

Transparency International Anti-Corruption Helpdesk Answer

Judicial appointments: corruption risks and integrity standards

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Judicial appointments play an important role in ensuring the independence and impartiality of courts. Unchecked and opaque appointment procedures pave the way for political interference and corruption in the judiciary.

Appointments can be made by the executive and/or the legislative branch of government, by the judiciary itself or by independent bodies. None of these models are immune from abuse, and other concerns must also be considered when reforming judicial appointment processes, such as democratic legitimacy and diversity of courts.

Different appointment systems present different challenges in terms of procedural integrity and transparency as well as ensuring that the outcome of appointment processes strengthens the independence and impartiality of the judiciary. Minimum qualification requirements, restrictions, integrity vetting, increased transparency and social participation are some of the tools used to increase the integrity of judicial appointments.

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Query

Provide an overview of judicial appointment proceedings, including the main risks associated with inadequate proceedings and integrity standards used to mitigate them.

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Caveat

This Helpdesk Answer focuses, primarily on, appointments to high-level courts and strategic positions within the judiciary, such as anti-corruption courts and electoral courts. The paper does not cover post-appointment integrity standards, such as codes of conduct, disciplinary procedures, and impartiality issues in procedural law. The paper also does not deal with oversight functions within the judiciary.

Some of the rules and standards mentioned in this paper may be applicable to other types of appointments to bodies in the justice system, for example the prosecutorial services, and other institutions, such as National Audit Courts.

Main points

- Robust judicial appointment proceedings can help strengthen the independence and impartiality of the courts.
- Inadequate proceedings, on the other hand, increase the risks of corruption and political interference in the judiciary.
- There are different appointment systems, and each carries specific risks and can offer different advantages, such as increased independence of the courts, democratic legitimacy, and diversity.
- Minimum qualification requirements, restrictions for appointees, integrity vetting, increased transparency and social participation are some of the integrity-related tools used to improve appointment proceedings.

Introduction

The appointment (or designation) of judges refers to the entry of an individual into judicial office where that person assumes the responsibility of hearing and deciding on cases.

Robust appointment proceedings are not, in themselves, sufficient to ensure the independence and the integrity of the judiciary, but they play a very important role. Other measures to combat corruption in the judiciary include adequate case management systems, ethical and technical training for judges and court staff, highly transparent practices and policies, appropriate salaries and benefits, as well as codes of conduct and asset declaration systems for judges (Martini 2014: 1).

This Helpdesk Answer primarily focuses on how strengthening judicial appointment proceedings can promote integrity in the judiciary. Nonetheless, the paper recognises that well-designed appointment proceedings can also contribute towards other goals, such as strengthening the independence of the courts, ensuring their legitimacy, and promoting diversity within the ranks of judges.

Separation of power and the rule of law

As one of the three branches of government, the judiciary should be independent from the executive and legislative branches, serving as a critical part of a system of checks and balances that underpin the rule of law in modern democracies. The judiciary is also responsible for promoting and preserving fundamental rights, while addressing abuses and holding perpetrators of violations to account.

The independence of the judiciary is considered a “prerequisite to the rule of law and a fundamental guarantee of a fair trial”, according to the

[Bangalore Principles of Judicial Conduct](#), as recognised by the United Nations Economic and Social Council (ECOSOC). The right to a fair trial is itself a fundamental right, enshrined in Article 10 of the [Universal Declaration of Human Rights](#) as well as the [International Covenant on Civil and Political Rights](#). The establishment of an independent and impartial judiciary is thus an obligation of every State in order to comply with international human rights standards.

An independent judiciary decides “matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason”, according to the [Basic Principles on the Independence of the Judiciary](#).

As such, the independence and political impartiality of the judiciary are crucial to the rule of law and the maintenance of a democratic constitutional order, as are the honesty and competence of its judges (IDEA 2014: 3).

The [United National Convention against Corruption](#) (UNCAC) recognises the role of an independent judiciary in combating corruption. It recommends that States “take measures to strengthen integrity and to prevent opportunities for corruption among members of the Judiciary” (art. 11, item 1).

The judiciary is responsible for passing judgement on individuals (and entities) involved in corruption schemes. It is also tasked with determining the constitutionality of laws and administrative acts that enact anti-corruption policies. The judiciary therefore plays an essential role in either reaffirming measures intended to reduce corruption or disrupting anti-corruption reforms and perpetuating impunity for those involved in schemes and misdeeds.

High-level courts and strategic positions in the judiciary

This Helpdesk Answer focuses primarily on appointments to high-level courts, especially supreme courts, constitutional courts, and other strategic positions in the judiciary due to their significance for anti-corruption efforts.

Supreme courts are usually understood to be the court of last resort or the final court of appeal, having jurisdiction to review rulings by lower courts. Its decisions are final and not subject to review by any other court. Constitutional courts, on the other hand, have (final) jurisdiction over disputes regarding constitutional law. This means that they can be the first and last court to rule on a dispute regarding the constitutionality of a judicial decision or of a law approved by Congress. In many countries, supreme courts also perform the role of constitutional courts.

