

JUDICIAL SERVICE COMMISSION



**‘AN OVERVIEW OF THE ROLE/ MANDATE OF A JUDICIAL
SERVICE COMMISSIONER’**

A PRESENTATION BY THE HONOURABLE MR JUSTICE

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AT THE ORIENTATION OF JUDICIAL SERVICE

COMMISSIONERS ON 20 JUNE 2020

FUNCTIONS OF THE JUDICIAL SERVICE COMMISSION

The Judicial Service Commission is established in terms of section 189 of the **Constitution of Zimbabwe**.

Section 190 of the Constitution provides that: -

‘190 Functions of Judicial Service Commission

- (1) The Judicial Service Commission may tender advice to the Government on any matter relating to the judiciary or the administration of justice, and the Government must pay due regard to any such advice.
- (2) The Judicial Service Commission must promote and facilitate the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice in Zimbabwe, and has all the powers needed for this purpose.
- (3) The Judicial Service Commission, with the approval of the Minister responsible for justice, may make regulations for any purpose set out in this section.’

Further to the constitutional provisions, the **Judicial Service Act** [CAP 7:18] also outlines the functions of the Judicial Service Commission in the following terms: -

“5 Functions of Judicial Service Commission

- (1) Subject to the Constitution, this Act or any other enactment, the Commission shall have the following functions—
 - (a) fix by means of service regulations conditions of service for its members; and
 - (b) administering and supervising the Judicial Service; and
 - (c) appointing persons to the Judicial Service, whether as permanent members on pensionable conditions of service or on contract or otherwise, assign and promote them to offices, posts and grades in the Judicial Service, and fixing their conditions of service; and
 - (d) inquiring into and dealing with complaints or grievances made by or against members of the Judicial Service; and

- (e) exercising disciplinary powers in relation to members of the Judicial Service; and
- (f) exercising any other functions that may be imposed or conferred upon it in terms of this Act or any other enactment.”

The common thread in the functions of the Judicial Service Commission outlined above is the singular importance bestowed upon the Commission to ensure the well-being and good administration of the Judicial Service and to maintain it in a high state of efficiency. The courts play a very crucial role in a constitutional democracy as ours and it becomes important for the necessary framework to be in place to ensure that this is achieved.

My vision is the efficient delivery of quality justice. This vision has been supported by the Judiciary and the Judicial Service Commission Secretariat. It is based on the Constitutional expectation that justice must be delivered expeditiously, without fear, favour or prejudice. This is based on the understanding that while judicial authority is vested in our various courts, judicial authority derives from the people of Zimbabwe.

Taken from this perspective, the quality of justice can be understood as comprising not only the quality of judicial decisions and key aspects of

the justice delivery system; but that it is also the mandate of the Judicial Service Commission to ensure that matters brought to court are dealt with using high standards of service delivery.

Strengthening the delivery of justice and security is an important development, for without justice and security other public goods and services cannot be provided or accessed. It is your mandate as Judicial Service Commissioners to examine the needs of the citizens and to reinforce and uphold their legitimate rights. This is done through the various functions conferred upon the Judicial Service Commission in the Constitution and the **Judicial Service Act**. It is important that members of the Judicial Service devote themselves to the call to deliver quality justice expeditiously and efficiently. It is equally important for the Commissioners constitutionally charged with the responsibility to promote and facilitate the independence and accountability of the Judiciary; and the efficient, effective and transparent administration of justice to hold the thumb on the pulse of the administration of justice; and to use appropriate mechanisms to constantly check on that pulse.

In 2017 I introduced ‘The CJ Asks’ portrait which asks: -

1. Are you at work or on a frolic of your own?
2. If you are at work, are you doing the right thing?
3. Do you know
 - a. What to do?
 - b. How to do it? and
4. Why you do it?
THEN, DO IT NOW.

