

Media Release

How are judges appointed? New principles from international working group

The Cape Town Principles look for a way that is neither a 'tap on the shoulder' nor a confrontation of powers

15 February 2016

A set of principles on the appointment of judges is being published today, 15 February 2016, by an international working group.

The Cape Town Principles are available for download from <http://www.biicl.org/bingham-centre/projects/capetownprinciples>.

The new 'Cape Town Principles' come at a time when the US is expecting to see a stand-off between the Executive and the Legislature over who should be appointed to the Supreme Court following the death of Justice Antonin Scalia.

In contrast with the frequently confrontational US processes, or the 'tap on the shoulder' by a government minister that was the norm for so long in the UK and its former colonies, the Cape Town Principles focus on a 'third way' of appointing judges. This is to entrust the task to an independent commission with a broad membership in which judges themselves, and the legal profession, also have a say. Such bodies, most often called Judicial Service Commissions or Judicial Appointment Commissions, have become by far the most popular mechanism by which senior judges are appointed in Commonwealth jurisdictions. By 2015, more than 80% of Commonwealth member states had established such bodies, [according to Bingham Centre research published last year](#). The Cape Town working group included experts from South Africa, the UK, Nigeria, Malaysia, Kenya and Canada.

Two of the project participants explain why and how the Cape Town Principles are important. Justice Kate O'Regan, who served a 15-year term on the Constitutional Court of South Africa from 1994:

"Appointing independent, competent and trusted judges is central to ensuring the rule of law in a democracy. The last few decades have seen the establishment of judicial appointment committees in many Commonwealth countries that have diminished the power of the executive over the appointment of judges. The Cape Town Principles provide welcome guidance on the processes and principles that should inform the work of these committees, which should in turn contribute to the enhancement of the rule of law and independence of the judiciary across the Commonwealth."

Professor Sir Jeffrey Jowell QC, Founding Director of the London-based Bingham Centre for the Rule of Law:

"These principles provide a sorely needed guide to the role of judicial appointment commissions, their composition, and their proper procedures – all in the interest of a judiciary that is legitimate, competent and wholly independent."

Establishing an independent commission to select judges is an important first step, but as the Cape Town Principles explain, more needs to be done to ensure that the commission's criteria and processes will do the best they can, in the circumstances of a particular society, to recruit judges who are independent, competent and worthy of public confidence in their role as guardians of the rule of law.

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NOTES TO EDITORS:

- The Faculty of Law at the University of Cape Town is widely regarded as one of the leading centres of legal education in Africa. Research and publications on the judiciary have long been a focus of several of its members, who contributed to the drafting of the South African Constitutions of 1993 and 1996. Since 2009, the Democratic Governance and Rights Unit within the Faculty has concentrated most of its research and socially responsive activities on the judicial branch of government, both in South Africa and more widely on the continent. For more details please see www.law.uct.ac.za.
- The Bingham Centre for the Rule of Law was launched in December 2010 to honour the work and career of Lord Bingham of Cornhill – a great judge and passionate advocate of the rule of law. The Centre is dedicated to the study, promotion and enhancement of the rule of law worldwide. It does this by defining the rule of law as a universal and practical concept, highlighting threats to the rule of law, conducting high quality research and training, and providing rule of law capacity-building to enhance economic development, political stability and human dignity. The Centre has worked with bodies including the Commonwealth Secretariat, the Palestinian Authority and the Kenya Judges and Magistrates Vetting Board on judicial independence issues. The Centre's publications include *The Appointment, Tenure and Removal of Judges under Commonwealth Principles: A Compendium and Analysis of Best Practice* (2015). For more details please see www.binghamcentre.biicl.org
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