Constitutional courts stand at the “crossroads between the legislature, executive and even judiciary” exactly because they review the constitutionality of laws and other legal acts (Court of Justice of the European Union 2020: 23). In this sense, it is not surprising that methods of appointment to constitutional courts generally seek to preserve some form of institutional balance between the authorities concerned and to reflect the balance between existing political parties in a given polity (Court of Justice of the European Union 2020: 23).

This balance has been referred to as ‘relative judicial independence’. This means that, while constitutional courts should be insulated from political interference, they need to be responsive to the democratic society in which they operate (Choudhry & Bass 2014: 9-10).

There are also strategic posts in the lower courts for which integrity concerns are especially relevant. Anti-corruption courts, for example, are defined as “a judge, court, division of a court, or a

tribunal that specialises substantially (though not necessarily exclusively) in the adjudication of corruption cases” (U4 Anti-Corruption Resource Centre 2022). According to a recent survey conducted by the U4 Anti-Corruption Resource Centre (2022), there are anti-corruption courts in at least 23 countries around the world.

Another type of specialised court that holds strategic importance in terms of upholding democracy and the rule of law are electoral courts, which are particularly common in Latin America (IDEA 2010: 16). They are usually part of the electoral justice system, which is responsible for “(i) ensuring that each action, procedure and decision related to the electoral process complies with the legal framework; and (ii) protecting or restoring electoral rights” (IDEA 2015: 5).

In sum, electoral courts seek to ensure that elections are free, fair and genuine, and they therefore need to enjoy functional independence so that elected officials or political candidates are not able to unduly influence their decisions (IDEA 2010: 16).

Jurisdiction over electoral disputes also frequently falls to the Supreme Court or the Constitutional Court, either directly or through the appeals system, highlighting the importance of ensuring adequate proceedings to appoint its judges.

Judicial appointments: risks and rewards

Risks

Judicial corruption has been defined as “the use of public authority for the private benefit of court personnel when this use undermines the rules and procedures to be applied in the provision of court services” (UNODC 2001: 4). The literature distinguishes between administrative corruption and operational corruption in the judiciary.

Administrative corruption refers to violations of formal or informal administrative procedures for the private benefit of court administrative employees, which also include judges that hold administrative power.

With the goal of ensuring the independence of the judiciary, courts in most countries possess administrative autonomy, and high-level courts often possess wide-ranging administrative responsibilities over the entire judiciary. Judges thus commonly assume administrative responsibilities, such as managing public funds and resources, conducting procurement proceedings and hiring personnel. These are all areas subject to corruption risks, where the appointment of judges not committed to high ethical standards may result in corruption and abuse of office.

Operational corruption refers to substantial irregularities affecting judicial decision-making. It includes politically motivated court rulings and undue changes to trials where judges stand to gain financially and professionally (UNODC 2001: 4). It should be noted that the private gain of judges in instances of corruption need not be cash bribes; it can also include promotions, raises in salary, allocations in preferred posts or even office equipment and improved work conditions, such as being assigned more staff.

Political interference to determine the outcome of a civil or criminal case is not uncommon, especially for cases which involve substantial financial interests or threaten the freedom of powerful individuals. When political power plays a significant role in judicial appointments, judges may feel compelled to abide by the wishes of politicians and other powerful individuals and groups (Transparency International 2007).

Courts particularly exposed to political interference include specialised anti-corruption courts, high-level courts that possess sole responsibility for handling cases that involve high-level public

officials or deal with final appeals on criminal convictions, as well as supreme and constitutional courts that rule on the constitutionality of laws and decrees.

Even where the risk of political interference is low, judges, as well as other court staff, may be bribed to influence the results of cases or even to delay or hasten its resolution (Jennett 2014: 5). The fact that court proceedings are often secretive increases these risks of corruption. Moreover, when there are reasonable arguments for both sides of a case or wide discretion for interpreting evidence, it can be more difficult to pinpoint undue influence in the final decision.

A lack of robust integrity measures in judicial appointment processes can thus pave the way for corruption. Appointments to the judiciary are usually for extended periods or even for life, and proceedings to impeach or remove judges are typically complex and lengthy, which is intended to uphold judicial independence. The longevity of a judge's tenure nonetheless underscores the need to ensure that appointment processes result in the selection of judges that uphold high ethical standards.

In summary, the judiciary faces risks of corruption and undue influence both from other public officials, in the executive and legislative branches, as well as from private individuals and companies (IDEA 2014: 4). A judicial appointment process that does not concern itself with mitigating these risks does not meet a state's obligations to ensure integrity and independence in the judiciary.

