

Aspects Of Legal And Practical Shortcomings In The Election Of Judges Of The International Criminal Court

جوانب من القصور القانوني والعملي في انتخاب قضاة المحكمة الجنائية الدولية

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abstract:

This article aims at clarifying some of the conditions that contribute to the obtaining of independent judges of the ICC, most notably the integrity, impartiality, competence and experience; and highlighting the criteria under which States parties must elect the judges of this Court. On the other hand, it reveals the legal and practical limitations that place unqualified persons on the same court.

The study also provides solutions to the legal and practical shortcomings in the election of judges of the ICC, relying on international judicial expertise as well as on the criteria of equitable geographical distribution and gender parity of judges.

Keywords: Election of judges, the impartiality, the integrity, the competence, the experience.

ملخص :

يرمي هذا المقال لتوضيح بعض الشروط المساهمة في الحصول على قضاة مستقلين بالمحكمة الجنائية الدولية أبرزها النزاهة والحياد والكفاءة والخبرة، وإبراز المعايير التي بموجبها يتعين على الدول الأطراف انتخاب قضاة هذه المحكمة. بالمقابل يكشف عن القصور القانوني والعملي الذي يكرس تولي أشخاص غير مؤهلين مناصب قضاة بذات المحكمة. كما خلصت هذه الدراسة لتقديم حلول لذلك القصور القانوني والعملي في انتخاب قضاة المحكمة الجنائية الدولية، بالاعتصام على الخبرة القضائية الدولية، والحرص على الامتثال لمعيار التوزيع الجغرافي العادل والتكافؤ العددي بين الجنسين من القضاة. **الكلمات المفتاحية :** انتخاب القضاة ، الحياد ، النزاهة ، الكفاءة ، الخبرة .

Introduction:

Since the judge is the central element in the structure of any judicial system, and since his functions are of great relevance to human rights, he must be highly competent, integrity and impartiality in order to carry out his duties independently and to make the litigants very confident. The authors of the Rome Statute have tried to establish the independence of the judges of the ICC¹ by establishing conditions for the selection of judges, as well as obligating States parties² to observe specific criteria in the process of nominating judges.

The importance of the study is to identify the conditions and guarantees established in the Rome Statute of the ICC judges, and the extent to which they are guaranteed to them, because the consideration of international criminal cases requires a thorough knowledge of the conduct of hearings, especially with regard to the issuance of judgments and judicial decisions. The safety of justice is a judge's strength, competence and integrity, and its corruption is deviated from his inexperience.

Undoubtedly, not all candidates reflect the image of an integral and efficient international judge in the absence of legal and practical shortcomings in the election of judges of the ICC. But what if the Assembly of States Parties³ intervened and amended the legal shortcoming of the judges' experience.

This study aims at revealing some of the conditions stipulated in the Rome Statute for the election of judges of the ICC which bring high competencies of judges and thus contribute to the independence and effectiveness of the Court. In contrast, some other conditions permit the candidacy of individuals who do not reflect the supposed competence of the international criminal judge. Accordingly, this is considered to be a legal deficiency in the Rome Statute with regard to the election of the judges of this Court. The legal insufficiency has been exploited by States parties, leading to a policy preference over competence and experience in the election. This study has led to suggestions that may become part of the calls of researchers to draw the attention of States parties with a view to abandoning politics and building merit and competence in this election.

We wonder whether the conditions for the election of judges of the ICC established in the Rome Statute are capable of obtaining distinguished judges reflecting the presumed competence of the international criminal

judge. Or are there texts that allow unqualified candidates to win the elections, which are reflected negatively on the integrity of the elections and the effectiveness and independence of the ICC? And to what extent do States parties take into account the criterion of equitable geographical distribution and gender parity in judges nominated for judges of the ICC?

In this study, we will draw on the analytical approach that alleviates the difficulties, simplifies the reader's understanding. It will also include the descriptive approach, as appropriate, and sometimes we will draw on the comparative approach and the inductive method. This is a critical and illustrative aspect of some of the provisions of the Rome Statute, and some comment on the practical practices for the election of judges of the ICC. In order to present this study, we have decided to address the conditions for the election of judges of the ICC (Firstly) and the extent to which States parties observe certain criteria and conditions for the election of judges of the ICC (secondly).

