

# An appraisal of the recruitment and selection process of the judiciary (chief justice) in Zimbabwe

Sandiso Bazana<sup>1</sup> and Charlene Jackson<sup>2</sup>

Psychology Department, Rhodes University

*s.bazana@ru.ac.za*

## Abstract

*Societies that have accepted the notion of liberal modern democracy respect the role of the judges or the judiciary in making such democracies a success. As such, the drafting of the 2013 Constitution of Zimbabwe was a particularly significant event because, amongst other things, it set out the judicial selection process to be followed in the future. Following the recent appointment of the new chief justice (Justice Malaba, appointed in 2016) there has been controversy regarding the Zimbabwean judicial recruitment and selection appointment process. While some renowned legal practitioners expressed the opinion that the process itself was somewhat commendable, the reality is that there were some major flaws, which must be addressed for future judicial selection and appointment. This study analysed documents to appraise the recent recruitment and selection process of the chief justice in Zimbabwe. This study collated data from the Zimbabwe Constitution, Zimbabwe Legal Information Institute, Zimbabwe Case law, legislation and journal articles. The findings from this study suggest that there were some flaws in the last recruitment and selection process of the Chief Justice that were conducted by the Judicial Service Commission. The paper demonstrates some of these flaws. Broadly, the results of this work suggest that the recruitment and selection process require the expertise of those who are skilled in the procedure to do it with utmost proficiency, with limited acrimony and as little hindrance from the public as possible.*

**Keywords:** democracy, recruitment & selection, judiciary, Zimbabwe

## Introduction

Societies that have accepted the notion of liberal modern democracy respect the role of the judges or the judiciary in making such a democracy a success (Schmitter & Karl 1991). For the judiciary to function properly, fit and proper individuals must be recruited and selected. This paper argues that the recruitment and selection process requires the expertise of those who are trained in the process to do it with utmost competence and with limited animosity and dissatisfaction from the public. In many countries, including Zimbabwe, the recruitment and selection of the judiciary tends to involve those who do not have the necessary competencies nor formal training in the core principles of recruitment and selection and often leaves qualified attorneys to run the process, unchecked. The word 'appraisal' is used in this paper to mean the process of carefully and systematically analysing the recruitment and selection procedure of the Chief Justice in Zimbabwe (Frijda & Zeelenberg 2001). Effectively, judges are professionals

1. Sandiso Bazana is a lecturer in the Department of Psychology, Rhodes University, South Africa.

2. Charlene Jackson completed an Organisational Psychology Honours degree. She is currently completing an LLB degree with the Rhodes University's Faculty of Law, South Africa

and are appointed, not elected, into their positions. As such, principles of recruitment and selection appear relevant to appoint human capital that helps a country uphold the 'rule of law', protect citizens' constitutional rights and promote democratic values. Allegations of unfairness and political interference bedevil the process in many countries, including Zimbabwe. In this paper, we aim to explore the process that is followed in the recruitment and selection of the chief justice in Zimbabwe and to explore the possibility of a professionally managed process.

The law regulates relationships between people by prescribing patterns of behaviour. It is also understood to essentially reflect the values of society (Barack 2002). Consequently, the role of the judiciary is to understand the purpose of law in society and to help the law achieve its purpose. In a democratic state, the judiciary has four major roles: formulating the rule of law through interpretation, application of the law, dispute resolution and checking the legality in state politics (Barack 2002). To accomplish these four duties, the basic principles of a democratic state must be guided by a judicial system that is fair, transparent and democratic. This is because the judiciary bears the burden of interpreting and applying the law along with the Constitution, to provide impartial adjudications of disputes between the state and individuals, between individuals, and between different levels of government within the state (Barack 2002).

Based on the aforementioned paragraph, it is evident that any liberal state or society must have a strong judiciary. This is because history has shown that a weak judiciary results in weak democracy. In Uzbekistan, among other examples, gross violations of human rights and religious freedom resulted from a weak judiciary and lack of democratic accountability during the rule of President Islam Karimov in 2015 (Human rights watch 2015). Therefore, this paper argues that to have a strong judicial system, the process of recruiting and selecting a judicial body must be meticulous, thorough and replicable for future selections. If the process is flawed, replicability becomes impossible, thus compromising the quality of the judicial body that is appointed from that point onwards. This, in turn, shows the importance of recruiting and selecting the best candidates. This paper will briefly look at the recent events in Zimbabwe that necessitated this kind of research.

