

We are independent, Zim Judiciary declares

Like any other in the world, Zimbabwe's judiciary has a love-hate relationship with the people it serves.

At times, it is talked of in negative terms. At other times, glorious praise is showered on the same men and women tasked with the delicate matters of the country's justice delivery service.

In this Special Edition, *The Legal Monitor* gets up close with the Secretary of the Judicial Service Commission (JSC) Justice Rita Makarau to talk about the work of the judiciary.

In this candid interview,

reproduced in full on page 3 and 4, Justice Makarau tells us about the tough job of being a judicial officer in underperforming Zimbabwe and how, with insufficient resources, the judiciary is making strides towards modernity.

She bluntly comments on the alleged corruption pervading the judiciary, particularly at the Magistrates' Court level, and how determined Chief Justice Godfrey Chidyausiku is to put an end to it.

Operating in an environment where the judiciary has to struggle for money, whilst at the same time operating in polarised political times, Justice Makarau says people have come to accept the judiciary's fierce defence of its independence.

She admits to close interaction with the Executive and the Legislature, arms of government which many view as a meddlesome lot.

"We are part of a system," she says.

"We are the third arm of the State and we are part of the State and not independent of it. That means that at some levels we have to link with the two other arms of State and our link has always been the Minister of Justice because in the Executive he is our link if we want papers processed by the President," she explains.

"For instance, appointments to the Bench are made by His Excellency and for us to have appointments made we have to go through the minister.

The minister (Justice and Legal Affairs Minister, Hon. Patrick Chinamasa) is also our voice in Parliament. If an MP asks about why the court in Norton is not performing, he asks the minister because we can't sit in Parliament," she adds.

"The minister cannot issue directives to us. The minister actually doesn't have any direct contact with our members of staff. All interactions have to be through the JSC. But it's a new phenomenon. It takes time for people to appreciate, but we are always preaching that doctrine - to say the judiciary is independent. It is independent under the Chief Justice. We need to have those links to Parliament and the Executive but they are just links. They are not doors through which policies can come to us."

Then Justice Makarau, dressed elegantly and casually offering *The Legal Monitor* crew orange juice in her modest office at the High Court, opposite the "citadel of power", Munhumutapa Building, boldly declares: "That is as far as it goes."

"The minister cannot issue directives to us. The minister actually doesn't have any direct contact with our members of staff. All interactions have to be through the JSC. But it's a new phenomenon. It takes time for people to appreciate, but we are always preaching that doctrine - to say the judiciary is independent. It is independent under the Chief Justice. We need to have those links to Parliament and the Executive but they are just links. They are not doors through which policies can come to us."

"No," she declares calmly, before adding: "Because at each and every platform we get, we preach that, so I think people now understand that we are serious and we do make independent decisions. We tell people this is what we are going to do as the judiciary, we are going to do it and we do it," she says.

The JSC, the body she is leading now, is tasked with overseeing the work of the entire judicial service.

Justice Makarau together with Rex Shana, the JSC deputy secretary talk about it all on Page 3 and 4.



New era in the judiciary-Chief Justice

THE Judicial Service Commission is created by section 90 of the Constitution of Zimbabwe. One of its functions is to tender advice to the President on appointments to certain posts specified in the Constitution, including the appointment of judges. Its other equally important function is to employ all persons within the Judicial Service as defined in section 3 of the Judicial Service Act [Chapter 7:18].

The Constitution thus casts a dual role on me, as the Chairperson of the Judicial Service Commission on the one hand and as head of the Judiciary in Zimbabwe on the other. The two roles are in my view the two sides of the same coin. The welfare of the people who work in the courts is as important as the quality of justice that comes out of those courts.

The role of the Judicial Service Commission as an employer of persons within the Judicial Service is

a relatively new mandate, having been brought into operation on 18 June 2010, thus for the first time, unifying the entire judiciary under my office. It is therefore a welcome development to me as Chief Justice that both the selection and appointment processes of members of the judiciary and support staff on one hand and the administration of justice delivery in all courts on the other, be reposed in the same body.