The portrait addresses the substantive, procedural and ethical aspects of work in an arguably calm manner. Asking people to do the right thing when do not appreciate what is expected of them or what they are supposed to do is an exercise in futility. It is also impractical to do the right thing when the procedural aspects are shrouded in mystery. The ‘Why?’ issue could be read as an appeal to the ethical dimensions of the administration of justice. Why do we do what we do? The last part is the most important part which pushes all members of the Judicial Service Commission to abandon the procrastination syndrome. It is an appeal to do what we are called to do now, not to say I will do it tomorrow.

Those questions do not only speak to our members, but they also speak to us as a Commission. Do we know what we are supposed to do? Do

we know how we are supposed to do it and why we do it? If we do, we should do it. We owe it to the people of Zimbabwe to ensure that the wheels of the administration of justice are well-oiled and continuously in motion.

In relation to the Judiciary, the Judicial Service Commission is mainly concerned with the making of policy. A distinction is drawn between the tenure of other Commissioners for example those in the Zimbabwe Anti-Corruption Commission who are full time members and thus are able to make decisions on the go on the day to day operations of the Commission. In our case, the day to day operations of the Commission are overseen by the Secretary to whom the responsibility to see the daily operations of the Judicial Service Commission is reposed. This is because Judicial Service Commissioners are not full time Commissioners, but operate on a part time basis meeting regularly. The membership of the Commission as outlined in the Constitution shows that these members are office-holders elsewhere and would consequently be still expected to carry out their mandates in the offices that make them suitable or qualified for appointment as Judicial Service Commissioners. If the Commission would be expected to micro-

manage the operations of the Judicial Service, this would not only fly in the face of the terms and conditions of their engagement but operations would also grind to a halt.

Thus, in relation to the Judicial Service, the Judicial Service Commission is responsible for: -

1. Tendering advice to Government on any matter relating to the Judiciary or the administration of justice

Situations arise where the Judicial Service Commission may be required to give advice to Government on the Judiciary and or the administration of justice. The advice may be solicited by government or may be instigated by the Judicial Service Commission for example where there is need of the services of an additional Judge of the High Court, the Labour Court or the Administrative Court are required for a specified period, the Judicial Service Commission is empowered by section 181 (3) of the Constitution to advise the President to appoint a former Judge to act in that office.

Commissioners will note that the Constitution provides that when such advice is given, Government must pay due regard to it. Candour and integrity in giving the advice therefore becomes an important hallmark.

2. Promoting and facilitating the independence and accountability of the judiciary, and the efficient, effective and transparent administration of justice in Zimbabwe

The Judicial Service Commission is clothed with all the powers to promote and facilitate the independence and accountability of the Judiciary. To this end, the Judicial Service Commission is responsible for: -

- i. Fixing salaries, allowances and other benefits for members of the Judicial Service namely the Judges, the Magistrates and all support staff.
- ii. Administering and supervising the Judicial Service. In doing so, and considering the exigencies involved in micro-managing operations, the Commission is empowered to delegate functions to other sub-departments in the Judicial Service to ensure efficiency and effectiveness in the day to day

operations of the Judicial Service Commission. The Commission is still permitted by the law to exercise any functions so delegated to a sub-department and to set the conditions of the exercise of such delegated authority through a policy decision making process.

- iii. Appointing members to the Judicial Service. The Judicial Service Commission is responsible for appointing **all** members of the Judicial Service as contract or permanent employees. In practice, the appointment of the Secretary to the Commission has been done by the Commission itself while to the Secretary the Commission has delegated the power to appoint all other members of staff and where necessary, validated some appointments.
- iv. In terms of section 180 of the Constitution and section 259 (3) of the Constitution, the Judicial Service Commission is also responsible for conducting interviews in public for Judges and the Prosecutor General respectively. The Deputy Chief Justice will unpack the appointment process for Judges in further

detail. This process is similar to the appointment process of the Prosecutor General.