## Background and problem statement

In October 2016, the Zimbabwean Judicial Service Commission (JSC) began its search for their next chief justice since Justice Chidyausiku was set to retire the following year. However, wary that the appointment procedures might cause problems, Chief Justice Godfrey Chidyausiku alerted the Executive to his concerns (Hofisi & Felote 2017, cited in *Newsday*). Nevertheless, he received no response, and he assumed that the Executive was comfortable with the process and was prepared to address its challenges (*Newsday* 2016; *Herald* 2017). As a result, the late former Chief Justice claimed that he was just as stunned to receive a statement informing him that an Executive order had been issued to stop the selection process just a few days before the interviews (*Newsday* 2016). In fact, the chief justice advised the executive that it was impossible to comply with the executive's directive without violating the constitution and, as such; the interviews would proceed in terms of the constitution.

A few days prior to the public interviews, Mr. Romeo Zibani, a private citizen (then a 4th-year law student at the University of Zimbabwe) brought an application before the High Court, challenging the legality of the appointment process of the chief justice. Pending the amendment of the constitution, Section 180 remained operational. Mr. Zibani claimed that the selection process violated the founding values of transparency and accountability in the constitution by creating the possibility of biased decisions (Hofisi & Felote 2016). This claim is perhaps one of the most outstanding flaws of the last judicial recruitment and selection process conducted by the JSC of Zimbabwe. The flaw was so inexcusable that Mr Zibani sought an interdict to stop the public interviews, pending the constitutional amendment of Section 180. Justice Hungwe granted the interdict in December 2016. Whilst agreeing that the process in Section 180 was lawful, the

learned judge found that the section was contrary to the constitutional values of transparency and accountability and was therefore unconstitutional (*Newsday* 2016). Justice Hungwe argued that:

*It occurs that where a lawful process leads to an absurd result, in the sense that colleagues select each other for entitlement to public office, as argued by the applicant, it cannot be sanctioned on the ground that it is provided for in the law (Hofisi & Feltoe 2016).*

Even so, in February 2017 the Supreme Court ruled that, according to Section 180, the chief justice interviews were lawful. In addition, the court ruled that according to section 180, the JSC had acted lawfully, hence overruling the judgment by Justice Hungwe (*Newsday* 2016). It is on this basis and the recruitment and selection process that followed, that this paper focuses its argument.

## Research purpose and question

Following Mr. Zibani's claim that the judicial selection process violated the founding values of transparency and accountability in the constitution by creating the possibility of biased decisions, of the recruitment and selection process, this paper is attempting to determine whether the current Zimbabwean judicial recruitment and selection process of the chief justice is flawed (Manyatera and Fombad 2014). In this instance, the process that this study is concerned with is the most recent one, of 2016 and February 2017 where the Supreme Court ruled that Section 180 of the constitution and the chief justice interviews were lawful and that the JSC had acted lawfully. This study asks the following two questions:

- In what ways did the process violate the Constitution?
- What were the flaws and possible solutions with regards to the established principles?

## Research methodology

The social constructionist epistemology was used in this study. Social constructionism is chiefly concerned with clarifying the processes by which people describe, explain, or otherwise account for the world in which they live (Gergen, 1985). Most social constructionist research manifests one or more of the following assumptions (Gergen, 1985). The first assumption is that what we take to be the experience of the world does not in itself dictate the terms by which the world is understood (Gergen, 1985). Second, it assumes that what we take to be knowledge of the world is not a product of induction, or of the building and testing of general hypotheses (Gergen, 1985).

