**Answers to Questionnaire of the Special Rapporteur on the Independence of Judges and Lawyers**

1. *Please indicate whether there is a national body or mechanism in charge of* *selecting, appointing, promoting, transferring, suspending or removing judges in your country. What is the exact denomination of this body or mechanism? What are the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other?):*

In Ireland, rules relating to the selecting, appointing, promoting, transferring, suspending or removing judges can be found grounded in the Irish Constitution 1937 (“the Constitution”) and legislation.

Judges are appointed formally in Ireland by the President, pursuant to Article 35.1 of the Constitution, on the advice of the Government pursuant to Article 13.9 of the Constitution, with the assistance of a body called the Judicial Appointments Advisory Board (“the JAAB”).

The JAAB has its legal basis in legislation and was established by the Court and Court Officers Act 1995 (“the 1995 Act”) where section 13 states that it’s establishment is for the purposes of “identifying persons and informing the Government of the suitability of those persons for appointment to judicial office.”

Under section 16 of the 1995 Act, any person interested in being appointed to judicial office must provide information to the JAAB regarding their suitability, which is to include details relating to their education, qualifications, character and experience. The JAAB, on the request of the Minister, where a judicial office stands vacant or before such vacancy arises, must submit the names of at least seven persons who have expressed interest in being appointed to a judicial office pursuant to section 16(2) of the 1995 Act. However, the Government is not bound to follow the advice of the JAAB and if this is the case, the Government will compile their own list of potential appointees for judicial office and advise the President accordingly.

The Courts (Supplemental Provisions) Act 1961 (“the 1961 Act”) is the other main legislative text that provides assistance in relation to judicial appointments with regards to qualifications and eligibility.

The JAAB however does not have any role in relation to the promotion, transfer or removal of judges in Ireland. These mechanisms are to be found within the Constitution, the 1995 Act and the 1961 Act.

Therefore, in this jurisdiction, selecting, appointing, promoting, transferring, suspending or removing judges are managed by a combination of the JAAB, a public body, the Constitution and legislative sources.

1. *Please provide information on the composition of the body or mechanism (number and qualifications of members), the procedure for appointment of its members and the duration of their term of office. Please also provide information on human and financial resources of this body or mechanism (e.g. number of employees and their qualifications; annual budget):*

**Composition of the JAAB**

As mentioned above, the main body involved in the appointment of the judiciary is the JAAB. Its composition is provided for under section 13 of the 1995 Act, as amended by section 12 of the Court of Appeal Act 2014 (“the 2014 Act”). The JAAB must have 11 members pursuant to section 13(2) of the 1995 Act consisting of the following:

“ (a) (i) the Chief Justice, who shall be the chairperson of the Board,

(ia) the President of the Court of Appeal,

(ii) the President of the High Court,

(iii) the President of the Circuit Court,

(iv) the President of the District Court,

(v) the Attorney General,

(b) (i) a practising barrister who shall be nominated by the Chairman for the time being of the Council of the Bar of Ireland,

(ii) a practising solicitor who shall be nominated by the President for the time being of the Law Society of Ireland, and

(*c*) not more than three persons appointed by the Minister who shall be persons engaged in, or having knowledge or experience (being knowledge or experience that the Minister considers appropriate) of commerce, finance, administration or persons who have experience as consumers of the services provided by the courts that the Minister considers appropriate.”

**Procedure for Appointment to the JAAB**

The legislation establishing the JAAB, namely the 1995 Act, does not provide for a procedure that is to be followed for the appointment of its members - this may be due to the fact that section 13 is very specific in who must comprise the JAAB at any one time. In fact, section 13 states that the board “shall” comprise these members, thus making their appointment to the JAAB a mandatory legislative obligation. However, section 14 specifies that the JAAB may establish sub-committees to adopt such procedures as it thinks fit which can help it carry out its functions. Pursuant to section 14(2) of the 1995 Act, in carrying out its functions, the JAAB may:

“(a) advertise for applications for judicial appointment,

(b) require applicants to complete application forms,

(c) consult persons concerning the suitability of applicants to the Board,

(d) invite persons, identified by the Board, to submit their names for consideration by the Board,

(e) arrange for the interviewing of applicants who wish to be considered by the Board for appointment to judicial office, and

(f) do such other things as the Board considers necessary to enable it to discharge its functions under this Act.”

