

Mission Permanente du Sultanat d'Oman
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Geneve



الوفد الدائم لسلاطنة عمان
 لدى الأمم المتحدة والمنظمات الدولية
 جنيف

The Permanent Mission of the Sultanate of Oman to the United Nations Office and Other International Organizations in Geneva presents its compliments to the Special Rapporteur on the independence of judges and lawyers and with reference to the letter dated 12 December 2017 in relation with the Special Rapporteur's report regarding the question of national judicial councils and/or other national organs or mechanisms in charge of selecting, appointing, promoting, transferring, suspending or removing judges, has the honour to submit attached herewith the response of the relevant authorities in the Sultanate of Oman to the Special Rapporteur's questionnaire.

The Permanent Mission of the Sultanate of Oman avails itself of this opportunity to renew to the Special Rapporteur on the independence of judges and lawyers the assurances of its highest consideration.



UN Special Rapporteur on the independence

of judges and lawyers

Special Procedures Branch

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Report Answering Questionnaire of the Special Rapporteur on the Independence of Judges in Oman

Prepared by:

The Secretary of the Council of Administrative Affairs for the Judiciary

Being a member of the United Nation, the Sultanate of Oman is fully aware of its responsibility, and as a civilized nation of a rich history, it puts the independency of its judiciary power as a corner stone in its development process. Therefore, Regulations related to the independence of judicial authority are set out clearly within the Omani laws. For example, Article 59 of the Basic Law states, “The dignity, integrity and impartiality of the judges are the guarantee for the preservation of rights and freedoms” as an acknowledgement of the rule of the integrity of judges in Oman.¹ Importantly, Article 60 emphasises that the judiciary in Oman is independent.

The independence and the integrity of the judiciary in Oman are supported by many significant legal provisions of which is Article 61 of the Basic Law, that reads “Judges are subject only to the Law”, and “No party can interfere in law suits or matters of justice; such interference shall be considered a crime punishable by law”. This wording makes it clear that any sort of interference in the judicial process is treated as a

¹ Basic Law, art 59 states that: “The supremacy of the Law shall be the basis of governance in the State”.



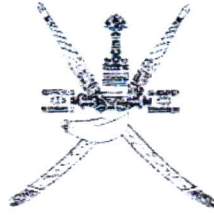
crime and those affected have the right to take legal action against any party that interferes in this process.

1- Indicate whether there is a national body or mechanism in charge of selecting, appointing, transferring, promoting, 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)?

Article 1 of the Royal Decree No. 10/2012 in Organizing the Judiciary Affairs provides that “the Council of Administrative Affairs for the Judiciary is to practice the jurisdictions of the Ministry of Justice in which it granted under the Law of the Judiciary Power (issued by the Royal Decree No. 90/99)”.

This Royal Decree has given the full power of selecting, appointing, transfer, promoting, suspending or removing judges in Oman, to the judiciary body. In other words, the Council of Administrative Affairs for the Judiciary is the Omani national body in charge of the whole mechanism. There is no dispute that the Royal Decree No. 10/2012 has provided a window more independency to the judiciary body in Oman.

The judiciary work of the Council of Administrative Affairs is legally based on Article 17 of the Law of the Judiciary Power which indicates that the Council has jurisdictions over issues related to appointing, transferring, promoting, suspending or



removing judges and all their job's affairs and other jurisdictions defined by law..."

2- Provide information on the composition of the body or mechanism (number and qualifications of members). The procedure for the appointing of its members and the duration of their term of office. Please also provide information on the human and financial resources of this body or mechanism (e.g. number of employees and their qualifications, annual budget)

According to Article 16 of the Law of the Judiciary Power, the President of the Supreme Court is the Chairman of the Council of Administrative Affairs for the Judiciary.

Apart from the chairman, the Council consists of 6 members: three of the most senior deputies in the Supreme Court, the General Attorney, the most senior president of the Court of Appeal and the most senior president of the Primary Courts.

It is obvious that all of the Council's members are judges expect for the General Attorney, bearing in mind that the Public Prosecution is a part of the judiciary body in Oman. Hence, all members of the Council in this case are members of the judiciary power. In order to properly preform its functions, the Council in Oman is provided by the required human and financial resources through the government as the council's budget for 2018 is around OMR 45 million (\$126 Million).



3- Provide detailed information on the legislation and practice existing in your country in relation to:

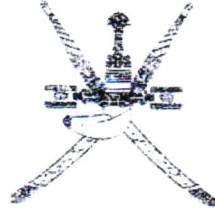
a- The selecting, appointing of candidates for judicial offices and criteria used for their selecting, appointing (e.g: qualifications, integrity, ability and efficiency)

The Law of the Judiciary Power governing and organizing the selection and appointing of the judiciary offices according to Article 20 of the Law are ranked as follows:

- A- President of the Supreme Court.
- B- Deputy of the Supreme Court.
- C- Judge at the Supreme Court.
- D- Judge at Court of Appeal.
- E- Senior Judge at a Primary Court.
- F- Second Judge at a Primary Court.
- G- Judge at a Primary Court.
- H- Judge Assistant.

According to Article 21/d of the Law of the Judiciary Power, the minimum requirement for the candidate is law or Sharia degree from a recognized university or higher institute.