- v. The Judicial Service Commission is in charge of assigning and promoting members of the Judicial Service to offices, posts and grades.
- vi. Inquiring into and dealing with complaints made by or against members of the Judicial Service. The Commission has a robust complaint handling mechanism and an open-door policy meant to ensure that any complaints are taken seriously and are properly, expeditiously and thoroughly investigated at every level of the Judicial Service. The robust complaint handling mechanism has been able to weed out spurious allegations from merited ones, which are followed by the appropriate corrective action.
- vii. Channels of communication have been opened to ensure that members of the public access justice. Such channels are also available to Commissioners where they are free to ask fellow Commissioners or the Secretary on how to conduct certain

tasks. It is critical for Commissioners to be aware of the rules and practices of the Judicial Service Commission.

- viii. To closely monitor operations, in my capacity as the Chief Justice and the Chairperson of the Judicial Service Commission I have called upon regular reports from Heads of Courts and departments which are submitted on a monthly basis. I also get to meet these Heads once each month to discuss these reports and a plethora of issues affecting the various courts. On a weekly basis, I also meet the Judges of the Constitutional and Supreme Courts.
- ix. This tradition has provided a window through which we have been able to decipher logical conclusions from analysing both the numerical figures and non-numerical facts. We have been able to analyse the performance and make decisions based on this data.
- x. The Commission is also seized with the role of promoting and facilitating the efficient, effective and transparent administration of justice in this country. The mandate of the Commission in this regard is to ensure the advancement of

accessible justice in Zimbabwe. The Commission has therefore directed the Acting Secretary to conduct monitoring, supervision and evaluation visits to each Province at least once each year. Through these visits, we have been able to test our efficiency and take corrective action after a careful analysis of the situation on the ground.

- xi. The Judicial Service Commission is responsible for exercising disciplinary powers in relation to members of the Judicial Service. To this end, the Judicial Service Regulations, the Judicial Code of Ethics for Judges, and the Judicial Code of Ethics for Magistrates play an active role in instilling and enforcing discipline. It will be noted that the Judicial Service Regulations establish various disciplinary authorities in whom authority to discipline specified categories of staff on behalf of the Judicial Service Commission is reposed.

3. Making regulations

The Judicial Service Commission is also endowed with power to make regulations for the purposes of ensuring the well-being and good administration of the Judicial Service. The Commission has

enacted the **Judicial Service Regulations, 2015**; the **Judicial Service (Code of Ethics) Regulations, 2012** and the **Judicial Service (Magistrates Code of Ethics) Regulations, 2019** which are a guiding beacon on the conduct expected of Judges, Magistrates and other members of staff. Compliance is checked by the Commission through the delegated functionaries. To ensure the efficiency of the justice delivery system, deviation therefrom is visited with the necessary sanction.

4. Other functions bestowed by the Constitution on the Judicial Service Commission

Over and above the responsibilities given to the Judicial Service Commission in relation to the Judiciary, the Constitution has reposed in the Commissioners further functions which include: -

4.1. Consultative role on certain appointments

The appointment of the Chairperson of the Zimbabwe Electoral Commission is done after consultation with the Judicial Service Commission (section 238 (1) (a) of the Constitution.) Should the appointment subsequently done by

the President be inconsistent with the recommendation of the JSC, the President is required to cause the Committee on Standing Rules and Orders to be informed as soon as is practicable (s238 (3)).

ii. Similar provisions apply for the appointment of the Zimbabwe Human Rights Commission chairperson (section 242 (1)(a) and (3)); and the Chairperson of the National Peace and Reconciliation Commission (section 251 (1)(a) and (3)).

4.2. Role in removal of certain members from office

- i. The Constitution bestows upon the Judicial Service Commission the power to advise the President that the question of removing any Judge from office ought to be investigated in terms of section 187 of the Constitution.
- ii. The Constitution also confers upon the Judicial Service Commission the same power for members of the: -
 - a. Zimbabwe Electoral Commission;
 - b. Zimbabwe Human Rights Commission;

- c. Zimbabwe Gender Commission;
- d. Zimbabwe Media Commission;
- e. National Peace and Reconciliation Commission¹;
- f. Zimbabwe Anti-Corruption Commission²;
- g. Zimbabwe Lands Commission³; and for
- h. The Prosecutor General⁴.