This is a qualitative research that refers to a design that works to gain insight; explore the depth and complexity of a phenomenon (Maxwell 2012:3). Thus, qualitative research allows the researcher to familiarise him or herself with the problem or concept to be studied, and generate testable hypotheses (Golafshani 2003). The emphasis is on facts and causes of behaviour (Golafshani 2003; Bogdan & Biklen 1998). Due to the scantiness of government and juridical public records in Zimbabwe (Mpofu & Chimhenga 2013), this paper analysed limited publicly available documents, literature and media reports using a documents analysis approach (O'Leary, 2014). Among them were: Barak (2002), "A Judge on Judging: the role of a Supreme Court in a democracy", Du Bois (2006), "Judicial selection in post-apartheid South Africa" and Manyatera and Fombad (2014), "An assessment of the Judicial Service Commission in Zimbabwe's new Constitution." Document analysis is increasingly popular for such analysis (Bowen 2009).

As such, there are three primary types of documents, namely; public records, personal documents and physical documents (O'Leary, 2014, Bowen 2009). The study uses the first two because physical evidence refers to the analysis of physical objects found within the study setting (often called artefacts) (O'Leary 2014). This research utilises document analysis of public

records as it analyses the Constitution of Zimbabwe (2013), newspaper articles, journal articles on the subject and the opening speech at the High Court judicial interviews.

This study explores purposively selected documents articles to determine its quality, value, and relevance in comparisons to other countries as widely recommended (Tongco 2007).

## Presentation and analysis of results

This section is divided by themes from the two objectives referred to at the beginning of the article. The outline will follow two stages. The first stage of this section is to outline the current recruitment and selection process in Zimbabwe and explore the problem/s identified above.

The second stage engages with the literature and explores the flaws and possible solutions for future judicial recruitment and selection processes in Zimbabwe, especially for the chief justice.

### Initial structure of the JSC for recruitment and selection

The primary basis of this Constitution is that one of the roles of the judiciary is that of enhancing and protecting human rights as provided in Section 189 of the Constitution. To begin with, Section 180 of the Constitution of Zimbabwe provides the procedure for the appointment of the judiciary. The section states that the JSC must declare the requisite number of vacancies, invite nominations then carry out interviews. In addition, Section 180 (2) of the Constitution states that for each judicial office which becomes vacant, the JSC must compile a list of three nominees and conduct public interviews to nominate the best-suited candidate.

Moreover, Section 189 of the Constitution requires that the JSC must include a chief justice, deputy chief justice and a person with at least 7 years' experience in human resources management who is appointed by the president, in order for the JSC to be a legitimate *ad hoc* committee. VERITAS watch reported, "There are two JSC vacancies that are puzzling, and have existed all along (VERITAS 2018). The missing members are a professor or senior lecturer of law designated by an association representing the majority of the teachers of law at Zimbabwean universities or, in the absence of such an association, appointed by the President and a person with at least seven years' experience in human resources management, appointed by the President" (VERITAS 2018). This paper argues that the absence of an HR person on the panel is problematic for several reasons, that shall be unpacked below.

### Mr. Zibani's concerns

In October 2016, *Newsday* (2016) reported that a law student from the University of Zimbabwe had made an application to the High Court of Harare in a bid to stop the 2016 chief justice interviews. The newspaper reported that Zibani claimed that the shortlisted candidates were "either friends, colleagues or bosses" of the interviewing panel and this could be best described as an "incestuous" relationship (*Newsday* 2016). Therefore, Mr. Zibani argued that in fact, the remaining members of the panel "ought to be saved the agony" of having to interview their own colleagues (*Newsday* 2016). In addition, Mr. Zibani's argument was that most of the members of the panel are junior to the four nominees, creating a most undesirable state of affairs that will actually destabilise the JSC and the due process (*Newsday* 2016).

In response to Mr. Zibani's claim, the Herald Newspaper (2016) reported that the outgoing Chief Justice Godfrey Chidyausiku had conceded that the current procedure of appointing the chief justice of the country is problematic. In fact, the newspaper reported that the outgoing chief justice had alerted the executive to this new procedure in the appointment of the chief justice as early as March 2016. However, he did not get a response and inferred from the conduct that the executive was comfortable with the new procedure. Despite the chief justice's concerns, the interviews went ahead, thus leading to the research questions in this study. This is another clear

violation of the procedure as prescribed by the Constitution of Zimbabwe that does not seem to concern the executive.