**First main title: Conditions for the election of judges of the
International Criminal Court**

The Rome Statute requires any candidate to become a judge of the ICC to be impartial and integral (first subtitle). He must have competence and experience (second subtitle).

**First subtitle: Integrity and impartiality of judges of the International
Criminal Court**

It should be recalled that many international and national texts dealt with the integrity of the judge in general. Among these texts interpretation by the European Court of Human Rights of article 6/1 of the European Convention on Human Rights⁴, and Algerian constitution in articles 165 and 166.

The condition of integrity of a judge of the ICC is referred to in article 36, paragraph 3 (a), of the Rome Statute, which states: «The Judges shall be chosen from among persons of high moral character, impartiality and integrity ...».

It is noted that the provisions of the above paragraph relate to the emotional aspects of the candidate's judge, which are closely related to the personality of the judge. And are necessary for his independence, which must be fulfilled before he takes office and accompanies him during the course of his work, which are high ethics, impartiality and integrity.

After determining the legal framework for the fairness of the Judge in the Rome statute, we try to clarify the concept of the supposed integrity in the Judge. The integrity of the Judge is a moral value inherent in his behavior, because it is a trait of the Judge intellectually and morally, According to the commentary prepared by the United Nations Office on Drugs and Crime on the Bangalore Principles of Judicial Conduct. Integrity is given to all those who are upright, consisting of the qualities of honesty and juridical integrity⁵, in the sense that the candidate shall be a good conduct and reputation, and shall not have committed an act of disrespect or dishonesty even if rehabilitated. It was even said that integrity is the internal quality of the judge⁶.

The previous commentary recognizes difficulties in defining the concept of integrity, the same difficulties encountered by many researchers, because the concept of morality is constantly evolving, and to some extent related to the privacy of each community. The comment goes on to state that: "The ethical rules that care for the life of a special judge cannot be determined very precisely⁷). Some also warn against the expansion of the interpretation of the concept of integrity, which leads to the denial of candidates for subjective reasons, such as what the French Minister of Justice did with a legal error in the according to French Council of State, why he was denied a candidate to take up a judiciary position because she only withdrew a driving license⁸.

The question should be asked about the integrity of the judges of the ICC is how can the latter know the availability of its candidates from the judges on the condition of integrity ?, To answer this question, the ICC is satisfied only with the testimony of the candidate countries to its citizens, which provides a complete biography of the life and behavior of the scientific and professional candidate Morals⁹. Through a survey conducted by the competent bodies in each country, on the biography of candidates.

As for impartiality, it means hostility or sympathy for either party, because the judge is bound by impartiality, even if the law does not oblige him to do so¹⁰. It is enshrined in many international conventions and declarations¹¹. The impartiality of judges means that they seek a fair trial. This is only because a prior opinion may not be formed in the case during the judgment or during the proceedings¹² and that they do not act in a way that promotes the interests of one party. Where the law provides that the judge is not competent, the court shall, on its own initiative, replace it in accordance with the criteria of incompetence provided for in the law. Since cases must be adjudicated on the basis of facts and in accordance with the law and without any restrictions¹³.

The impartiality of the judges of the ICC has been laid down in the Rome Statute, in the Rules of Procedure and Evidence, and in the Code of Judicial Conduct for Judges of this Court. The Code contains in its article 4: "Judges are impartial and ensure integrity in the exercise of their judicial functions. Conflict of interest". It is clear from the text that the ICC affirms the impartiality and Integrity of its judges in the practice of their functions. Integrity and impartiality are conditions for litigants to reassure judges and their decisions. The court also requires them to avoid any conflict of interest, impartiality and integrity together. The pledge made by them after their inauguration is evidence of their impartiality in view of the role played by the pledge in the judge's psyche¹⁴. The language of the ICC judges' pledge is contained in rule 5, subparagraph 1 (a), of the Rules of Procedure and Evidence¹⁵.

