 2019 Panel, pp. 12 and 13.
[265] *Ibid.,* p. 13.
[266] *Ibid*., p. 11.
[267] Final Report of the 2015 Panel, p. 5 and Final Report of the 2017 Panel, p. 6.
[268] Addis Ababa Guidelines, *supra* note 68, para. 12.
[269] Final Report of the 2015 Panel, p. 5.

[270] Final Report of the 2019 Panel, p. 9.
[271] *Ibid*., p. 15.
[272] *Ibid*., p. 17.
[273] *Ibid*., p.6.
[274] *Ibid*., p. 6.
[275] *Ibid*., p.7.
[276] See Spanish version of the announcement at: https://www.wcl.american.edu/impact/initiatives-programs/center/programs/human-rights-education/candidatos-as-a-la-corte-interamericana-de-derechos-humanos/