## Nature and procedure of the interviews and assessment

Moreover, the two tests that were used were a behavioural assessment test and a judgment-writing test. These were conducted on 21 October 2016. However, only 14 out of the 46 nominees passed the tests (Chidyausiku 2016). In fact, the speech stated that it would be a dereliction of the JSC's duty if it were to recommend for appointment anyone who failed these tests to the appointing authority. By stating this, the JSC, in fact, closed the door on all candidates but the 14 that passed the initial assessment. Not surprisingly, the majority of those who failed then subsequently desisted from attending the public interviews later held.

Nonetheless, the JSC, through a statement by the former chief justice on 24 October 2016 did not stop the failed candidates from attending the public interviews (Chidyausiku 2016). On the other hand, the former chief justice further expressed his disappointment in that out of the forty-three (43) candidates who turned up for the exercise, only fourteen (14) obtained a passing mark of five (5) and above out of a total of ten (Chidyausiku 2016:3).

Section 180 of the Constitution of Zimbabwe (2013) provides the procedure for the appointment of the judiciary. The section states that the JSC must declare the requisite number of vacancies, invite nominations and carry out public interviews. However, there was no actual provision for the public to make comments or participate in the call for nominations. Therefore, public participation is essential in this process considering that everyone has judicial interests, in that we (Zimbabwean citizens) all expect and rely on the judiciary to protect our rights (Barak, 2002). Based on the above, the judiciary is one 'organisation' where the principles of open systems apply (Cowen 2010).

Furthermore, the briefing suggested stated that during the interviews, JSC members would score candidates on each of nine qualities: competence, integrity, industry, independence, experience, good judgment including common sense, relevant legal and life experiences; commitment to the community and public service, the potential for the post applied for. However, it is important to note that these broad behavioural competencies were not clearly defined for all parties that were involved in the process to "sing from the same hymn book" (as it were). Therefore, this leaves the definition and interpretation of the competencies open to subjective interpretation.

## Public participation and pre-interviews

VERITAS (2016) suggested that the interviews be televised live because the briefing did not make mention of televising the interviews. In fact, this would be a desirable development because televising the interviews would enhance the transparency of the proceedings and cater for the wider public interest by enabling the whole nation, including citizens based outside Harare, to take an interest in the proceedings in line with the recommendations of the constitution of the state. VERITAS (2016) further argued that Zimbabwe must learn from South Africa because, in South Africa, the public interviews of judicial candidates by their JSC are televised live, and this is regarded as promoting citizens' confidence and pride in their judicial system.

Perhaps one of the most important aspects of the speech was that the former chief justice explained that the JSC regards the writing of judgments as the core competence of any judge (Chidyausiku 2016). The speech states that in view of the poor performance by most of the candidates during the pre-interview assessment exercise, it was important for all those who did not pass the elementary exercise to introspect and decide on whether they wanted to proceed with the interviews or will wait until they are ready and can pass this preliminary hurdle (Chidyausiku 2016). In addition, the chief justice argued that he believed that it will be "dereliction of duty on the part of the JSC" to recommend the appointment of a person who failed at the

elementary (Chidyausiku 2016:5). At this point, the speech also highlighted that it is the constitutional right of every qualifying candidate to be interviewed (S180(c)). This provision of the constitution thereby renders the role of the assessments obsolete, because even those who fail the assessment can still proceed to the interview stage. Therefore, those that did not perform well in the pre-interview assessment had the right to present themselves before the JSC and in the process, to persuade the JSC that “despite their poor showing earlier”, they should recommend that they are appointed to the High Court Bench (Chidyausiku 2016:5).

## Discussions

According to Section 191 of the constitution, the JSC is to act in “a just, fair and transparent manner.” As is common practice with organisations, there is a need to have a human resources manager or a psychologist within the organisation when conducting interviews. In fact, one of the major contributions of human resources management as a science in organisations is the meticulous and transparent process of recruitment and selection (Ekwoaba, Ikeije &Ujoma, 2015). However, as it currently stands (even during the appointment process) the JSC lacked that one person with at least 7 years’ experience in Human Resources Management (VERITAS, 2018). Therefore, the issue arises as to whether that JSC had the initial capacity to exist, let alone transact and conduct interviews for a chief justice. As it stands, the lack of the human resources manager means that the JSC had no capacity to act; hence, the appointment process of the chief justice was invalid and lacked transparency and did not fully comply with prescripts of the constitution.