POLICY AND PROCEDURES GUIDING THE JUDICIAL SERVICE COMMISSION

From the above, it can be seen that the operations of the Judicial Service Commission are guided by the **Constitution of Zimbabwe**, the **Judicial Service Act**, the **Judicial Service (Code of Ethics) Regulations** published in Statutory Instrument 107 of 2012, the **Judicial Service Regulations** published in Statutory Instrument 30 of 2015 and the **Judicial Service (Magistrates' Code of Ethics) Regulations** published in Statutory Instrument 238 of 2019.

¹ Section 237 (3) of the Constitution.

² Section 256 as read with section 237 (3) of the Constitution

³ Section 296 (1) as read with section 237 (3) of the Constitution

⁴ Section 259 (7) of the Constitution

These pieces of legislation endow the Judicial Service Commission with wide ranging powers as described above. The Constitution further provides that members of Commissions other than independent Commissions, the Zimbabwe Anti-Corruption Commission, the Zimbabwe Land Commission and the Judicial Service Commission hold office at the pleasure of the President. This mechanism has been put in place not to encourage recalcitrance among the Commissioners, but to ensure that the business of the Commission is conducted independently without fear, favour or undue influence being brought to bear.

The need for the independence in the exercise of functions by the Judicial Service Commission is underscored by Section 321 of the Constitution which, while making provision for an Act of Parliament to confer additional functions on the Commission and to regulate the manner in which the Commission exercises its functions like the **Judicial Service Act** does, it is quick to point out that this should be done in a manner that does not compromise the independence or effectiveness of the Commission.

The rider to the independent exercise of functions by the Judicial Service Commission is to be found in section 191 of the Constitution which emphasises that the Commission must conduct its business in a **just, fair and transparent** manner. Section 324 further provides that all constitutional obligations must be performed **diligently and without delay**.

Any such procedures must be fair and promote transparency in the performance of the Commission's functions⁵. The Commission cannot lay claim on independence without accepting the responsibilities associated with transparency and accountability in its operations.

At the occasion to mark the commencement of the 2020 legal year I remarked that transparency and accountability are concepts which obligate public officials to provide full information and to explain and justify their performance in the execution of functions assigned to them where it is necessary to do so. Our understanding of transparency is openness in relation to the activities that we do.

The notion that independence should be a 'be all and end all' is now archaic. We need to account. Accountability serves to moderate

⁵ Section 321 (4) of the Constitution.

unacceptable decisional independence and inconsistent behaviour. It is accepted that independence shields the Judicial Service Commission from improper influence, but there is also need to subject the Judicial Service Commission to scrutiny to ensure that the Commission's conduct of business is above reproach. Accountability is vital to preserving independence. The Constitution creates the need for a both independent and accountable Commission through insulating members from outside influence while the subjecting them to appropriate accountability standards. The right balance will result in a system that affords due process being followed in the conduct of Commission business, in accordance with the Constitution and the law.

Thus, the Constitution⁶ requires the Judicial Service Commission to report annually to Parliament through an annual report which describes fully the operations and activities of the Commission in the preceding year. It is in the annual report that we give an account to the public through Parliamentarians, of the manner in which public funds would have been expended. A copy of the latest report has already been shared with you to give you an appreciation of what this report entails.

⁶ Section 323 of the Constitution

The legal year opening ceremony affords the Commission another opportunity to account for its operations to the public.

JUDICIAL SERVICE COMMISSION MEETINGS

The Chairperson of the Judicial Service Commission convenes meetings regularly. Notice of a meeting shall be given to members by the Secretary. The Chairperson may, at any time, convene a special/extraordinary meeting of the Commission outside the regular meetings, upon giving such notice as to the particulars of the circumstances require.