In addition to the commitment of the judges, the Rome Statute and the Rules of Procedure and Evidence added the exemption and dismissal of judges. According to paragraph 1/14 of the Rome Statute, a judge of the Chamber may exempt himself when he considers that there are grounds for his disqualification, any case in which its impartiality may be reasonably questionable for any reason (paragraph/ a/2/41) of the Rome Statute. The exemption shall be in accordance with a request by the judge to the Presidency prior to the submission by any other person of one or more grounds for disqualification at the request of the victim or the Prosecutor.

With regard to the reasons why the judge is not competent to hear the case and is exempted: A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence¹⁶.

Judges shall also be removed from office for the following reasons¹⁷:

1. Personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties.
2. Involvement, in his or her private capacity, in any legal proceedings initiated prior to his or her involvement in the case, or initiated by him or her subsequently, in which the person being investigated or prosecuted was or is an opposing party;
3. Performance of functions, prior to taking office, during which he or she could be expected to have formed an opinion on the case in question, on the parties or on their legal representatives that, objectively, could adversely affect the required impartiality of the person concerned;
4. Expression of opinions, through the communications media, in writing or in public actions that, objectively, could adversely affect the required impartiality of the person concerned.

And When The judges of the Pre-Trial Chamber shall not be transferred to the Trial Chamber when they have been able to form a prior opinion in the case in which they wish to be dismissed (paragraph 39 (4) of the Rome Statute).

In addition to the above, Article 40 of the Rome Statute and Section 10 of the Code of Judicial Conduct expressly prohibit the judges of the ICC from carrying out certain acts that would affect their impartiality and independence as follows:

1. The judges shall be independent in the performance of their functions.
2. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

3. Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature.

Despite the assurances given to the impartiality of judges by the ICC, in our view it is difficult to find an impartial one. Since no judge can claim to be impartially objective. This is because the issue of impartiality is difficult to control legally. If it is the virtues of the judge, it is a matter of being enabled in the depths of his human soul.

Second subtitle: Conditions of competence and experience for the election of judges of the International Criminal Court

Competence and experience are also prerequisites for judges to be appointed to the ICC. The experience in general is to accumulate years of work in a particular area and to take advantage of these accumulations through a person's ability to develop his or her practical level. The distinguished international criminal judge accumulates his own expertise on the type of international crime he specializes in, is composed and sentenced, and also accumulates specialized and accurate knowledge of international criminals, and thus his judgment is consistent with and realized the rules of justice.

(1) (b) (3) / 36 of the Rome Statute referred to the competence and experience of the judges nominated to serve in the ICC, where it stated:

(b)- (Every candidate for election to the Court shall:

1- Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, and advocate or in other similar capacity, in criminal proceedings...).

Paragraph (c) of the same text required that each candidate for election as a judge of the ICC should have excellent knowledge and fluency in at least one of the two working languages of the Court, (English and French).

In the light of the reading of sub-paragraph (1) (b) (3) / 36 of the Rome Statute, it appears to us that it requires scientific qualifications, ie, the scientific efficiency and intent of the text (consistent efficiency) as an important condition in the process of selecting judges of the ICC. The qualifications of the candidates shall be evaluated according to specific and appropriate criteria established by custom and tradition¹⁸. The candidate must submit his /her scientific and practical curriculum vitae, and here we

refer to the experience in the text "in the capacity of a judge, prosecutor or advocate". The admission of judges internationally is determined ten years, as well as good control in one of the two working languages of the Court in writing and oral, a course of justice adopted by the Rome system to bring the best competencies of judges.

On the other hand, the efficiency and experience of the judges provided for in subparagraph 1 (b) (3) / 36 of the Rome Statute, subparagraph 2 (b) (3) / 36 of the same system appears to be inaccurate, Which states that each candidate for election to the Court shall have the following: " Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court".

What is certain of the terms of the second paragraph above that it does not require any judicial experience? How can a person who has never practiced justice become a judge of the ICC after an election process that may be politicized? A careful reading of the same paragraph makes us conclude that there is nothing in the Rome Statute to oppose or prevent the candidature of persons who have not practiced the judiciary before, nationally or internationally. Because the paragraph did not require the registration of candidates to the judiciary, nor did it require judicial experience, but required extensive professional experience in a legal work area relevant to judicial work, which did not mean judicial experience. Under that paragraph, States parties could nominate competent persons International humanitarian law, or human rights, such as politicians, administrator, academic, diplomatic, or international investigator, or enough to have previously been employed in functions related to the judiciary. By choosing this, the judge nominated and the winner of the election of the judges of the Court is completely ignorant of the conduct of the hearings, but finds itself for the first time decide the fate of the accused, it may not oppress his experience. Thus, the text above shows that it is legally flawed. But also allowed this legal deficiency of States parties and enabled them to nominate and elect persons unrelated to the judiciary. Which we shall address in the second subtitle.