**Duration of Term in Office**

In relation to the members of the JAAB made up of the Chief Justice, Presidents of the Court of Appeal, High Court, Circuit Court, District Court and the Attorney General, they will remain members for as long as they retain these judicial/legal positions. However, as per section 15 of the 1995 Act, if the Chief Justice or one of the Presidents die or retires then a senior ordinary judge of that jurisdiction will be appointed until a new Chief Justice or President is selected.

With regards to the duration of office of a nominated practising barrister and practising solicitor and those three people who are appointed by the Minister pursuant to section 13(2)(b) & (c) of the 1995 Act, they shall be a member of the JAAB for a period not exceeding 3 years. However, they can apply for re-appointment to the JAAB. This is pursuant to section 13(3) of the 1995 Act.

**Human and Financial Resources of the JAAB**

As mentioned above, the legislation provides for 11 members to be appointed to the JAAB. However, the JAAB can still exercise its functions notwithstanding a vacancy in their membership. Furthermore, due to the fact that the JAAB can make up sub-committees in order to help exercise their function under the legislation, the number of employees may increase in this way. There are no specified qualifications in the legislation that the employees of these sub-committees must possess although section 21 of the 1995 Act, as amended by S.I. 418/2011, states that the Minister will “make available to the Board such services, including staff, as the Minister may determine from time to time with the consent of the Minister for Public Expenditure and Reform.”

The CEO of the Courts Service of Ireland is the current Secretary of the JAAB and it would appear that the budget allocated to it is nominal. However, pursuant to section 22 of the 1995 Act any expenses incurred by the JAAB in its administration shall be paid out of moneys provided by the Oireachtas.

1. *Please provide detailed information on the legislation and practice existing in your country relating to:*
2. *The selection and appointment of candidates for judicial offices and the criteria used for their selection and appointment*

**Selecting and Appointing Judges**

Before a person can be considered for appointment to judicial office, regard must be had to the requirements provided for in legislation regarding qualifications. Section 5 of the 1961 Act, as amended by section 4 of the Courts and Court Officers Act 2002 (“the 2002 Act”), and section 11 of the 2014 Act, provides that in order to be qualified for appointment as a judge of the Superior Courts, namely the Supreme Court, the Court of Appeal and the High Court, a person must be a practising barrister or solicitor with 12 years standing and practiced in such capacity for a continuous period of two years immediately before such appointment.

In order to be considered for judicial office to sit as a Circuit Court judge, section 17(2) of the 1961 Act as amended by section 5 of the 2002 Act and section 188 of the Personal Insolvency Act 2012 (“the 2012 Act”) provides that the person be a practising barrister or solicitor of not less than 10 years standing or a judge of the District Court or a specialist judge of the Circuit Court or a country registrar who has practised as a barrister or solicitor for not less than 10 years prior to appointment.

Section 29(2) of the 1961 Act provides that a person who is for the time being a practising barrister or solicitor of not less than 10 years standing is qualified for appointment as a judge of the District Court.

According to section 16(7)(a) of the 1995 Act as substituted by section 192 of the 2012 Act, the JAAB must indicate whether the person who has applied for appointment to judicial office has satisfied the above professional requirements. Individual qualifications will vary from judge to judge.

