

WORKSHOP 6

ACHIEVING GENDER PARITY ON THE INTERNATIONAL COURT OF JUSTICE BENCH:
NEXT STEPS
CONCLUSIONS & RECOMENDATIONS

I. Introduction

This document lays out steps for promoting the objective of achieving parity on the International Court of Justice bench. These ideas were discussed during a workshop session at the Gqual Conference of 3-5 October, 2017, in the Hague, the Netherlands. Presentations were made at the workshop by International Court of Justice Judge Xue Hanqin, Westminster University Reader in International Law Ruth MacKenzie, UN International Law Commission Member Patricia Galvao Teles, and Ambassador of Nicaragua to the Netherlands Carlos Argüello-Gomez. The discussion was moderated by University of Baltimore Associate Professor of Law Nienke Grossman and University of Brunel Law Lecturer Dr. Jessica Corsi. While Judge Hanqin presented at the workshop, she is not a member of the Working Group that prepared the present document.

Since the workshop, the United Nations held a regular election for the ICJ in November 2017. Six male candidates competed, five of whom were sitting judges. Four of the five were re-elected, and a fifth was elected for the first time. Since no women were nominated for election or reelection, the gender composition of the bench remains unchanged, at 12 men and 3 women. The next regular election is scheduled to take place in three years.

II. Recommendations

The Working Group's recommendations are aimed at promoting awareness of the paucity of women judges on the ICJ, reminding stakeholders of obligations to promote gender parity within the UN system, encouraging research on selection procedures to the ICJ, and cultivating future female ICJ candidates.

To increase gender balance on the ICJ bench, an important first step is to increase awareness of the paucity of women judges on the International Court of Justice and states' commitments to advancing gender equality in the United Nations system among various stakeholders involved in ICJ elections. These stakeholders include national groups of the Permanent Court of Arbitration, Foreign Ministry officials, and relevant United Nations actors, such as the President of the General Assembly and the Secretary General.

The Gqual campaign could begin by writing to Permanent Court of Arbitration national groups, charged with nominating candidates to the ICJ. The letter would contain information about the role of the national groups in the selection of ICJ candidates detailed in the ICJ statute and data about the current and historical composition of the ICJ bench. It would also encourage national groups to consider gender parity as a factor in the nomination of candidates to the ICJ bench and



remind national groups of their states' obligations with respect to gender parity in the United Nations system. Such correspondence could take place in the short term, with additional communications 12 to 18 months prior to the next election.

In addition to the above, a letter to Foreign Ministries could encourage states to diversify PCA national groups. More than half of the 79 PCA national groups are composed exclusively of men, while only one is composed exclusively of women, and only 50 of 273 national group members are women. Diversifying national groups may lead to greater attention to gender balance when nominating candidates to the ICJ bench. The letter could also urge states to commit to nominating and voting for qualified female candidates in the next ICJ election, given the historical and current underrepresentation of women on the UN's principal judicial organ and existing UN gender equality policies, as well as relevant provisions of the UN Charter. The letter could communicate not only international norms of equality and representation, but also the benefits that could be achieved by creating gender parity at the ICJ. To the extent that Ministries of Justice are involved in the domestic nomination process, Gqual could also direct such correspondence to them. Additional letters could be sent to the President of the General Assembly and the Secretary General, calling on them to encourage states to take gender into account in the nomination and election of candidates to the ICJ.

Additionally, passing a General Assembly Resolution calling for enhancing the transparency of and creating greater uniformity in national nomination procedures, as well as urging states to take gender into account could be a useful and important tool in raising awareness about the paucity of women judges on the ICJ and in encouraging states to nominate and elect female candidates to the ICJ. It also may help to enhance the legitimacy of the Court by improving selection procedures for its members. Ideally, this should take place within the next two years, before the regularly scheduled elections in 2020. This would require the identification, by Gqual and the Working Group, of a state or states from different regions of the world willing to promote and advocate for such a resolution within the United Nations.

In the longer term, Working Group members believe it is important to cultivate future female candidates for ICJ judgeships, providing them with guidance about developing an appropriate international CV and promoting the participation and nomination of women in key positions related to international law, for example through membership in the International Law Commission and by appearing as counsel or advocates before the International Court of Justice. One mechanism for doing so is to reach out to the International Association of Women Judges, the International Bar Association and other groups to help create a pipeline of female candidates for ICJ judgeships.

III. Conclusions

The Working Group believes these and additional steps can have a significant impact on the nomination and election of women to the ICJ.