The coming into operation of the Judicial Service Act in June 2010 has ushered in a new era in the judiciary. I do not for once doubt that the task ahead is daunting. I am however fortified in my belief that the Judicial Service Commission will receive support from all, as it is a truism that without an efficient, independent, impartial and accountable judicial service, there can be no meaningful economic or social development in any country. *Source: <http://www.jsc.org.zw>*



Chief Justice Chidyausiku



Judge President George Chiweshe

Where you can find 50 circuit courts in Zimbabwe

2.3.1 Harare Province

- (a) Beatrice
- (b) Chinhamora

2.3.2 Mashonaland Central Province

- (a) Shamva
- (b) Concession
- (c) Nzvimbo
- (d) Mvurwi
- (e) Centenary
- (f) Rushinga

2.3.3 Matabeleland North Province

- (a) Entumbane
- (b) Dete
- (c) Nyamandlovu
- (d) Inyathi
- (e) Mbembesi
- (f) Fort Rixon
- (g) Drill Hall

- (a) Mutorashanga
- (b) Mhangura
- (c) Banket
- (d) Darwendale
- (e) Murombedzi
- (f) Battlefields
- (g) Chakari
- (h) Magunje

2.3.5 Matabeleland South Province

- (a) Guyu/Tuli
- (b) West Nicholson
- (c) Matobo

2.3.6 Midlands Province

- (a) Silobela
- (b) Lalapanzi

2.3.7 Mashonaland East Province

- (a) Featherstone
- (b) Macheke
- (c) Nyamapanda
- (d) Mudzi
- (e) Sadza
- (f) Juru

2.3.8 Masvingo Province

- (a) Triangle
- (b) Chatsworth
- (c) Mashava

2.3.9 Manicaland Province

- (a) Penhalonga
- (b) Odzi
- (c) Nyazura
- (d) Headlands
- (e) Mayo
- (f) Chisumbanje
- (g) Middle Sabi
- (h) Nyanyadzi
- (i) Chimanimani
- (j) Cashel
- (k) Buhera/Muzokomba
- (l) Dorowa
- (m) Mutasa

Structure of the JSC

The Judicial Service commission is established by section 90 of the Constitution in the following terms:

- (1) There shall be a Judicial Service Commission which shall consist of:
 - (a) The Chief Justice or, if there is no Chief Justice or the Chief Justice is not available, the Deputy Chief Justice;
 - (b) The Chairman of the Public Service Commission;
 - (c) The Attorney-General;
 - (d) no less than two or more than three other members appointed, subject to the provisions of subsection (2), by the President.

Currently, the Judicial Service Commission comprises of the Chief Justice, the Chairman of the Public Service Commission, the Attorney-General, the Judge President, Mr Sternford Moyo and Mr Canaan Dube, two senior practising lawyers.

The Commissioners are supported by a Secretariat headed by the Acting Secretary, Justice Rita Makarau, and deputised by Mr Rex Shana.

Source: <http://www.jsc.org.zw>

JSC's Core Values

The Judicial Service Commission has adopted the following Core Values, being an expression of the philosophy that guides the Judicial Service

Commission in all its internal and external working relations:
Source: <http://www.jsc.org.zw>

Independence:

While working within its mandate, JSC resists any undue influence and interference and takes the appropriate steps to install independence as a core value of all members of the Judicial Service.

Fairness:

JSC treats all members and users of the Judicial Service equitably, impartially, respectfully and in a transparent manner, based on a strict adherence to communicated policies and regulations.

Professionalism:

JSC works efficiently and effectively, based on honesty, reliability and zero tolerance to corruption, while strictly adhering to its code of ethics and its code of conduct.

Accountability:

While safeguarding the independence of the Judicial Service, the JSC acknowledges its accountability to the general public from which it derives its mandate and is responsive to the legitimate concerns and expectations of its stakeholders.

1.1. Founding Principles

The Judicial Service Commission has adopted the following Founding Principles, being the basic ideology that, together with the Core Values, informs the organisational culture of the Judicial Service Commission and guides the pursuit of its Vision:

Accessible justice for all:

JSC seeks to promote equitable access to justice through the elimination of cost, infrastructure and knowledge barriers.

Competent judicial service:

JSC will create and sustain an environment conducive for members of the Judicial Service to be highly trained, well equipped and adequately resourced for effectiveness and efficiency.

High quality service to the public:

JSC is committed to the expeditious delivery of affordable justice and excellent and respectful service to all court users.

Performance culture:

The JSC will encourage a culture of continuous implementation, monitoring and regular review of its plans and policies.

