



SELECTION AND APPOINTMENT OF JUDGES AND JUDICIAL INDEPENDENCE: NEW PERSPECTIVES ON FACING AN OLD PROBLEM

**NATIONAL COUNCIL OF JUSTICE, BRAZIL
DEMOCRATIC GOVERNANCE AND RIGHTS
UNIT, UNIVERSITY OF CAPE TOWN.**

This panel discussion falls within the broad topic of selection and appointment of judges, and judicial independence.

A strong process of recruiting and appointing judges, which fulfils the United Nations *Basic Principles on the Independence of the Judiciary*, and guarantees the implementation of the *Bangalore Principles of Judicial Conduct*, is of crucial importance in several respects. It has been cogently argued that judges must be independent, impartial, honest and competent. A sound process and structure of judicial selection and appointment is therefore vital to ensuring the actual independence of the judiciary, and to furthering public trust and confidence in the independence of the judiciary. An independent judiciary plays a critical role in the fight against corruption at all levels of government and at both the domestic and international levels.

A robust and strong system of judicial selection and appointment is also vital to ensuring judicial integrity. This is so both because it affirms public confidence in the quality of the judges appointed, and as it serves to identify and eliminate from possible judicial selection candidates who are shown to have a weak grasp of legal ethics, or who have engaged in professional misconduct or corruption. Judicial integrity can also be strengthened by expressly including, among the criteria for selection, qualities that indicate the integrity, probity and personal independence of individual judges.

However, the process and modalities by which judicial selection is made is one that can vary significantly between different jurisdictions, and the importance of the judicial office means that the process is often the subject of strong political pressure and public scrutiny. This guided panel discussion aims to examine potential ways of developing effective processes and structures for judicial selection, drawing on three sets of regional experiences: from Europe, Latin America and Africa.

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Session Organizer:

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Moderator:

Judge Herman Benjamin
Superior Court of Justice, Brazil
Director-General of the National School of Magistrates

Rapporteur:

Judge Carl Smith
National Council of Justice, Brazil

Panellists:

Mr. Hartmut Rank
Konrad Adenauer Foundation, Germany

Mr. Chris Oxtoby
University of Cape Town, South Africa

Judge Richard Pae Kim
National Council of Justice, Brazil

Judge Ibrahim Alnisf
Court of Appeal, Qatar

THE BRAZILIAN NATIONAL COUNCIL OF JUSTICE (CNJ)

The Brazilian National Council of Justice is a public institution in charge of supervising the administrative and financial activities of the judiciary. The 15-member Council is an organ of the Brazilian Judicial System established in 2004 by the 45th Amendment to the Federal Constitution of Brazil.

DEMOCRATIC GOVERNANCE AND RIGHTS UNIT (DGRU)

The Democratic Governance and Rights Unit is an applied research unit based in the Department of Public Law at the University of Cape Town. The DGRU aims to advance social justice and constitutional democracy in Africa.



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Main Issues:

- The selection and appointment of judges;
- The impact of the process of judicial selection on judicial independence;
- Creating best practice standards and developing institutions to ensure the appointment of the best judges possible.

Key Objectives:

To promote a global conversation that can inform policy development in Latin America, taking into account experiences from other regions in the Global South (Africa), and from the Global North (Europe). Specifically:

- To analyze the role that has been played by the recruitment and nomination of judges in the construction and protection of institutional and individual judicial independence;
- To discuss how appropriate selection criteria for judges strengthens judicial independence;
- To explore the global scenarios on selection and appointment of judges, focusing on Africa, Latin America and Europe;
- To explore distinct experiences on selection and appointment of judges, mainly of southern and eastern Africa and Brazil;
- To discuss and propose possible guidelines to improve the process of the selection and appointment of judges, drawing particularly on the experience in Europe and Africa, and discussing the feasibility of the eventual creation of bodies responsible for the recruitment and selection of judges;
- To explore the practicalities and desirability of regional integration of selection and appointment criteria, how this can be achieved, and what pitfalls may exist.

Specific Questions and Discussion Points:

- The impact of the recruitment process on the independence of judges, and the importance of having adequate criteria for appointment. These issues will be analyzed by highlighting different scenarios from around the globe, particularly the experience in Europe, Southern and Eastern Africa, and Latin America;
- The implementation of the *Lilongwe Principles and Guidelines on the Selection and Appointment of Judicial Officers*, which was adopted by the Southern African Chief Justices' Forum in October 2018. What issues and challenges have been encountered, and what lessons can be drawn from this experience that may be of relevance to other jurisdictions that may undertake a similar project,

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- The experience of judicial recruitment and appointment in Latin America, focusing specifically on the experience of Brazil, and the role of the Brazilian National Council of Justice;
- Identification of potential methods of selecting judges, and how they impact perceived and actual judicial independence;
- Whether the creation of bodies responsible for the recruitment, appointment, promotion and discipline of judges, such as national councils or equivalent organizations, is a viable approach.
- How such institutions can be structured in such a way that their independence is secured;
- Drawing specifically on the Brazilian experience, is the selection of judges with the supervision of a Council of Justice a possible alternative to the existing system of judicial selection?

Proposed Outcome of the Session:

- Identify the desirability of best practice principles for Latin America;
 - Identify lessons learned from the European and African experiences to inform the modalities, content and practice of developing and implementing such principles;
 - Identify ways in which the *Bangalore Principles* can be effectively implemented through a strong judicial selection process;
 - Identify potential difficulties that may be foreseeable or be experienced, and develop possible strategies for how these could be addressed;
 - Identify effective methods of implementation in different contexts, that may be adapted and applied to best practices on judicial recruitment and appointment;
 - Develop networks for future collaboration, and identify potential topics and issues for such collaborations to address.
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