Experiences and perceptions of widespread corruption in the judiciary can serve as a pretext for unscrupulous officials in the executive branch to intervene in the judiciary and exert more direct control over judicial proceedings, thereby weakening the system of checks and balances. For example, in Peru, Alberto Fujimori justified policies that undercut the independence of the judicial branch as efforts to combat corruption and

inefficiency. Similarly, in Venezuela, Chavez implemented wholesale reforms in the courts that had been plagued by corruption allegations. His efforts resulted in the removal of hundreds of judges and in the political capture of the country's Supreme Court (Human Rights Watch 2004).

Moreover, perceptions of widespread corruption can undermine the legitimacy of the judiciary, upon which the effectiveness of judicial judgements depends. Without broad acceptance that it has the right and the duty to make decisions, the judiciary is rendered impotent, as it lacks powers to directly control law enforcement agencies or the military (IDEA 2014: 6).

Rewards

Robust, high-quality judicial appointment processes bring multiple advantages to both the justice system and society at large. These include (Court of Justice of the European Union 2020: 24; IDEA 2014: 3):

- reducing the risk of undue interference from the executive or legislative branches,
- ensuring that appointed judges are capable of performing their functions in a competent and ethical manner, and
- taking steps to ensure that the judiciary is inclusive, diverse, and representative of wider society.

Merit-based, transparent and independent appointment procedures thus “form part of a [wider] system of judicial accountability” (Transparency International 2007).

Growing recognition of need for judicial appointment processes to promote diversity

Diversity has gained increasing recognition as an element that should be promoted through judicial appointment systems. According to the [Commonwealth \(Latimer House\) Principles on the](#)

[Three Branches of Government](#), appropriate consideration should be given to the “progressive attainment of gender equality and the removal of other historic factors of discrimination”.

The Human Rights Council (2020) has also encouraged States to promote diversity in the composition of judiciaries, not only by taking into account a gender perspective, but also including persons belonging to minority and other disadvantaged groups.

These recommendations are based on the recognition that the courts should reflect society and that they benefit from including gender and minority groups as this improves their ability to adopt decisions conscious of the historic impacts of discrimination in societies (Due Process of Law Foundation 2020: 2).

Specific rules may be set to ensure greater diversity. For example, in Canada, at least three of the nine members of the Supreme Court have to be from Quebec, which ensures regional diversity as well as the inclusion of justices who know the civil law system practiced in that province (IDEA 2014: 19). Similarly, in Belgium, half of the judges in the Constitutional Court belong to the French language group, and the other half to the Dutch language group. There is also a 33 per cent gender quota in that country (Ramiche 2014; European Law Institute 2023).

Principles and standards for judicial appointments

According to the [Basic Principles on the Independence of the Judiciary](#) endorsed by the UN General Assembly (1985), integrity and ability are two of the main criteria for judicial selection. Judges should have appropriate training and qualifications in law, and methods of judicial selection should include safeguards against appointments for improper motives.

Ability, integrity, and experience are also the main criteria for the promotion of judges, which should be based on objective factors. Objective standards contribute to excluding political influence and risks of nepotism, favouritism, and cronyism (UNODC 2015).

There are two components to the concept of integrity for judges: honesty and judicial morality. They should be “free from fraud, deceit and falsehood; and be good and virtuous in behaviour and in character.” (UNODC 2007: 63)

Ensuring the independence of the judiciary should also be a goal of the rules placed around judicial appointment. [The Bangalore Principles](#) state that judges should be (and appear to be) free from inappropriate connections with, and influence by, the executive and legislative branches of government (UNODC 2007: 34).

Equality of opportunity and merit-based appointments should be two of the general objectives of the appointment process, as determined by the [Commonwealth \(Latimer House\) Principles on the Three Branches of Government](#). In general, appointment systems should encourage the best candidates to seek positions in high-level courts and strategic positions in the judiciary (British Institute for International and Comparative Law 2016: 2).

The selection of judges should also not be discriminatory “on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status”, according to the Basic Principles on the Independence of the Judiciary. The Council of Europe [Recommendation \(2010\)](#) adds other considerations that should not give cause to discrimination: association with a national minority, disability, and sexual orientation.

While countries adopt different systems for appointing judges, one generalisable recommendation is that the proceedings be guided by clear and previously established rules and

criteria (Due Process of Law Foundation 2014: 1). These rules should be inscribed in law in order to produce greater legal certainty (Judicial Integrity Group 2010). If an elected official or official body changes the appointment proceeding rules in order to make it possible or easier to appoint a specific individual, this should be taken as clear evidence of undue influence in the process.

Besides the Basic Principles on the Independence of the Judiciary, a number of other instruments and standards have been put forth by regional and international organisations, as well as by conferences of presidents of supreme courts and other high-level judges:

- [Istanbul Declaration on Transparency in the Judicial Process](#), adopted at the Conference of Chief Justices and Senior Justices of the Asian Region in 2013.
- [Jakarta Statement on Principles for Anti-Corruption Agencies](#), adopted in 2012.
- [Kiev Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia](#), adopted by experts gathered by OSCE in 2010.
- [Statute of the Iberoamerican Judge](#), adopted by the VI Ibero-American Summit of Presidents of Supreme Courts and Tribunals of Justice in 2001.
- [Commonwealth \(Latimer House\) Principles on the Three Branches of Government](#), adopted in 2003.
- [European Charter on the Statute for Judges](#), adopted by the Council of Europe in 1998.
- [Beijing Statement on Principles of the Independence of the Judiciary in the LAWASIA region](#), adopted at the 1995 Conference of the Chief Justices of Asia and the Pacific.