Therefore, we believe that it would be preferable for the court to select only those candidates with the appropriate experience and capacity in international jurisdiction, particularly in criminal proceedings. As a result of this outcome, we draw the attention of the Assembly of States Parties to elect a candidate with international judicial experience and consider it to be an additional point in the candidate's file compared to a candidate with only national experience. Accordingly, we consider it necessary to amend subparagraph 2 (b) (3) of the Rome Statute such as, " Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court". Because (... a professional legal capacity which is of relevance to the judicial work of the Court) . is insufficient and does not reflect the experience of the candidates in the administration of the judicial sessions. Can a person who has never been familiar with the hearings hear a case before the ICC for the first time?

**second main title: States Parties shall observe certain
criteria and conditions for the election of judges of
the International Criminal Court**

Already offered and required by the candidate judge, States parties must observe the criterion of equitable geographical distribution and gender parity (first subtitle), but States Parties have exploited the legal deficiency of the lack of judicial experience and have not observed gender parity (second subtitle).

**First subtitle: States Parties shall take into account the criterion of
equitable geographical distribution and gender parity**

Among the criteria set out in the Rome Statute, to encourage all groups of all States parties to apply in accordance¹⁹ with the criterion of equitable geographical representation of judges²⁰, (article 36/8 (a) (2)) of the Rome Statute, in order to maintain the balance of the composition of the Court; The Standard ensures the application of another standard, representing the various major legal systems of the world (article 36, paragraph 1 (a) (8), of the Rome Statute), and that the last is the product of

the two largest legal systems in the world (the Anglo-Saxon system and the Latin system).

PHILIPPE Sands refers to the difficulty of States respecting the criterion of equitable geographical distribution²¹, but practice in the election of judges of the ICC takes some account of the application of this standard. It follows that a State Party may not select more than one judge to stand for candidacy, whether he is a national or a national of another State, provided that he is a national of a State Party. This is logical as long as the Rome Statute is issued in the form of an international convention, According to the Vienna Convention on the Law of Treaties

In addition to observing the criterion of equitable geographical distribution, the Rome Statute requires States parties to ensure equitable representation of the number of female and male candidates, in accordance with article 36, subparagraph 3 (a) (8) of the Rome Statute, which states: "The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for: A fair representation of female and male judges".

It can be seen from the above text, taking account of that during the election and the election result, in order to maintain the balance of the composition of the Court. The reason for the concern of women judges is that the majority of victims of international crimes are children and women. However, practice has shown that this standard has been violated. Which we will explain in the second subtitle.

Second subtitle: The exploitation of States parties not to ensure the requirement of judicial experience and disregard for gender parity

We attempt to demonstrate how States parties have been able to exploit the shortcomings of the Rome Statute with regard to the lack of judicial experience under subparagraph 2 / b / 3/36 of the Rome Statute in the process of electing judges. Some researchers have found that some judges who have won an incompetent position in the court lack judicial experience. There is a state without any legal qualifications. A leading study by Oxford University Specialist professors concluded that competence and experience are not the main factor in the election of judges, and that judges Winners are not subject to any evaluation.

The first batch of judges of the ICC consisted of diplomats and academics who were members of their delegations to the preparatory committees on the drafting or ratification of the Rome Statute. The same study revealed that more than 50% have no prior experience or knowledge of the judiciary in general, as there is no judicial background in some of them, they do not know what Procedure should be.