Consultations may also be done telephonically and on a round robin basis. For physical meetings, they shall be held at such places, at such times and in such manner as the Commission shall consider necessary for the discharge of its functions.

The Chief Justice, or in his or her absence the Deputy Chief Justice presides at the Judicial Service Commission meetings. In the event that both the Chief Justice and the Deputy Chief Justice are not present at

any meeting, the Commissioners present may elect one of them to preside at the meeting⁷.

QUORUM

Section 344 (2) of the Constitution provides that: -

‘half the total membership of any body established by or under this Constitution constitutes a quorum.’

The quorum of the Commission shall be seven. The Commission may also constitute Committees to look into specific areas. The Commission is empowered to invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of the meetings of the Commission, but such person shall have no power to vote. All questions before the Commission or a Committee thereof shall be determined by consensus. In the absence of consensus, decisions of the Commission shall be determined by the concurrence of the majority of members present and voting when the decision is taken⁸.

Commissioners are chosen on the basis of their maturity and integrity.

It is therefore expected that Commissioners take Commission business

⁷ Section 189 (2) of the Constitution

⁸ Section 321 (3) of the Constitution.

seriously and attend to Commission business as and when required to do so in an expeditious and diligent manner.

AGENDA

The Agenda of meetings is generated by the Secretary, with the authority of the Chairperson. The recommendations from Committees shall be tabled before the Commission for adoption and or ratification before implementation.

The Chairperson shall cause to be maintained a record of each Commissioner's attendance at the Commission meetings. The Chair or any Commissioner may have an item placed on the Agenda. Wherever possible, items for the Agenda shall be given to the Secretary seven days before the meeting.

MINUTES OF MEETINGS

Minutes shall be taken by the Secretary for the Commission or any person appointed to perform that function. Minutes shall be stored in confidence and no content of the meeting shall be communicated to any persons, even by the Commissioners, unless authorised by the Commission. Minutes of a previous Commission meeting shall be

circulated with the Agenda of the next meeting and shall be approved at the next meeting of the Commission.

COMMITTEES OF THE COMMISSION

Section 4 of the **Judicial Service Act** provides that: -

'4 Establishment of committees

(1) The Commission may constitute, on a permanent or temporary basis, one or more advisory committees to advise the Commission on such matters relating to the Judicial Service as the Commission may from time to time consider necessary.

(2) A committee formed in terms of subsection (1) may, subject to the direction of the Commission, regulate its own procedure, and its members shall hold office on such terms and conditions as the Commission may determine.'

To allow for detailed analysis and consideration of complex issues and in the exercise of powers conferred under Section 4, the Commission is empowered to constitute advisory committees to advise it. The Commission may also from time to time constitute committees to deal with specific matters for effective discharge of its mandate. Committees are appointed on a permanent basis to deal with issues that constantly arise for example the Audit Committee and on temporary basis for example to deal with issues as and when they arise for example Judges' conditions of service.

Traditionally, each Committee has constituted at least three members and the Committees are at large to regulate their processes including the dates, times, venues and Agendas of each meeting.

The Commission or the Committee may appoint a Chairperson and the Chairperson is responsible for causing minutes of the Committee meetings to be maintained. The Committee may also assign one of its members secretarial duties.

Each Commissioner is expected to support the proper functioning of the Commission Committees. The Chairperson of each Committee shall report the recommendations of the Committee to the full Commission meeting for adoption.

CONCLUSION

There are a number of statutes, policies and procedures which govern the day to day operations of a Judicial Service Commissioner. Commissioners are responsible for providing oversight, insight and foresight to the Judicial Service. The Judicial Service Commission oversees the independence and autonomy of the Judiciary; the overall role of the Judiciary as the custodian of fundamental rights and freedoms; and the development of the justice delivery system. Against this background, the manner in which functions are exercised should inject the much-needed public confidence in the Judicial Service Commission and ultimately the Judiciary.