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- Judges: independence, efficiency and responsibilities [Recommendation: CM/Rec \(2010\)12, adopted by the Committee of Ministers of the Council of Europe in 2010.](#)

Different systems for judicial appointments

There is a wide array of judicial appointment systems and each of them has positive and negative attributes (UNODC 2015:26). The Venice Commission (2007) has recognised that there is no single “model” for appointment systems that guarantees the separation of powers and the full independence of the judiciary. Similarly, certain regional standards, such as the [Statute of the Iberoamerican Judge](#), have recognised that “the mechanisms of selection [of judges] shall be adapted to the necessity of each country”.

The level of maturity of a country’s legal system and, more broadly, of its democracy is important to consider when assessing appointment systems. In older democracies, where the executive branch has a deciding role in judicial appointments, these powers are often constrained by legal culture and traditions, which have evolved over long periods of time. For newer democracies, the Venice Commission (2007: 10) argues that explicit constitutional and legal provisions are needed to safeguard against political abuse.

In some countries, judges are elected by voters to positions in high-level courts. This is common in the United States, for example, where the positions in state-level Supreme Courts are filled via electoral proceedings.¹ The selection of judges through electoral proceedings may be seen as providing a greater degree of democratic legitimacy to the appointed individual – and consequently to the pertaining court.

However, judicial elections require candidates to fundraise and to engage in political campaigns, which UNODC (2015: 26) notes entails its own set of corruption risks. Some of the specific risks of electoral systems for judicial appointments are shared with other popular election processes, while others specific to the involvement of voters in choosing judges. Given this unique set of issues, this Helpdesk Answer does not cover electoral appointment procedures. Nor does it cover processes to appoint judges to religious courts.

The following section considers appointment processes by the executive and/or legislative branch, by the judicial itself and by independent bodies. It is important to note, however, that some countries adopt more than one system for different courts, or even for the same court. Appointments to one type of position in a given court may, for example, be governed by different rules than another type of position (Choudhry & Bass 2014: 12).

The following section notes the main integrity and independence-related concerns that may arise in different systems.

Appointments by the executive and/or the legislative branch

Numerous systems assign elected officials a major role in the appointment of judges to high-level courts. The mandate to appoint judges can be the sole responsibility of one official or it can be shared between elected officials or political institutions. In the United States, for instance, the President selects members of the Supreme Court, but the Senate must confirm these appointments.

In these cases, the executive and/or the legislative control the appointment process, which may threaten the independence of the judiciary but also

¹ For a complete list of US states where partisan or nonpartisan elections are held for state Supreme Courts, see https://ballotpedia.org/State_supreme_courts.

conveys a degree of legitimacy to the court, given that its members are chosen by citizens' elected representatives.

According to the International Bar Association's (IBA) [Minimum Standards on Judicial Independence](#), adopted in 1982, the participation of the executive and the legislative branches in judicial appointments is not inconsistent with judicial independence. The IBA notes, however, that promotions and appointments should be vested in a judicial body in which members of the judiciary and the legal profession form a majority.

The IBA states that appointments by non-judicial bodies are not "considered inconsistent with judicial independence in countries where, by a long historic and democratic tradition, judicial appointments and promotion operate satisfactorily" (IBA 1982).

In several countries, the legislative branch is also involved in the appointment process. It can either provide a list of possible candidates for the chief of the executive branch to choose from or it must conduct a vetting process to confirm (or not) the appointee. When it is involved in the approval of candidates, an additional question is the threshold of votes needed to confirm the appointment, since the simple majority model may allow the governing party to dominate appointments. The supermajority model, used in Germany and Morocco, may foster a process of negotiation and compromise between government and opposition leaders, but it can also lead to deadlock (Choudhry & Bass 2014: 11).

A country where the legislative plays an even more significant role in judicial appointments for high-level courts is Belgium. The country's Constitutional Court is made up of twelve justices, six of whom must be former parliamentarians, appointed by the Chamber of Representatives and by the Senate. The legislative is also responsible for selecting the remaining six Constitutional Court justices from judges across the country. Similarly, the legislative branch is responsible for all

appointments to constitutional courts in Germany and Poland (Court of Justice of the European Union 2020: 22-24).

In other countries, multiple authorities share responsibility for selecting constitutional court judges. This is the case of Austria, Bulgaria and Romania. In Italy, for example, each branch of government selects one third of the Constitutional Court members (Court of Justice of the European Union 2020: 27).

