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.