When recruiting the judiciary, the JSC is required to declare the requisite number of vacancies. Section 180 (2) of the Constitution (2013) states that for each judicial office which becomes vacant, the JSC must compile a list of 3 nominees and conduct public interviews. In 2016, the JSC advertised 8 vacancies, which means that 24 names were needed to be submitted to the president (S180 (2)). Instead, 3 names were taken to the president to allow him to appoint one person as Chief Justice.

Furthermore, the JSC called for the nomination of candidates in October 2016 (*Newsday*, 2016) and only four candidates were nominated and were due to be interviewed on 12 December 2016 (*Newsday*, 2016). As a result, the JSC not only breached the constitution but it failed to execute proper steps to the selection process. This could have been avoided had the panel included a person with at least 7 years’ experience in human resources management as required by S189.

## Constituting the JSE and the question of fairness

The above results also illustrate that the JSC failed to reflect transparency in those undisclosed markers whose credentials and identities were kept a secret, marked the scripts (VERITAS, 2018). This means that the standards of testing were neither available nor verified. In addition, the scripts were not returned to the candidates for scrutiny, and there were no appeal procedures in place. This is because the exam. was written on Friday 21 October and on Monday 24 October 2016, there was a statement stating that the JSC would not recommend anyone who failed the exam. for appointment. This suggests that there was no external person who moderated the exam, given the short time frame between the day the tests were conducted and the day that the announcement was made. This leaves room for mistakes in marking or assessment to have gone unnoticed.

Second, there was no actual provision for the public to make their comments or participate in the call for nominations. Therefore, public participation is essential in this process, considering that everyone has judicial interests, in that we (Zimbabwean citizens) all expect and rely on the judiciary to protect our rights (Barak, 2002). Based on the above, the judiciary is one ‘organisation’ where the principles of open systems apply (Cowen, 2010). Contrary to Section

180 (2) of the Constitution (2013), the JSC, instead of basing its nominations on the public interviews, it conducted two pre-interview tests, which were then used to weed out some candidates. Therefore, in this case, the JSC went against the outlined guidelines for selecting its candidates for the position of chief justice.

Section 191 of the Constitution (2013) enjoins the JSC to act in a just, fair and transparent manner. The pre-interview assessment defeated the idea of fairness and transparency for the following reasons. Firstly, The JSC allowed junior lawyers to assess prominent and senior judges in this exercise in the absence of a human resources manager. According to the Employment Equity Act of South Africa, no organisation can perform assessment tests in the absence of a human resources manager or a psychometrician (Moerdyk 2009).

Furthermore, the assessment was a two-hour extempore judgment on decided facts as stated in the opening speech by the former Chief Justice of Zimbabwe (Chidyausiku 2016). The exercise was done in 2 hours, which is an unreasonable timeframe to write a good judgment considering that the average judge may spend up to a week to come up with a proper judgement (Barak, 2002). In fact, the judiciary is one of the most important organisations in the land, therefore “good” is unsatisfactory (Barak, 2002). Barak (2002) argues that the role of the judiciary is to determine the law and decide cases according to the rule of law. As such, he disputes the notion that judges merely state the law but do not create it (Barack 2002). Consequently, the role of the judge in courts such as the Supreme Court or Constitutional Court is more than just to correct the mistakes of the lower courts (Barak 2002). Moreover, their role is more about bridging the gap between the law and society, while protecting the democracy of the people (Barak 2002). Therefore, based on the above, it is essential that the process of selecting a judge, according to Barak (2002) must be thorough, transparent and foolproof to yield an effective judiciary rather than being based on their ability to write a “good” judgment.

Furthermore, the briefing suggested that during the interviews, JSC members would score candidates on each of nine qualities: competence, integrity, industry, independence, experience, good judgment including common sense, relevant legal and life experiences; commitment to the community and public service, the potential for the post applied for. However, it is important to note that these broad behavioural competencies were not clearly defined for all parties that were involved in the process to “sing from the same hymn book” (as it were). Therefore, this leaves the definition and interpretation of the competencies open to subjective interpretation.