The involvement of the legislative can lead to the politisation of judicial appointments, as political considerations may supersede objective criteria (UNODC 2015: 26). Approving an individual appointed to become a judge can become a bargaining chip in wider political debates. It can also lead to efforts at ensuring proportional party representation in appointments to the judiciary (Rank 2020). On the other hand, the legislature can serve as a check on the authority of appointing authority (UNDOC 2015: 26).

The risk that a parliament's involvement in the process leads to its politisation has been noted by the Venice Commission (2007: 3), which expressly stated that the appointment of judges to non-constitutional courts is "not an appropriate subject for a vote by Parliament".

Appointments by the Judiciary

In some countries, new judges are appointed by existing judges. This serves as a self-perpetuating process in which senior judges act as guardians of the profession and of the judicial institution. While this system can protect judicial independence and professionalism, it can also concentrate "power within the senior judiciary, undermining the independence of individual judges and making the bench conservative, unrepresentative, unaccountable and unresponsive to the public" (IDEA 2014: 10).

When appointments to high-level courts are, in essence, promotions of judges, it is important to

ensure that appointments are based on an objective evaluation of the candidate's qualifications and past performance, not on personal preferences or corporativism. This is especially relevant if the promotion is not based solely on seniority (Judicial Integrity Group 2010).

Some countries adopt appointment proceedings whereby other members of the judiciary are, alone, responsible for nominating some of the judges in the Supreme Court or in the constitutional court. In Albania, for example, the [Constitution](#) determines that three out of the nine members of the Constitutional Court should be chosen by the High Court. Similarly, the [Portuguese Constitution](#) determines that three out of the 13 Constitutional Court's justices are chosen by a vote of the remaining 10 Constitutional Court justices from a pool of the country's judges.

Appointment by independent bodies

According to the UNODC (2015: 23), the appointment of judges by an independent body has gained increased support from international and regional initiatives concerned with judicial independence and integrity.

The [Measures for the Effective Implementation of the Bangalore Principles](#), adopted by the Judicial Integrity Group in 2010, recognises that the creation of bodies such as a Higher Council for the Judiciary, with mixed lay and judicial representation, to make judicial appointments has gained particular support in states developing new constitutional arrangements. While these bodies may be called "judicial councils", a term often used to describe bodies composed *solely* of members of the judiciary, this section focuses on independent public institutions of *mixed* composition responsible for judicial appointments.

The [Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa](#)² state that "the process for appointments to judicial bodies shall be transparent and accountable and the establishment of an independent body for this purpose is encouraged". An independent process is also endorsed by the [Commonwealth \(Latimer House\) Principles on the Three Branches of Government](#).

Independent bodies have also been previously endorsed by Transparency International (2007: 3), which highlighted the importance of an objective and transparent process for the appointment of its members. After all, the independence of these bodies is the foundation of the legitimacy of their appointment choices (Due Process of Law Foundation 2020: 1).

Concerning the role of these commissions, the [Cape Town Principles on the Role of Independent Commissions in the Selection and Appointment of Judges](#) provides recommendations on how they should be set up and function. These recommendations include that they have a "wide mandate, encompassing all levels of the superior court hierarchy and including temporary, acting or part-time judges, where such positions exist.". The commissions should be well resourced and staffed to adequately fulfil their functions (British Institute for International and Comparative Law 2016).

Their decisions may be subject to examination by an independent ombudsman with power to make non-binding recommendations. The decisions of the commission should also be subject to judicial review (British Institute of International and Comparative Law 2016: 3).

The composition of these independent commissions, in turn, becomes a central point of concern. According to the UNODC, "[their] members should be selected on the basis of their

² Proclaimed by the African Commission on Human and Peoples' Rights and endorsed by the Heads of State of the African Union in 2003.

competence, experience, understanding of judicial life, capacity for appropriate discussion and appreciation of the importance of a culture of independence” (UNODC 2015: 26). There is particular concern over the selection of non-judge members, who should be citizens of acknowledged reputation and experience (Judicial Integrity Group 2010).

A mixed composition, which may include judges, lawyers, jurists, citizens of acknowledged reputation and experience, avoids the perception of self-interest, self-protection, and cronyism. Increased diversity in these commissions ensures that different viewpoints within society are represented in making these important decisions, serving as an additional source of legitimacy (UNODC 2015: 26).

An example of diverse body charged with this responsibility is the Judicial Service Commission of South Africa, which is made up of more than 20 individuals from different sectors of society, including judges, lawyers, professors of law, and legislators, including members of opposing parties.³

The Venice Commission (2007: 10) has argued that the establishment of a judicial council responsible for appointments is an appropriate method for guaranteeing judicial independence. It noted, however, that these councils should be endowed with constitutional guarantees for its composition, powers, and autonomy. Regarding its composition, the Commission recommends that a majority of the members be elected by the judiciary itself and that the others be elected by parliament, in order to provide democratic legitimacy to the council.

The composition should avoid an unjustified dominance of the commission by the executive, by members of parliament or representatives of

political parties (British Institute of International and Comparative Law 2016: 2).