We are trying to reinforce the shortcomings of the Rome Statute with regard to the competence and experience of judges, through the statement by US prosecutor Markus Funk that the Rome Statute does not guarantee in particular that judges have judicial or even National experience²², nor does it prohibit ordinary persons who hold Mr. Funk concludes that the Court includes a group of experienced jurists, a group of individuals who have no real background in criminal justice, no trial experience, no judicial records, and no legal training. And another class of ordinary characters with backgrounds in diplomacy, in NGOs, or academics²³

Hans Corell showed similar reservations about the judges of the ICC: "The election of persons to the ICC who do not have courtroom experience is, in my opinion, inappropriate, regardless of other qualifications they possess". Even supporters of the court, such as William Pace, acknowledged the existence of incompetent and inappropriate judges. In 2005, William admitted, "We have identified a number of highly qualified candidates, including some who have not even read the Rome Statute." It is therefore clear that there is ample evidence that in many cases the quality of the judges of the court has been substandard. Phillips Sands also said that the lack of efficiency and experience of judges is very worrying for a court dealing with some of the most serious criminal cases and depriving people of liberty²⁴.

The voting and political deliberation in the election of the judges of the ICC produced results that greatly affected the court's effectiveness. Elizabeth Odio Benito, Vice-President of Costa Rica and Minister of Justice, won the post of judge of the ICC 2007, and after her death in April 2009, the Japanese government nominated Koniko Ozaki as an alternative to her literary specialist, also diplomatic²⁵. Miriam Devensor Santiago of the Philippines won the seat of a judge in December 2011, a modest

advocate and member of the Senate. Judge Plitman of Bolivia is a former politician, former law professor and human rights activist. Judge Kuenyehia Ghana The Presidency of the Faculty of Law of the University of Ghana, Judge "Kaul" of Germany was working in the German Foreign Ministry before his appointment as a judge of the International Criminal Court²⁶.

Unlike experienced professional judges, who are dismissed in cases professionally and with great experience, they are efficient and prejudge issues similar to the cases in which they are adjudicated, but their opinions were tabled in individual decisions²⁷. It follows that a few judges of the court were professional judges. This deliberate selection of incompetent judges contributes to the record of bad court practices.

Following the presentation of these states, we cannot highlight all the cases that prove the lack of judicial experience and legal qualification of judges, sometimes resulting from the legal inadequacy of the Rome Statute, which enables incompetent individuals to run for the post of judge of the ICC, where States parties have used them.

The lack of judicial experience of the judges of the ICC has resulted in many of the disadvantages of fair trial guarantees, most notably lengthy proceedings²⁸, one of the difficulties of international criminal trials. A study by Heidi Hansbury revealed delays in proceedings; Statistics indicate that the accused spends an average of 2.3 years awaiting trial at the ICC while in detention and that the average time between detention and a decision on the adoption of charges as a first step towards trial is 0.9 years. For example, Abu karda voluntarily and the adoption of the resolution on the charge of 0.7 years. Thus, it is usual for a very long period of time to pass before the trial itself begins even for the suspects who appear willingly. Judge Claude Jordan of the Tribunal for the Former Yugoslavia, who also presided over it and then became a judge of the ICC in 2003, stated that the trial should not last more than 18 months²⁹. In contrast, the trial of Thomas Lubanga Dyilo lasted 6 years, Because of the slow pace of proceedings, which is attributable to many things, notably the inexperience of judges.

We have already pointed out that States parties have violated the criterion of numerical equivalence between men and women judges, we recall the repeated resentment of Amnesty International in its reference to the failure of the Assembly of States Parties to respect the equal standing of male and female judges, as it reminded States parties about what has been taking place since the first election of the judges of the Court in 2002, This issue had been dealt with previous international courts, and the majority of nominations for the same year had been men³⁰.

Unlike the results of the 2007 elections, "Navanethem Pillay" stated that: "If civil society did not intervene, we would all be women"³¹. In 2009, the Court was composed of 4 women, compared with 2 males in the Pre-Trial Division, 4 women versus 3 males in the Trial Division, 3 females versus 2 males in the Appeals Division, ie 11 females versus 7 males³². Indicating that the criterion established in the Rome Statute was not observed Where the proportion of women was formed where the proportion of women was 61.11%, compared with the proportion of men estimated at 38.89%, with difference of 22.22%, and results of the periodic elections in December 2017, 5 women compared to one man³³. This kind of gender-based political interference in the selection of judges violates the provisions of the Rome Statute in one hand and undermines the competence and professionalism of judges in other hand.