## Pre-interviews and assessment

The Chief Justice states that in view of the poor performance by most of the candidates during the pre-interview assessment exercise, it was important for all those who did not pass the elementary exercise to introspect and decide whether they wanted to proceed with the interviews or wait until they are ready and can pass this preliminary hurdle (Chidyausiku, 2016). In addition, the Chief Justice argued that he believed that it would be a “dereliction of duty on the part of the JSC” to recommend the appointment of a person who failed at the elementary (Chidyausiku 2016:5). At this point, the speech also highlighted that it is the constitutional right of every qualifying candidate to be interviewed (S180(c)).

This provision of the constitution thereby renders the role of the assessments obsolete, because even those who fail the assessment can still proceed to the interview stage. Therefore, those that did not perform well in the pre-interview assessment had the right to present themselves before the JSC and in the process to persuade the JSC that “despite their poor showing earlier”, they should recommend that they are appointed to the High Court Bench (Chidyausiku 2016:5).

Although the Constitution (2013) provides that those who failed be allowed to proceed, it raises issues within the judiciary because it defeats the purpose of the selection process. Selection refers to the identification of qualified candidates from a pool of candidates, through

methods such as interviews and assessments (Du Bois 2006). This stage should lead to shortlisting; otherwise, there is no point of the pre-interview exercise if everyone will make it to the interview stage. As such, a classic illustration of the downside to this is illustrated when a renowned human rights' attorney who failed the pre-interview assessment, chose to continue to the interview stage. As a result, he failed to tell the panel the difference between a court application and a court action. This is information that most lawyers have at the tips of their fingers. Had the pre-interview process been used as a screening method, candidates such as the aforementioned would have been deemed incompetent for the position and would have been unable to proceed to the interview stage.

Fairness could be increased if the process of assessment stated explicitly that the candidate must have had some experience or training in writing judgments in their line of work to achieve to ensure that candidates are assessed on equal footing and perform better. Joppe (2000) defines reliability as the extent to which results are consistent over time. As such, if the different assessors can reproduce the same results after marking under similar conditions, then the assessment method is considered reliable (Joppe 2000: 1). Therefore, in this case, it would have been more reliable to have different markers to mark the scripts to see if they would have the same results, to increase inter-rater reliability (Joppe 2000).

Seasoned judges and registered assessors should be used as assessors since they have the experience and are trained in such complex assessments. Experience is essential in this regard because unlike the Zimbabwean Constitution, the South African Constitution of 1996 provides two (2) criteria for judicial selection in Section 174 (1). This is because the method of assessment is so complex and plays a major role in determining whether a person is fit for a job or not (Moerdyk 2009). On the other hand, the Zimbabwean process lacked expert assessors and used junior lawyers that have no experience in writing judgments, let alone in assessing a judgment writing exercise. This section states that judicial candidates must be appropriately qualified and must be fit and proper (Du Bois 2006). This means that there must be a standard that is used to determine whether one is fit and proper. Therefore, experienced judges who have been through the process before or who have experience in the selection of judges would be better qualified to interpret and measure these criteria to improve the Zimbabwean recruitment and selection of the judiciary. Consequently, this leads to the questions regarding the fairness and transparency in the marking by the assessors.

In doing so, the JSC could adopt the South African method of judicial selection, to engage with interest groups such as NGOs, and Pension groups as well as other interested groups for public comments and nominations of candidates (Cowen 2010).

## Conclusion and recommendations

The paper used a limited number of documents that helped to answer the questions that emanated from the most recent recruitment and selection process of the Chief Justice in Zimbabwe. The first important challenge of doing a study of this nature is the inaccessibility of government public documents in Zimbabwe. Perhaps, with the availability of these public documents, the research could be strengthened. The paper has identified many flaws in the current recruitment and selection process of Chief Justice in Zimbabwe. Second, the paper identified the problem and demonstrated through documents analysis, particularly how the process contravened some of the constitutional provisions. Considering the above flaws and suggestions, it is possible to have a fair, transparent and effective selection and appointment of the Chief Justice in Zimbabwe. It is important to remember that no single process of screening candidates is enough. Therefore, there is a need for a detailed and thorough job analysis so that the ad hoc committee is clear on what to look for in a candidate rather than just their ability to "write a good judgment". Moreover, having assessed the role of the judiciary, it is essential that a professional job analysis provide the JSC with key skills, qualifications, and knowledge that one

must possess to be the best candidate for the position. Nonetheless, possible solutions for the JSC include televising the public interviews to ensure transparency in the process. Furthermore, as already suggested, the JSC should follow the South African method of questionnaires to help to gather more information regarding the candidates' competencies and implement peer reviews so that peers are able to make contributions regarding a specific candidate's nomination. In addition, perhaps a competence-based assessment should also be used for effectiveness in the next recruitment and selection of the Chief Justice. This will ensure that that future judiciary selection is effective and promotes human rights as envisioned by the Constitution of 2013.