There is a trade-off in determining the make-up of these commissions. Greater diversity brought about by the inclusion of different sectors and national associations provides democratic legitimacy, but representation can become a channel of influence. In other words, and decisions on appointments become a political matter rather than about the merits of the candidate (Due Process of Law Foundation 2020: 1). Restricting the membership to jurists and academics reduces the risks of politisation, but it also widens the gap between the commission and the people, impacting the legitimacy of the choice made.

Besides the composition, it is also important to consider its internal voting procedures. For example, the Israeli Judicial Selection Committee is made up of nine members, five of which come from the judicial profession (three Supreme Court justices and two representatives of the Israel Bar Association). However, the selection of judges requires a seven-vote majority, which means that at least a portion of the remaining four members (two ministers and two parliamentarians) have to agree with the selection (Lurie 2022)

Mixed proceedings

There are also countries in which more than one authority plays a significant role. Ensuring that appointment proceedings include elements of all three branches of power is sometimes seen as a means of reducing chances of arbitrary decisions (Rank 2020).

Independent commissions and judicial councils can share the responsibility of appointing judges with an appointing authority – usually the Head of State or the Head of Government. Where the Head of State plays an essentially formal role in the

³ For a complete list, see <https://www.judiciary.org.za/index.php/judicial-service-commission/members-of-the-jsc>.

proceedings, it is more likely they will be insulated from party politics. In this case, there is less risk of politicisation of judicial appointments.

In Indonesia, the Judicial Commission conducts the initial selection proceedings, which include the receipt of nominations from the Supreme Court, the government and the public, the administration of a test which requires candidates to write an academic paper and a public interview session. The Commission then selects three nominees, who are presented to the House of Representatives, which conducts its own round of interviews and makes the final selection, before submitting the chosen nominee for the appointment of the President (Damayana 2017: 123-124).

Responsibility for appointments is often shared by the judiciary and the executive. Either the judiciary nominates a shortlist of candidates for the head of the executive to select one name, or s/he nominates an individual that the judiciary must approve. The head of the executive may also put forward a shortlist of candidacies that will be decided on by the courts. These models are used in Egypt and Iraq, for example (Choudhry & Bass 2014: 12).

Only in exceptional circumstances, provided in law, may the appointing authority reject, after providing justification, a candidate proposed by those bodies or require reconsideration of a list put forward by them (British Institute of International and Comparative Law 2016). The appointing authority should not be allowed, according to the Venice Commission (2007: 4), to appoint a candidate not included in the list that submitted to them.

Professional associations can also play a role in the selection and/or vetting of judicial appointees. In multiple OECD countries, for example, they have decisive influence on decision-making, they vet candidates or offer advice, which is, by custom,

followed by appointing authorities (The Israel Democracy Institute 2023).

Integrity safeguards

Different appointment systems present different challenges in seeking to ensure both integrity and transparency in the process of appointing judges and making sure that the outcome contributes to the independence and impartiality of the judiciary. The following section presents international standards and recommendations, as well as domestic best practices that, while not necessarily applicable to all systems, can contribute to that result.

Qualifications

The qualifications required of judges should be clearly and publicly stated so that eligible candidates are identified and to ensure that the appointing authorities can have a clear understanding of the process from the start (Transparency International 2007).

Different judicial roles demand specific qualifications and requirements should be proportionate to the responsibility that each judge is expected to hold. Minimum qualification requirements should guarantee that the appointed judge will be able to effectively fulfill their duties. Minimum thresholds for qualifications also serve as an additional barrier to political interference (Choudhry & Bass 2014: 13).

In some countries, a portion of the vacancies in high-level courts is reserved for candidates that come from one particular legal profession. Most commonly career judges, but sometimes also prosecutors, lawyers, and professors of law. In these cases, candidates have to demonstrate that their professional experience matches or exceeds the minimum requirements, which may include seniority, experience and performance in examinations and assessments (Choudhry & Bass 2014: 89).

Assessing a candidate's educational qualifications and professional experience is, according to the [European Charter on the Statute for Judges](#), traditionally considered the main component of the process for evaluating the merits of an appointment. Some countries impose criteria which serve as a proxy or as minimum requirements for qualifications, such as minimum age limits and/or years of experience practicing law (IDEA 2014: 18).

However, legal expertise and professional abilities are not the only elements of a candidate's qualifications that should be considered. Their social awareness and sensitivity, communication skills, and other personal qualities, such as "a sense of ethics, patience, courtesy, honesty, common sense, tact, humility and punctuality" should also be taken into account (UNODC 2015: 25).

Generic expressions are often used regarding ethical and moral qualifications, such as "well-known morality" in El Salvador and "high moral character and proven integrity" in Ghana (IDEA 2014: 18). However, these required qualifications may serve as barriers to the appointment of individuals who were, for example, previously investigated or convicted for corruption or other types of misdeeds. Background checks are useful tools in raising issues in the past professional lives of appointees.

A commitment to the protection of human rights, democratic values and transparency as well as an ability to understand the social and legal impacts of a judicial decision should also be taken into account (Due Process of Law Foundation 2020: 4).