Pursuant to section 16 of the 1995 Act any person who wishes to be considered for appointment to judicial office must include details as to their experience, professional qualifications, education and character. Furthermore, section 16(7)(b) of the 1995 Act as substituted by section 8 of the 2002 Act and further substituted by section 12 of the 2014 Act, provides that the JAAB shall not recommend a name of a potential judicial appointee to the Government unless that person has:

1. has displayed in his or her practice as a barrister or a solicitor a degree of competence and a degree of probity appropriate to and consistent with the appointment concerned,
2. in the case of an appointment to the office of ordinary judge of the Supreme Court, of ordinary judge of the Court of Appeal or of ordinary judge of the High Court, has an appropriate knowledge of the decisions, and an appropriate knowledge and appropriate experience of the practice and procedure, of the Supreme Court, the Court of Appeal and the High Court,
3. is suitable on the grounds of character and temperament,
4. complies with the requirements of section 19of this Act,
5. is otherwise suitable

In the case of subparagraph II above, “the Board shall have regard, in particular, to the nature and extent of the practice of the person concerned insofar as it relates to his or her personal conduct of proceedings in the Supreme Court, the Court of Appeal and the High Court whether as an advocate or as a solicitor instructing counsel in such proceedings or both.”

Section 19 of 1995 Act provides that a person who wishes to be considered for judicial appointment must agree to undertake any courses, education or training that may be required by the Chief Justice or President of the court to which that person is appointed. This section was amended by section 192 of the 2012 Act which extends this obligation to potential specialist judges of the Circuit Court.

1. *Condition of Service and Security of Tenure of Judges:*

According to Article 35.2 of the Constitution, “all judges shall be independent in the exercise of their judicial functions and subject only to this Constitution and the law.” Therefore, the role is zealously protected. The Constitution also provides for the oath that must be taken by every new judge appointed to judicial office. Article 34.6.1. states:

“In the presence of Almighty God I do solemnly and sincerely promise and declare that I will duly and faithfully and to the best of my knowledge and power execute the office of Chief Justice (or as the case may be) without fear or favour, affection or ill-will towards any man, and that I will uphold the Constitution and the laws. May God direct and sustain me."

Furthermore, the remuneration of judges shall not be reduced during their continuance in office save in accordance with reductions made in the remuneration of a class of people whose salary is paid out of public money.

Retirement age for members of the judiciary is fixed by statute at 70 years of age for judges of the Superior Courts (s. 47 and s. 47A of the 1995 Act)and the Circuit Court (s. 40 of the Courts of Justice Act 1924 (the 1924 Act”))*.* In relation to the District Court the age of retirement is 65 years for judges of the (s. 30(1) of the 1961 Act). However, notwithstanding this provision, section 2 of the Courts of Justice (District Court) Act 1949 provides for the extension of the retirement age of District Court judges. If a District Court judge is about to reach the age of 65 and satisfies a committee (made up of the Chief Justice, President of the High Court and the Attorney General) that he/she is fit to discharge his/her duties of the office then a warrant will be made, after a consultation with the Minister, that he/she is to continue in office for 1 year commencing on when he/she attains 65 years. It appears from section 2(3) of the 1949 Act that this can continue on a yearly basis until the judge reaches the age of 70. This extension only applies to District Court judges. Therefore, subject to these retirement ages, a judge will remain in office on good behaviour.

According to Article 35.3 of the Constitution, judges are not authorised to hold any other office or position of emolument.

Although there is a hierarchy of courts in this jurisdiction, all judges enjoy the same protection with regards to their tenure. In the case of judges of the Circuit Court the relevant provision is s. 39 of the 1924 Actwhich provides that judges of the Circuit Court enjoy the same tenure as judges of the High Court and Supreme Court. The equivalent provision in respect of judges of the District Court is s. 20 of the Courts of Justice (District Court) Act 1946.

1. *Promotion of Judges:*

In relation to the promotion of judges to another court, the JAAB does not have a function here – it is exclusively for the Government to advise the President to appoint a judge to a new judicial office. This is provided for under section 17 of the 1995 Act as substituted by section 13 of the 2014 Act. The Government will advise the President of nominated judicial appointees when a vacancy arises in one of the courts.