Taking the above into consideration, this paper suggests that Zimbabwe's JSC should follow the South African JSC process of selection that shortlists the candidates to ensure that only the suitable candidates for the judicial position proceed to the interview stage (S12 of the Judicial Commission Service Act of South Africa 1994). The South African method, unlike the Zimbabwean one, aligns more with a proper recruitment and selection process because the purpose of short-listing is to identify candidates who best meet the selection criteria for the post (Newell 2009).

## Reference list

- Barak, A. 2002. A Judge on Judging: the Role of a Supreme Court in a Democracy. *Harvard. Law Review*, 116, 19.
- Bogdan, R., & Biklen, S. 1998. *Introduction to qualitative research in education*. England: Pearson.
- Bowen, G. A. 2009. Document analysis as a qualitative research method. *Qualitative research journal*, 9(2), 27-40.
- Chidyausiku, G. G. 2016. Speech by the Chief Justice the honourable Godfrey Guwa Chidyausiku on the occasion of the official opening of the 2015 legal year on 12 January 2015. Viewed on 25<sup>th</sup> November, 2019 from [http://www.veritaszim.net/sites/veritas\\_d/files/CJ%20Chidyausiku%27s%20Speech%20at%20the%20Opening%20of%20the%202015%20Legal%20Year.pdf](http://www.veritaszim.net/sites/veritas_d/files/CJ%20Chidyausiku%27s%20Speech%20at%20the%20Opening%20of%20the%202015%20Legal%20Year.pdf).
- Chiduza, L. 2013. The significance of judicial independence in human rights protection: A critical analysis of the constitutional reforms in Zimbabwe (Doctoral dissertation, University of the Western Cape).
- Cowen, S. 2010. Judicial selection in South Africa. Research report. Cape Town. South Africa: Democratic Governance and Rights Unit, University of Cape Town.
- Constitution of Republic of Zimbabwe. 2013.
- Daily news live. 2016. "JSC seeks new Chief Justice." Viewed 24<sup>th</sup> April, 2018 from <https://www.dailynews.co.zw/articles/2016/10/19/jsc-seeks-new-chief-justice>.
- Department of Justice of the Republic of South Africa. 2018. Viewed 24 April, 2018 from <http://www.justice.gov.za/faq/faq-jsc.html>.
- Du Bois, F. 2006. 14. Judicial Selection in Post-Apartheid South Africa. In Kate Malleson, Peter H. Russell (eds.) *Appointing Judges in an Age of Judicial Power: Critical Perspectives from around the World* (pp. 280–312). Toronto: University of Toronto Press. Viewed 15 December 2019, from <https://doi.org/10.3138/9781442670921-017>. Book DOI: <https://doi.org/10.3138/9781442670921>
- Ekwoaba, J. O., Ikeje, U. U., & Ufoma, N. 2015. The Impact of Recruitment and Selection Criteria on Organizational Performance. *Global Journal of Human Resource Management*. Vol. 3, Issue 2, Pages 22-33.
- Inkanyiso, Jnl Hum & Soc Sci* 2019, 11(1)