The imposition of necessary qualifications for judges should not lead to discriminatory practices. Certain requirements are not considered, in principle, discriminatory, such as minimum age or experience, maximum or retirement age and the

requirement that only nationals be eligible for appointment (African Commission on Human and People's Rights 2003).

Candidates should themselves present a clear record of competence, as well as compelling evidence supporting their professional and academic experience that meets or exceeds the minimum legal requirements (Transparency International 2007: 3). Rules can require candidates to submit samples of written work and the vetting process should allow for external references to be questioned about the candidates' qualifications (British Institute of International and Comparative Law 2016: 3).

Restrictions

There are multiple restrictions on the conduct of judges in order to safeguard their independence and impartiality. Ensuring that an individual is complying with these restrictions before and when taking office is therefore relevant to the appointment process. At the very least, candidates should proactively provide information to vetting bodies and to society more broadly to ensure that the vetting process considers all relevant concerns about their conduct while in office.

This is especially relevant for individuals who have not previously held judicial office before being appointed. For example, judges should not be allowed to practice law while in office⁴, so demonstrating that this restriction has been and will be upheld can be a part of the vetting process. Similarly, judges should not hold positions in political parties (IBA 1982).

While judges are allowed to serve on official bodies, government commissions, committees and advisory boards, this membership may become inconsistent with the need to ensure their perceived impartiality and political neutrality.⁵ Assessing whether current or past engagements in public office might hinder future service in judicial

⁴ *Bangalore Principles of Judicial Conduct*, 4.12.

⁵ *Bangalore Principles of Judicial Conduct*, 4.11 (c).

office should also be part of the vetting process of a judicial appointee.

A number of international standards, including TI's [National Integrity System Assessment](#), demonstrate concern over post-government private sector employment for judges. However, there are fewer directives on restrictions for the appointment of judges based on present or prior private or public sector employment or other forms of work. Transparency International Brazil (2018: 311) recommends that elected officials or individuals who serve as ministers and other high-level positions, such as Prosecutor General, should observe a 4-year cooling off period before being eligible for appointment to the country's Supreme Court.

Judges are expected not to participate in the determination of a case in which a family member represents a litigant or is in any other way associated, as this would violate their propriety obligations.⁶ To ensure compliance with this standard, an individual appointed to a strategic position in the judiciary should provide information about potential conflicts of interests, given their relationships at the time of the appointment (and periodically, when in office).

Similarly, in order to ensure that a judge's conduct is impartial, they should be required to disqualify themselves from proceedings in which they are unable to perform their judicial duties without favour, bias, or prejudice. According to the Bangalore Principles, this includes, but is not limited to, instances where the judge previously served a lawyer or material witness, and where they, or a family member, have an economic interest in the outcome of the case.⁷

If judges are required to conduct themselves in a manner that minimises the occasions in which it would be necessary for them to be disqualified

from deciding on cases⁸, it is reasonable to include a prospective assessment of the impact of their past professional activities if and when they assume office.

Appointment proceedings

Appointment proceedings may be as simple as a direct order for an individual to assume judicial office or as complex as involving multiple institutions and bodies which all need to validate or confirm the appointment.

A possible component of appointment proceedings is integrity vetting, a tool designed to identify past improprieties which are incompatible with holding public office. The vetting process may be conducted by a body or institution specifically designed for that end, as a preliminary examination, or by the body that is responsible for confirming the appointment itself.

The body responsible for the vetting process should, in this case, have access to past and current asset declarations and conditions to fully assess them. If the analysis of this data indicates possible integrity violations, especially in the form of unexplained wealth, the candidates should present clarifications and additional information through written submissions. If reasonable doubt remains, the burden of proof shifts to the candidate, who should not be appointed to the judicial post unless they are able to fully clarify questions posed by the vetting body (Hoppe 2023).

Finally, the vetting body can notify law enforcement authorities if evidence of any crimes is found. The decisions by this body are, however, subject to judicial appeal and it should be held accountable for its findings (Hoppe 2023).

In Ukraine and, more recently, in Moldova, integrity vetting for high-level judicial posts has been

⁶ *Bangalore Principles of Judicial Conduct*, 4.4.

⁷ *Bangalore Principles of Judicial Conduct*, 2.5.

⁸ *Bangalore Principles of Judicial Conduct*, 2.3.

conducted by bodies in which international experts make up a portion of the members. Local civil society also has an important role to play in the integrity vetting processes in these countries. Civil society representatives may be members of the vetting body and they can also provide information and questions about the vetted candidate, in addition to serving as watchdogs of the whole process (Hoppe 2023).

In Ukraine, there are two component bodies to the High Qualification Commission of Judges, which is responsible for managing the recruitment process of the Ukraine High Anti-Corruption Court. These are the Public Integrity Council (PIC), made up of 20 members from civil society, academia, and the Public Council of International Experts (PCIE), composed of six international experts appointed by international organisations. Candidates have to receive at least three votes from the PCIE and nine votes from the PIC to be confirmed (Stephenson & Schütte 2022: 35).