Selection process of judiciary offices' candidates is based on objective factors. It starts with written exams and personal interview through three-year on job training where the candidate assessed and evaluated before appointed as a judge. Currently, the annual intake of judge assistants is about 30.



b-Conditions for service and security of tenure of judges.

Conditions of service and security of tenure of judges are adequately secured by Omani Law. According to Article 21 of Law of the Judiciary Power, there are 6 conditions to be met by the applicants to become a judge:

- A- Muslim Omani national.
- B- Fully competent (sui juris).
- C- Good conduct and behavior.
- D- First degree holder of Law or Sharia from a recognized university or higher institute.
- E- Not have received criminal or disciplinary sentence for reasons of trust or honor, even if rehabilitated.
- F- Should pass the examinations and interviews held for this purpose.

There is, however, an exception for the condition A, where judges from other Arab countries could be appointed in case of unavailability of Omani judges as provided by Article 22 of the Law. It is worth mentioning that the condition for candidates to be Muslim is mostly due to the fact that more than 99% of Oman population are Muslims.

The Judiciary structure is hierarchal. Firstly, judiciary offices start as judge assistant who undergoes at least two-year training according to a program set by the Council of Administrative Affairs for the Judiciary which is approved by the Chairman of the Council of Administrative Affairs for the Judiciary. However, if the judge assistant fails the



training program, s/he is shifted to non-judiciary post by a decision from the Chairman of the Council of Administrative Affairs for the Judiciary.

While Article 32 of the Law of the Judiciary Power states that all judiciary offices are appointed by a Royal Decree, Article 42 of the Basic Law of the State provides that only high positions in judiciary body are appointed by royal decrees. The practice supports the latter.

The Law of the Judiciary Power Articles 45 – 49 adequately secure the term of office of judges and guarantee tenure until a mandatory retirement age which is specified by Article 48 - age of 65. However, in practice this age has been extended in several cases after the approval of his Majesty the Sultan Qaboos provided that the concerned is mentally fit.

c- Promotion of judges.

The promotion of judges in the Sultanate is based on objective factors, in particular ability, integrity and experience. However, there are two main criteria for the promotion of judges, as provided in Article 34 of the Law of the Judiciary Power; seniority and judicial inspection report. In all cases the promotion should be based on the two latest reports in which the judge should achieve above the average. These reports evaluate number of elements mainly judge's ability, for instance, his ability to follow the right procedures and process stipulated by law. In addition, the judicial inspection



reports examine the integrity of judges, whether the judge has violated the integrity standards.

It is worth mentioning that the efficiency assessment of judges is divided into four categories in Oman; efficient, above average, average and below average.² Importantly, the judges who achieve average or below are informed by the Chairman of the Council of Administrative Affairs for the Judiciary once the report is received as provided by Article 66 of the Law of the Judiciary Power. However, in very rare cases the judge is denied a promotion for a reason not relating to his efficiency. If happens, the Chairman of the Council of Administrative Affairs for the Judiciary is to notify the judge 30 days in advance to discuss his case in the meeting of the Council of Administrative Affairs for the Judiciary.³

d- Transfer of judges.

According to Article 37 of the Law of the Judiciary Power, judges and the head of primary and appeal courts should be rotated to courts annually. However, practically judges quite often stay between four to five years in their courts, where necessary.

e- Disciplinary proceeding against judges.

Judges in Oman are subjected to suspension or removal upon two main reasons; incapacity or behavior that renders them unfit to carry out their duties. The removal process follows

² As it provided by Article 65 of the Law of Judiciary Power.

³ Article 66 of the Law of Judiciary Power.



certain procedures, for example, the Chairman of the Council of Administrative Affairs for the Judiciary should request the removal from the Council and the judge must be notified with such a decision in advance.

Judges are only investigated by the Accountability Council headed by the President of the Supreme Court along with four of his senior deputies who act as investigation panel members, as provided by Article 75 of the Law of the Judiciary Power.

It is important to mention that according to Article 86 of the Law of Judiciary Power, judges are immune from removing except for cases and procedures specified in law.

Judges are immune from arrest and detention except for cases of flagrante delicto, or for other cases when the Council of Administrative Affairs for the Judiciary approves the arrest or detention. In the case of flagrante delicto, it should be reported to the Council within 24 hours and no decision shall be made by the council until the hearing for the judge is provided.⁴ The aim of this Article is to make the process of any charge or complaint against judges in their judicial and professional capacity expeditious and fair under an appropriate procedure.

In addition, no investigation procedures or criminal action shall be held against judges without the permission from the Council of Administrative Affairs for the Judiciary and after a request from the General Attorney.⁵ The judge shall have the right for a fair hearing.

⁴ Article 87 of the Law of Judiciary Power.

⁵ Article 88, *ibid.*



One of the important practices and regulations in the Omani Judicial system is that decisions of disciplinary, suspension or removal proceedings should be subject to a review. In addition, the judge has the right to appeal before the Council of Administrative Affairs for the Judiciary within 30 days from being informed as provided by Articles 68 and 69 of Law of Judiciary Power.

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

4- If the national organ or mechanism does not have a role to play in relation to any of these issues, please provide detailed information on legislation and procedure for:

- a- Judicial selection and appointment.**
- b- Transfer and Promotion of judges.**
- c- Disciplinary proceeding against judges.**

This question has been answered already in the previous questions.