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Promoting Fairness in Judicial Appointments

Where political power plays a significant role in the appointment, promotion and conditions of service of judges there is a risk that judicial candidates, as well as sitting judges, will feel compelled to respond positively to the demands of the powerful. In some countries, judges who abide by the wishes of senior public officials may be rewarded with modern office equipment, higher quality housing or newer cars. Rather than act as a check on government or economic interests in protecting civil liberties and human rights, judges who have been appointed unfairly may also be more likely to promote their own interests over the rights of the individual.

Appointment procedures must therefore be transparent, fair and robust enough to ensure that only those candidates with the highest professional qualifications and standards of personal integrity are allowed to sit on the bench. Fair, independent and transparent appointment processes not only improve judicial independence, but also form part of a system of judicial accountability.

It is essential that all stages of the process — from selection to nomination to appointment — is based on clear, objective criteria aimed at ascertaining the professional qualifications of candidates and predicting, as far as possible, their integrity and high professional standards on the bench.

Representatives of lawyers' associations — as well as other civil society organisations such as those dedicated to judicial reform — can help limit unfair judicial appointments by enhancing the base of information used for making appointment decisions.

1. Making appointments fair

There are various models for promoting fair, merit-based judicial appointments, but very little agreement on precisely the best way to ensure a process that is free of inappropriate influence while still being accountable. In the civil law tradition, judges are generally selected through examination at a young age and previous professional experience plays a relatively minor role. The judicial corps is organised on a hierarchical pattern, according to which promotions are granted on criteria that combine seniority and merit. In the common law system, on the other hand, judges are typically selected from a body of experienced practicing lawyers. Once appointed, they are almost certain to remain until the mandatory age of retirement. Judges in these jurisdictions enjoy high social status, partly because of the power they exercise in making case law.

At the centre of any appointment process should be an appointing body that acts independently of both the executive and the legislature and whose members are appointed in an objective and transparent process. It is essential that at all stages — from selection to nomination to appointment — a clear, objective criteria is used which aims at ascertaining the professional qualifications of candidates and predicts (as far as possible) their integrity and high professional standards on the bench. It is advisable that the recruitment process should be open in part to experienced professionals. In this way, the judicial corps will be enriched with solid experience and assessments of candidates will take into account previous work activity, as well as theoretical knowledge.

2. Involving legal practitioners and civil society in judicial appointments

Authorities wanting to appoint judges from the bar should involve the heads of lawyers' associations to ensure that appointees have clean practice records. In other contexts, representatives of lawyers' associations — as well as civil society organisations such as those dedicated to judicial reform — can help limit unfair judicial appointments by enhancing the base of information upon which decisions are made. For example, these groups can be involved through their representation on bodies such as judicial service commissions.

3. Professionalism to counter corruption

Professionalism is a key means of enhancing the institutional identity for the judiciary and of building a culture that is averse to corruption. A professionally qualified judiciary is likely to enjoy greater prestige in society and, as a result, attract better candidates to the bench. Moreover, where there is a clear merit-based culture coupled with high standards of qualification and judicial training,

individuals are more likely to refer to the standards of the group in relation to their own conduct. In this way, a professional judicial environment activates an important check on judicial corruption, since judges will tend to measure themselves against the high-standards of the profession as a whole.

4. Key recommendations

- 🌐 An **objective and transparent process** should be in place for the appointment of judges at all levels. This ensures that only the best qualified judges are selected and that they do not feel they owe their position to a particular politician or senior judge that appointed them. At the centre of the process should be an appointing body that acts independently of both the executive and the legislature and whose members are appointed in an objective and transparent process.

- 🌐 **Election criteria** should be clear and well publicised, allowing candidates, selectors and others to have a clear understanding of where the bar lies to be part of the bench. Candidates should be required to demonstrate a record of competence and integrity.

- 🌐 Civil society groups, including professional associations linked to judicial matters, should be **consulted on the merits of specific candidates.** 🌐

This TI Policy Position is part of a series on preventing corruption in judicial systems. It was produced in 2007 and revised in 2008.

The four topics covered in this series are: Decent Working Conditions, Fair Appointments, Accountability and Discipline, and Transparency. All four Policy Positions are based on TI's Global Corruption Report 2007 on Corruption and Judicial Systems.

To learn more about the GCR for 2007, please visit: www.transparency.org/publications/gcr.

Additional details of TI's work on the judiciary are at: www.transparency.org/global_priorities/other_thematic_issues/judiciary

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