Some important caveats should be mentioned about the integrity vetting process. While the Venice Commission and the European Court of Human Rights consider it a valid mechanism, in line with international human rights norms, the proceedings should be concerned with possible violations of the rights to privacy and due process of law. The process also consumes time and resources, which should be taken into account, as should the risk of the vetting body being politicised or instrumentalised by appointing officials (Hoppe 2023). Finally, the participation of international experts raises the possibility that the process comes to be seen as an undue interference in national government or as a violation of a country's sovereignty. In the case of Ukraine, the involvement of international experts was a condition for loans from the International Monetary Fund (Stephenson & Schütte 2022: 35).

Vetting procedures are useful for preventing conflicts of interest and for mitigating corruption risks, but they also serve the purpose of protecting

the judiciary from outside threats. In Slovakia, judges appointed to the Special Criminal Court, the national anti-corruption court, go through a security clearance in order to confirm that nothing in their backgrounds make them susceptible to blackmail or other forms of improper influence. This reflects a concern about the threat posed by criminal networks in the country (Stephenson & Schütte 2022: 34).

Additional concerns can also be included in the appointment process. For example, in Austria, appointed judges are submitted to health and psychological aptitude tests (Rank 2020).

Transparency and social participation

Transparency is one of the main conditions for an adequate appointment procedure. Selection criteria should be made available to the public in general, including the qualifications required of candidates to high-level courts (Judicial Integrity Group 2010).

Vacancies in judicial positions should be advertised in order to invite applications from a wide array of suitable candidates (UNODC 2015: 25). Sufficient time should be allowed for applicants to submit their candidacies, wherever such processes are available. In South Africa, vacancies are [published online](#) by the Judicial Service Commission (JSC), which details requirements and proceedings for candidacies. Once shortlisted candidates are identified, the JSC announces the names of those individuals who will be interviewed, and opens up a channel to receive comments on their suitability for the position.

While advertising vacancies widely can contribute to widening the pool of candidates (UNODC 2015: 25), it does not guarantee that the list of actual candidates will be diverse and reflective of society. There are numerous barriers for marginalised groups of society to accede to positions of power and these barriers very much apply to judicial appointments to high-level courts. Mapping such barriers and trying to eliminate them progressively

is an important step to ensuring greater diversity in the judiciary (Due Process of Law Foundation 2020: 2).

Public scrutiny of the process is only possible when competent authorities publish both the list of vacant posts and the list of candidates for said posts (UNODC 2015: 25). Civil society groups and professional associations linked to the legal professions, such as bar associations, should be consulted or have the opportunity to provide information on the merits of specific candidates. This is especially relevant when authorities want or need to appoint lawyers or prosecutors, seeing as their professional associations should be involved in this process (Transparency International 2007: 3).

The appointment process should offer opportunities for different sectors of society to provide input on the candidates, including other elements of concern about their past professional and personal lives (Due Process of Law Foundation 2020: 2). While this can be done through a formal process, in open societies with a free press, scrutiny of a candidate's life may be conducted as a matter of course.

Individuals and organisations that possess relevant concerns and possibly incriminating information about appointees should be able to freely and safely bring these to the attention of confirming bodies. In countries with a high degree of press freedom, the press may also receive information and investigate issues that could indicate the suitability of a candidate for judicial office. Whistleblowing systems, including those within judicial bodies, that provide anonymity and protection from retaliation can be used as tools to alert authorities to concerns about certain candidates.

However, when appointment proceedings are rushed, providing little time for controversial issues to be raised, it is more likely that important aspects of an appointee's history will not come to light

before the final decision is made. For this reason, ensuring a minimum period of time between the initial appointment and the final decision allows for greater scrutiny. Transparency International Brazil (2018: 311) recommends that an initial list of possible appointees be published for 30 days before the final decision is made, in order to ensure public debate about their qualifications.

Another good practice is to hold public hearings during which the candidates' qualifications can be assessed, and questions about their past professional experiences and current understanding of legal issues can be raised. Public hearings have the added benefit of heightening awareness about the relevance of the appointment process and encouraging civic engagement (Due Process of Law Foundation 2020: 2).

The UNODC included in the evaluation framework for the implementation of Article 11 of the UNCAC several questions that aim to assess and, indirectly, encourage participation of civil society in the appointment process of judges:

- What appointment and selection criteria are applicable? How were these criteria developed? Are these criteria made accessible to the general public?
- Are the names of judicial candidates published?
- Is civil society or the community represented on the appointment body [independent commission]?
- Does this body conduct interviews of judicial candidates? Are these interviews open to the public? Is the media allowed to attend? (UNODC 2015: 27)

A transparent selection process should lead to a decision that clearly states which elements were considered and the basis for its reasoning. This decision should also demonstrate that the

guidelines for the proceedings were followed, thus limiting the possibility of an arbitrary decision (Due Process of Law Foundation 2020: 2).

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