



Opening Statement to
Oireachtas Joint Committee on Justice
Judicial Appointments Commission Bill 2020
Committee Session - 15 June 2021

1. As many of the Committee members know, ICCL is an independent human rights organisation which has played an active role in public discourse on matters of law and policy since its foundation in 1976. In particular, we have pushed successive governments to look to international best practice and to incorporate these standards when framing Irish legislation.
2. ICCL has always been particularly concerned with the administration of justice, and in 2007 we published *Justice Matters*, a comprehensive analysis of the issues of independence and accountability with regard to the Irish judicial system.
3. The judicial appointments process in Ireland has been a point of contention for some time; and ICCL believes that a deficit of formality and transparency in the system of judicial appointment has impacted on public confidence in the judiciary.
4. In that context, ICCL broadly welcomes the proposals in the present Bill to introduce clear and transparent criteria by which appointments should be made, and we share the Government's stated objective of promoting diversity and ensuring that the judiciary is one which is truly representative of the people of Ireland.

5. However, although ICCL recognises that the proposed Bill marks a significant improvement on the preceding appointment process; we are also concerned that some of the proposed provisions fall short of international best practice. Our submission on the Bill contains a full analysis of all aspects of the present proposals and makes eight recommendations for amendment to the Bill in order to achieve an appointments process that is **independent, representative, transparent** and ensures **accountability**.
6. On the question of independence and who should constitute the appointing or nominating body, the current proposals recommend that the Chief Justice, two members of the Judicial Council and the President of the Court in which the vacancy arises will form part of the Commission. In line with international best practice ICCL recommends that the three judicial members of the Commission (excluding the Chief Justice) should be elected by their peers to ensure the integrity of the process and the independence of those entrusted with judicial appointments.
7. The judiciary must be representative of the society over which they adjudicate. All appointments should take into account the fundamental importance of ensuring diversity and appropriate representation in the judiciary. This should be reflected in the criteria for appointment to all judicial posts. ICCL also recognises that as judges will continue to be drawn from the legal professions, it is essential that the barrister and solicitor professions also address the issue of diversity and equality of access and advancement within their membership.
8. The judicial appointments process should also be transparent. The introduction of criteria based on merit and experience is helpful,

however, this is not sufficient to meet international best practice standards. First, the number of recommendations by the Commission to the Government should be reduced and these recommendations should be ranked. The importance of the separation of powers is key here; the Government should have as little discretion as possible in judicial appointments.

9. Second, there is no reason why the process proposed for general judicial appointments should not apply to the appointment of the Chief Justice and the Presidents of the Superior Courts. A separate system for the most senior appointments, especially one which does not meet the basic international requirements for judicial appointments, serves to undermine the entire process of a streamlined, transparent appointments system.
10. In order for the appointments system to maintain public confidence and integrity, there must be some level of accountability. For that reason, ICCL recommends that where the Government chooses to deviate from the recommendation of the Commission, written reasons should be given. Without the provision of clear reasoning for choosing to disregard the recommendations of those entrusted with applying the requisite criteria and selecting the most appropriate candidate, the system will remain translucent, lacking in integrity and devoid of true independence from government.
11. In conclusion, ICCL sees this Bill as an opportunity to drastically improve the judicial appointments system. If approached correctly, these changes have the potential to enhance public confidence in both the judiciary and the rule of law; however, this can only be achieved if the Government is truly committed to reinventing the system in a manner which aligns with international best practice

and to found this new system on the principles of independence, representativeness, transparency and accountability.