Opposition of several jurists on how to select judges of the Court, The Assembly of States Parties re-examined the election of the judges of the Court, where the Assembly took measures that allowed the Court to attract some of the judges who practiced law or the courts at the level of international courts. Through the establishment of the Judges Competency Research Committee, as well as the establishment of the Advisory Committee on the Nomination of Judges under subparagraph (4/2 / c / 36) of the Rome Statute, which reached the qualifications of candidates suitable for the work of the ICC.

Conclusion:

We can say that the legal and practical shortcomings of the process of electing the judges of the International Criminal Court are a legacy left by the former international tribunals and adopted by the laws of this Court therefore the excessive political character of their judicial elections, deliberation of voting, and electoral campaigns play a big role in the chances of candidates for election rather than considerations of competence and judicial experience, which often overrides political qualifications and judicial experience.

It is noted that in recent years the Court has begun to attract competent judges, and that through reading some of the biographies of candidates who have won the position of judge of the Court, States Parties must continue to attach great importance to the election process, by avoiding politics and considering competence, so that the Court's judgments are sound, especially as it is the hope of millions of victims in achieving international criminal justice.

In the context of this study, we do not claim that we have taken note of all aspects of the subject. Rather, we can say that it has modestly addressed the shortcomings of the Rome Statute with regard to the election of judges of the ICC and the exploitation of such shortcomings by States parties, perhaps because of the Rome Statute in the form of a consensus of different ideologies seeking primarily to maintain their interests, which makes it vulnerable to criticism, so we find it necessary to make our views and presented some of the proposals that we reached in this study as follows:

1. Amend article 36, paragraph 2 (b) / (3), of the Rome Statute, as we have presented, because the practice has shown that the lower level of some of the judges of this Court has been established.
2. The Assembly of States Parties is keen to encourage a candidate with international judicial experience.
3. The necessity to bring and select international judicial experience of the candidates and to consider a privilege in their files compared to candidates who are satisfied with the provision of national experience.

4. Ensuring compliance with the criterion of equitable geographical distribution. The geographical preference of the number of judges on the other hand loses confidence in the fairness of the ICC.
5. Equal numbers between males and females. The deliberate increase in the number of females on the number of males or vice versa is contrary to the principle of gender equality advocated by the laws of the Court and human rights.

References :

- ¹ . In this study, ICC means International Criminal Court or the court.
- ² . The States Parties are the States Member of the Rome Convention, The number of the States Parties was 124, then reduced to 122 States after the secession of Burundi and Philippines.
- ³ . The Assembly of States Parties is the General Assembly constituent of the Court, which is governed by the provisions of Article 112 of the Rome Statute.
- ⁴ . AUDREY Oudoul, , L'impartialité des magistrats dans la procédure pénale française à l'aune du droit de la convention Européenne des droits de l'Homme, doctoral thesis, droit privé, Université d'Auvergne, France, 2016, pp: 48-49.
- ⁵ . مريم مهنا، دليل حول معايير استقلالية القضاء، تونس، الطبعة الأولى، 2016، ص45.
- ⁶ . JOUANNET, Emmanuelle, indépendance et impartialité des juges internationaux, in https://etourmejouannet.files.wordpress.com/2014/10/indc3a9pendance_tap_emmanuelle_jouannet-1.pdf, 2010, browsing history 20/08/2019, p294.
- ⁷ . مريم مهنا، المرجع السابق، ص45.
- ⁸ . نفس المرجع، ص46.
- ⁹ . جمعية الدول الأطراف، تقرير اللجنة الاستشارية المعنية بترشيحات القضاة عن أعمال اجتماعها السادس عشر، نيويورك من 14-4/2017، الصادر بالوثيقة ICC-ASP/16/7، ص ص: 14-7.
- ¹⁰ . زين العابدين غيتري، حدود استقلالية السلطة القضائية في الفقه الإسلامي والتشريع الجزائري، دراسة مقارنة، دار هومه ، الجزائر، 2014 ، ص54.
- ¹¹ . Article 10 of the Universal Declaration of Human Rights, paragraph 1/14 of the International Covenant on Civil and Political Rights, paragraph 1/6 of the European Convention for the Protection of Human Rights, article 26 of the African Charter on Human Rights, principle 2 of the Basic Principles on the Independence of the Judiciary and Principles on the Conduct of Judges.
- ¹² . JIRI Malenovsky, « L'indépendance des juges internationaux », in Recueil des cours, de l'Académie de droit international de La Haye Pays-Bas, tome 349, n°349, 2010,, p29.
- ¹³ . United Nations Basic Principles on the Independence of the Judiciary , The previous reference, p 23.
- ¹⁴ . عبد الهادي بشار، الجوانب القانونية والعلمية التي تحيط بالقسم الذي يؤديه الموظف عند تعيينه في الوظيفة العامة، مجلة الدراسات الأردنية للعلوم الإنسانية ، الأردن، المجلد الثاني والعشرين، العدد الرابع، السلسلة (أ)، أوت 1995، ص1553.