Section 5 of the 1961 Act, as amended by sections 11(d) – (g) of the 2014 Act provides for who can be eligible for promotion to judicial office within the Superior Courts. Section 5 provides that:

(3) an ordinary judge of the Supreme Court shall be qualified for appointment as President of the High Court, President of the Court of Appeal or as the Chief Justice;

(4)the President of the Court of Appeal shall be qualified for appointment as an ordinary judge of the Supreme Court or as Chief Justice;

(5)an ordinary judge of the Court of Appeal shall be qualified for appointment as an ordinary judge of the Supreme Court or as President of the High Court, President of the Court of Appeal or as Chief Justice;

(6)the President of the High Court shall be qualified for appointment as ordinary judge of the Court of Appeal or of the Supreme Court or as President of the Court of Appeal or Chief Justice; and

(7) an ordinary judge of the High Court shall be qualified for appointment as an ordinary judge of the Court of Appeal or of the Supreme Court or as President of the High Court, President of the Court of Appeal or Chief Justice.

Section 5(2)(c) of the 1961 Act, as amended by section 11 of the 2014 Act, also provides that “a judge of the Circuit Court who has served as such a judge for a period of not less than 2 years shall be qualified for appointment as a judge of the Supreme Court, Court of Appeal or the High Court.”

Furthermore, section 5 of the 1961 Act, as amended by section 4 of the 2002 Act and section 11 of the 2014 Act, states that a person will be eligible for appointment as judge of the Supreme Court, Court of Appeal or High Court if he/she:

“(i) is or was at any time during the period of 2 years immediately before the appointment concerned—

(I) a judge of the Court of Justice of the European Communities,

(II) a judge of the Court of First Instance attached to that Court,

(III) an Advocate-General of the Court of Justice of the European Communities,

(IV) a judge of the European Court of Human Rights established under the Convention for the Protection of Human Rights and Fundamental Freedoms done at Rome on the 4th day of November, 1950,

(V) a judge of the International Court of Justice established under the Charter of the United Nations,

(VI) a judge of the International Criminal Court established under the Rome Statute of the International Criminal Court done at Rome on the 17th day of July, 1998, upon the entry into force of that Statute,

(VII) a judge of an international tribunal within the meaning of section 2 of the International War Crimes Tribunals Act, 1998 ,

and

(ii) was a practising barrister or a practising solicitor before appointment to any of the offices referred to in subparagraph (i) of this paragraph.”

In relation to eligibility for promotion to the Circuit Court, section 17 of the 1961 Act as amended by section 5 of the 2002 Act and further amended by section 188 of the 2012 Act states that:

“(2) Subject to subsection (4), a person who is for the time being a practising barrister or a practising solicitor of not less than 10 years' standing shall be qualified for appointment as a judge of the Circuit Court.

(2A) Subject to subsection (4), a judge of the District Court shall be qualified for appointment as a judge of the Circuit Court.

(2B) Subject to subsection (4), a county registrar who practised as a barrister or a solicitor for not less than 10 years before he or she was appointed to be a county registrar shall be qualified for appointment as a judge of the Circuit Court.

(2C) A specialist judge of the Circuit Court shall be qualified for appointment as an ordinary judge of the Circuit Court.”

Furthermore, section 17(4) of the 1961 Act as inserted by the 2012 Act provides for the eligibility of persons for appointment as a specialist judge of the Circuit Court. It provides that a person is eligible for such appointment if: (a) a person, who for the time being is a country registrar having held such office for not less than 2 years continuously or; (b)(i) a person who is for the time being a practising barrister or practising solicitor for not less than 10 years standing or; (ii) a judge of the District Court.

Due to the fact the District Court is the lowest court (the District Court is a court of local and limited jurisdiction) on the hierarchy, no promotions to this court takes place.

