

Enforcing Political Accountability for Decisional Independence on Appointed Judges Protecting the Rights of a Respondent Judge in Impeachment and Similar Proceedings

Through the exercise of the power of judicial review, judges influence or engage in policy determination, and consequently and necessarily encroach upon areas traditionally dominated by the executive and legislative branches of government. This judicial interference is observably resented by the other branches of governments, especially by strong executives in emerging democracies, and often serve as a premise for demands for judicial accountability against politically appointed judges. Notably, these demands are generally grounded on alleged misplaced assertions of decisional independence for rendering decisions which nullify policies laid out by the executive and legislative.

This paper reviews literature to validate the presence of a correlation between the exercise of decisional independence and political counterattacks masked as demands for judicial accountability in emerging democracies. It takes particular interest in the use and conduct of impeachment and similar proceedings, and seeks to determine whether the fundamental right to due process of impeached or similarly situated judges is duly observed during trial. It proceeds from the assumption that although impeachment and similar proceedings are administrative in nature, they are highly political and are consequently politicised. For this reason, the paper investigates whether there are clear and recognised norms on the political accountability of (politically) appointed judges for exercising decisional independence in international human rights law that could guide impeachment and similar tribunals in determining a respondent judge's culpability for an impeachable or similarly offence. Moreover, it explores whether international human rights conventions protecting a respondent in an administrative proceeding are applicable to impeachment or similar proceedings.

The paper concludes that the inherent ambiguity or vagueness of grounds for the removal of judges from office and the political nature of impeachment and similar proceedings are often abused in emerging democracies. This in turn results in the gross disadvantage and violation of the fundamental right to due process of impeached judges. It therefore suggests the drafting of guidelines which may safeguard both the substantive and procedural rights of impeached judges during trial, and ultimately protect the integrity and independence of the judiciary.