Striving for world class justice

The Legal Monitor (LM) last week sat down with Justice Rita Makarau (RM), the Secretary of the Judicial Service Commission (JSC), and her deputy Rex Shana (RS) for a candid talk. Since it was reconstituted in 2010 as an enhanced organ incorporating all judicial services staff, critically including magistrates, not many people have been exposed to, or aware of, the work of the JSC. In the Q&A below, Justice Makarau unpacks the work, successes and challenges of the JSC.

LM: How has the unification of the judiciary enhanced independence?

RM: A unified judiciary means much more independence as this ensures that magistrates now, for the first time, are no longer civil servants and they no longer report to or through the Executive. They now fall directly and squarely under the Chief Justice. He is now truly the head of the judiciary as the Chief Justice. He is accountable for the performance of all judicial officers; Judges of the Supreme Court, Judges of the High Court, Presidents of the specialised courts and now magistrates. So all court structures now report directly to him. He is accountable for their performance and he generally oversees justice delivery in all the courts in Zimbabwe.

LM: What were some of the problems you faced before this?

RM: The problem of a fragmented judiciary was accountability. Magistrates were under the Ministry of Justice and they were civil servants. They were under a permanent secretary in the ministry but because he was not part of the judiciary he could not come to the court to tell them how to run their things because that would have been seen as interference by the Executive. So, there was lack of accountability. Things were left to the Chief Magistrate to run and he would simply file reports with the permanent secretary who was not in a position to then direct how things should operate. And conditions of service were not unified. Magistrates, for quite some time, and even up to now we are struggling with the idea, were treated as civil servants. But they are not civil servants. They are public servants. Magistrates are judicial officers. They discharge a judicial function. It is trust that society has reposed in them to say if we have a dispute we come to you. So they should be treated very differently from civil servants. And even other people who work in our courts, we always say people complain that there is corruption in our courts. You cannot treat a clerk in the justice delivery service the same way you treat a clerk in the Ministry of Education because of the sensitivities of the justice delivery service. For example, if a record goes missing in a court it is different from when a record goes missing in the Ministry of Education. People don't seem to realise that it is a very sensitive field and we must treat staff in that area slightly differently.

LM: Talking about accountability, have there been any improvements since the formation of the JSC?

RM: Because the Chief Justice is interested in the output of the courts, he wants reports on a regular basis and we have seen a marked improvement. The Magistrates' Courts are a living example. This year we have recorded a decrease in the backlog by 65 percent because now the Chief Justice is demanding reports; what is each station doing, and why they are not performing. If it is a question of a shortage of vehicles, we give them more vehicles, if it is a question of too few magistrates then we move more magistrates to that station. And because of that close monitoring by the head of the judiciary

himself we have seen a marked reduction in the backlog. Magistrates are now accountable. They have time that they have to spend in court and reports are compiled every month for each and every magistrate. If the magistrate was not in court, say for the 60 hours, reasons have to be given. If one did not just perform then the Chief Justice will come down hard on that individual.

LM: So are days of *laissez faire* at the Magistrates' Courts gone for good?

RM: Gone are those days. Everybody now has to account. You have a minimum number of hours that you have to put in at court. If you don't put in those hours you have to explain yourself. You cannot just come in and remand cases. Your disposal rate is looked at; how many cases have you completed per month? There is a monthly report that goes to the Chief Justice and if we continue with that trend we can wipe out the backlog in two years, completely in the Magistrates' Courts.

to get justice.

RS: Maybe just a historical perspective. Because of the economic situation, most Magistrates' Courts had either broken-down vehicles or no vehicles at all. The net effect was that the circuit courts had to be closed. With this new scenario, we have 11 vehicles from the Danes and we have bought more than 20. We have managed to put a fleet at each and every resident Magistrates Court, of which there are 52 in the country. From these 52, each Magistrates Court has two or sometimes four different circuits. The whole idea of circuit courts is to take the court to where the people are to minimise the travelling. This is why cases used to fail to take off because witnesses couldn't travel, even the public transport was bad. Now they are able to go to their local circuit court and the net result is 65 percent reduction in our backlog.