¹⁵ . As provided in article 45, before exercising their functions under the Statute, the following solemn undertakings shall be made:

(a) In the case of a judge:

"I solemnly undertake that I will perform my duties and exercise my powers as a judge of the International Criminal Court honourably, faithfully, impartially and conscientiously, and that I will respect the confidentiality of investigations and prosecutions and the secrecy of deliberations.

¹⁶ .Article 41, subparagraph 2 (a), of the Statute of the International Criminal Court, of 17 July 1998, issued in document A / CONF.183 / 9, as amended by document N.651.2010. treatments6. CN.651.2010. treatments8 of 29/11/2010.

¹⁷ .Sub-rule 1/34 of the Rules of Procedure and Evidence.

¹⁸ .Article 9 of the World Charter of Judges, promulgated in 1999.

¹⁹ . جمعية الدول الأطراف، الانتخاب السادس لقضاة المحكمة الجنائية الدولية، الصادر بالوثيقة، ICC-ASP/16/3/Add.1، الدورة 16، نيويورك من 4 إلى 14 ديسمبر 2017 ص ص: 2 وما بعدها.

²⁰ . جمعية الدول، دليل وتعليق على إجراء ترشيح وانتخاب قضاة المحكمة الجنائية الدولية، الصادر بالوثيقة ICC-ASP/16/INF، الدورة 16، نيويورك من 4 إلى 14 ديسمبر 2017، ص 8.

²¹ . PHILIPPE Sands, in David Hoile, justice denied the reality of the international criminal court, Judges Elected by Vote-Trading, LONDON, The Africa Research Centre, 2014, p110.

²² . This is the argument that we presented in this study, And we called it Legal Shortcomings

²³ . ibid, p104.

²⁴ . ibid, p105.

²⁵ . The States Parties agree to elect the candidate of Japan, regardless of his curriculum vitae, due to the substantial financial contribution of that country to the resources of the Court.

²⁶ PHILIPPE Sands, in David Hoile, justice denied the reality of the international criminal court, opcit, pp: 103-107.

²⁷ . Situation en république démocratique du Congo affaire le procureur contre. GERMAIN KATANGA, Décision relative à la demande de participation des victimes à l'appel interjeté contre la décision de la Chambre de première instance II relative, ICC-01/04-01/07-3346-tFRA 20-02-2013 1/8 RH T OA13, 17/1/2013.

²⁸ .for example, the trial of the former Ivory Coast President, Laurant Gbagbo, whose trial lasted from 2011 to 2019, about 8 years and later he was innocent.

²⁹ .PHILIPPE Sands, Judges Elected by Vote-Trading, op. Cit, p112.

³⁰ . كمال عبد اللطيف براء منذر، (2008)، النظام القضائي للمحكمة الجنائية الدولية، عمان، الأردن، دار الحامد، الطبعة الأولى، ص 57.

³¹ . PHILIPPE Sands, op.cit., pp: 105-106.

³² .Elections of judges in international criminal court, in https://asp.icc-cpi.int/iccdocs/asp_docs/Elections/EJ2017/NL-elect-judges-ARA.PDF. Browsing history, 20-06/2019.

³³ .Élection 2017 des six juges – Résultats, Les juges élus ‘in https://asp.icc-cpi.int/FR_Menus/asp/elections/pages/results-elections-judges-2017.aspx Browsing history, 20-06/2019.