- Manyatera, G. & Fombad, C.M. 2014. An assessment of the Judicial Service Commission in Zimbabwe's new Constitution. *Comparative and International Law Journal of Southern Africa*, 47(1), 89-108.
- Gergen, K. J. 1985. Social constructionist inquiry: Context and implications. In *The social construction of the person* (pp. 3-18). Springer, New York, NY.
- Golafshani, N. 2003. Understanding reliability and validity in qualitative research. *The qualitative report*, 8(4), 597-606.
- Herald Article. 2016. "Chief Justice Interviews go head (sic)". Viewed 13 December 2016 from <http://www.Herald.co.zw/chief-justice-interviews-go-head/>
- Herald Article 2017. "Chidyausiku Speaks on Chief Justice Saga". Viewed 19 December 2019 from <http://www.Herald.co.zw/chidyausiku-speaks-on-chief-justice-saga/>
- Hofisi, D. T., & Feltoe, G. Playing Politics with the Judiciary and the Constitution? *The Zimbabwe Electronic Law Journal*, 68.
- Human rights watch. Viewed 14 DEcember 2019, from <https://www.hrw.org/world-report/2016/country-chapters/uzbekistan>).
- Hofisi, D.T. & Feltoe, G. 2016. Playing Politics with the Judiciary and the Constitution? *The Zimbabwe Electronic Law Journal*. Volume 1, ZELJ. Viewed 3 January 2017 from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3039518](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3039518).
- Joppe, M. 2000. *The Research Process*. Viewed 25 February, 1998, from <http://www.ryerson.ca/~mjoppe/rp.htm>
- Khurana, H.S., Phillips, S. B., Dobermann, A., Sidhu, A. S. & Peng, S. 2007. Performance of site-specific nutrient management for irrigated, transplanted rice in northwest India. *Agronomy journal*, 99(6), 1436-1447.
- Lepak, D.P., & Snell, S.A. 1999. The human resource architecture: Toward a theory of human capital allocation and development. *Academy of management review*, 24(1), 31-48.
- Manyatera, G. 2015. 'A critique of the superior courts judicial selection mechanisms in Africa: The case of Mozambique, South Africa and Zimbabwe. Viewed 14 December 2019 from [http://repository.up.ac.za/dspace/bitstream/handle/2263/52440/Manyatera\\_Critique\\_2015.pdf?sequence=1&isAllowed=y](http://repository.up.ac.za/dspace/bitstream/handle/2263/52440/Manyatera_Critique_2015.pdf?sequence=1&isAllowed=y)
- Maxwell, J.A. 2012. *Qualitative research design: An interactive approach* (Vol. 41). Sage publications.
- Moerdyk, A. 2009. *The principles and practice of psychological assessment* (1st ed.) Pretoria: Van Schaik Publishers.
- Mpofu, J. & Chimhenga, S. 2013. The impact of Zimbabwean Media Laws on the work of Journalists and Media organizations. *IOSR Journal of Research & Method in Education*, Issue 1 (Jul-Aug. 2013): 82-87
- Newsday Article. 2016. "UZ student bids to stop Chief Justice Interviews". Viewed 8 December, 2018 from <https://www.newsday.co.zw/2016/12/08/mphoko-chombo-roasted-protecting-criminals/>.
- Newell, S. 2009. Recruitment and Selection. In S. Bach, *Managing Human Resources* (4th ed., pp. 115-126). New York: John Wiley & Sons.
- O'Leary, Z. 2014. *The essential guide to doing your research project* (2nd ed.). Thousand Oaks, CA: SAGE Publications, Inc.
- Schmitter, P.C. & Karl, T.L. 1991. What democracy is ... and is not. *Journal of democracy*, 2(3), 75-88.

- Newsday. 2016, December. Zimbabwean Student bids to stop Chief Justice Interviews. Viewed 25 November, 2019 from <https://www.newsday.co.zw/2016/12/08/mphoko-chombo-roasted-protecting-criminals/>.
- Newsday. 2012, December. UZ student bids to stop Chief Justice Interviews. Viewed 25 November, 2019 from <https://www.newsday.co.zw/2016/12/mphoko-chombo-roasted-protecting-criminals/>.
- Russell, P.H. (eds.), *Appointing Judges in an Age of Judicial Power: Critical Perspectives from around the World* (pp. 280-312). Toronto: University of Toronto Press. Viewed 19 December 2019 from <https://doi.org/10.3138/9781442670921-017>.
- Tongco, M.D.C. 2007. Purposive sampling as a tool for informant selection. *Ethnobotany Research and applications*, 5: 147-158.
- VERITAS Zimbabwe's Court Watch. 2016. Viewed 24 April, 2018 from <http://veritaszim.net/node/1873>.