1. *Transfer of Judges*

In Ireland, a transfer would generally take place in relation to a case as opposed to a judge. For example, according to Order 49 of the Rules of the Superior Courts, if a case is pending in the High Court that could have been initiated in the District or Circuit Court, a High Court judge has jurisdiction to transfer the case to the lower courts. However, it is sometimes the case that judges can be transferred within their appointed jurisdiction, for example, a High Court judge that usually sits on the Chancery list may transfer to the Judicial Review list.

1. *Disciplinary Proceedings Against Judges*

As it stands, there is no system in Ireland where disciplinary proceedings can be taken against members of judicial office. Article 35.4 of the Constitution, however, provides that:

“A judge of the Supreme Court, the Court of Appeal, or the High Court shall not be removed from office except for stated misbehaviour or incapacity, and then only upon resolutions passed by Dáil Éireann and by Seanad Éireann calling for his removal.”

Furthermore, there must be a majority for such removal in both Houses of Government, the Dáil and the Seanad, namely the Oireachtas. Finally, the Taoiseach must inform the President of Ireland of the resolution which has been passed by the Houses of the Oireachtas and send him a copy of every such resolution certified by the Chairman of the Houses of the Oireachtas. The President will then have the power to remove the judge from office.

Although the Constitution only refers to the Superior Court judges with regard to the removal of a judge from office, judges of the lower courts have now been incorporated within this remit (the Superior Courts are expressly provided for in the Constitution whereas the District and Circuit Court are creatures of Statute, namely the 1924 Act). Due to the fact that no judge has been removed this way in the history of the Irish State as of yet, there has been no need to judicially interpret stated misbehaviour or incapacity. In the Irish context, the absence of any mechanism other than removal from office means that matters of judicial misconduct may only be resolved by resignation or impeachment.

In relation to the District Court however, there is a procedure whereby an investigation can be made into the conduct or health of a judge, which of course is much less onerous than resignation or removal from office. This mechanism is pursuant to section 21 of the Courts of Justice (District Court) Act 1946 where the Minister for Justice may request the Chief Justice to appoint a judge of the Supreme Court or the High Court to investigate the state of health or the conduct of a District Court Judge and provide the Minister with a report on the matter. This mechanism does not exist for any other judges of the Irish Courts.

There have been only two occasions where the impeachment procedure under the Constitution was almost used, but in both circumstances, the judges resigned.

A bill has been published called the Judicial Council Bill 2010 (“the 2010 Bill”) which has the aim of promoting education, high standards of conduct, effective use of judicial resources and respect for judicial independence. Furthermore, it envisages a Judicial Conduct Committee which will investigate allegations of judicial misconduct – the Committee will include lay persons to allow for impartiality. The 2010 Bill is pending and has not yet been written into law and so in Ireland, it remains that removal from judicial office can only occur through impeachment, as per the Constitution, or resignation.

*What is the role played by the national organ or mechanism with regard to the issues referred to above?*

As mentioned above, the JAAB only has the role of informing the Government of names suitable for appointment to judicial office, therefore, the JAAB’s role really only extends to the selection and appointment of judges. The rest of the issues are covered by mechanisms outlined in the law set out above. In fact, the Constitution specifies under Article 36 that the following matters should be regulated by law:

“i) the number of judges of the Supreme Court, of the Court of Appeal, and of the High Court, the remuneration, age of retirement and pensions of such judges,

ii) the number of the judges of all other Courts, and their terms of appointment, and

iii) the constitution and organization of the said Courts, the distribution of jurisdiction and business among the said Courts and judges, and all matters of procedure.”

1. *If the national organ or mechanism does not have a role to play in relation to any of these issues, please provided detailed information on legislation and procedure for:*
2. *Judicial Selection and Appointment*

Already answered above

1. *Transfer and Promotion of Judges:*

Already answered above

1. *Disciplinary Proceedings Against Judges*

Already answered above