RM: Talking of the backlog, we actually now have

in, you actually feel you are in a courthouse. So the first thing is actually making our courthouses real courthouses. The second one is where we open a circuit court there is a catch because we are not the only players. We are the JSC and we don't employ the police and we don't employ prison officers. Remember if it is a criminal trial, the person is brought in by the police to our courthouse and after we have dealt with him, prisons take over and sometimes prisons can't match our capacity and even if we want to establish a courthouse prisons won't be able to establish a satellite prison so we need to liaise with those other players. It is a challenge, especially with prisons. At some places like Goromonzi, you find that there are no holding cells at the courthouse so when prisoners are brought they are held under a Musasa tree and we are saying that is inhuman. Even if a person has committed a crime you don't hold him under a tree when it's raining waiting to take them into court.



Candid talk...JSC deputy secretary Rex Shana and Justice Makarau

LM: Is this also the case in the other courts such as the Labour Court?

RM: Unfortunately, because our statistics in those other courts are not as reliable as those from the Magistrates' Courts, we have not been able to measure our output. But the same spirit pervades the entire JSC. Everybody now knows they are being monitored not only on the quantity that they produce but the quality of work as well, so nobody wants the Chief Justice to be constantly calling them to explain.

LM: Your 2012-2016 strategic plan talks of delivering world class justice. What has the progress been, given the resources at your disposal?

RM: Resources are not world class at this stage (She laughs). But we are trying and we have got to be grateful to Treasury. They have released some funds to us. They have been very supportive. We have also gone outside and we are talking to donors to say 'please come in and support us'. So far we have received fantastic support from the Royal Danish embassy in Zimbabwe. They have come in to assist and with that assistance we have recorded a marked improvement. They gave us 11 vehicles and we matched that number, bought a few of our own and we have now managed to have a situation where each Magistrates' Court - just think of any Magistrates' Court - we have managed to give them each a vehicle. The beauty of that, and most people don't realise this, is that magistrates also do a lot of work and travel for circuit courts. For instance, magistrates from Harare go to Showgrounds (in Domboshava), where there is a circuit court, and because they have a vehicle they will definitely attend to the circuit courts and they will be able to clear all the cases there because the witnesses are there. That is why our backlog has also gone down. We are servicing all circuit courts and people don't have to travel

one or two regional courts where there is no backlog. In other words, the magistrate is actually waiting for cases to come. But instead of waiting in the courtroom for cases to come, we have begun transferring cases from other busy stations to courts which are less busy. Gokwe has a zero backlog and Chivhu also has zero, so all cases there are new cases. We are quite proud of that achievement. For the first time we have zero backlog in some areas.

LM: Tell us about the merits of taking the courts to the people?

RM: We are here to serve the people of Zimbabwe and sometimes where people cannot travel to us we should go to them. We should bring justice to them. Ideally that is supposed to be the situation. People should be within walking distance of a courthouse. They shouldn't have to travel 400 km to find a courthouse, like what happens in Kanyemba in Guruve. You know, people have to travel from Kanyemba to go to court in Guruve. The ideal situation is that there should be a courthouse within walking distance for any one group of people. That's the whole reason behind circuit courts. For example, that's why we go to the farming community of Beatrice on circuit so that people from there won't have to travel to Chitungwiza for justice.

LM: Any plans to build actual courthouses for people in remote areas such as Kanyemba?

RM: When we say there is a court in Guruve, we mean there is a site there. Most of our structures at these centres are not actual courthouses and so they are not affording people access to justice. It's like you are in an unjust place, where you sit not even under a tree while you are waiting to go into court. And we are saying that is not delivering justice to the people. We need a courthouse where, when you walk

LM: The issue of circuit courts obviously speaks to eliminating the cost barrier. But do you think the courts have an activist role to play in terms of bridging the information gap and raising awareness among women, children and vulnerable groups?

RM: That's an area we have identified. It's an area we intend to go into; educate and inform the public about court services and where the courts are and how to access them. It's a big gap - public awareness campaigns. We have said we are going to start working on those. We also intend to interact with the media so they can spread this message on our behalf. We are fairly new and these are some of the things we are working on.

LM: Are magistrates happy about their conditions of service?

RM: I am sure they are not happy. We are also not happy. We believe they are entitled to a whole lot more as judicial officers. But we also understand that the economy at the moment, while it has improved, has not performed that well to enable us to pay them what they actually deserve. It should be an unheard of situation for a magistrate not to have their own vehicle and they have to jump into public transport with accused and witnesses. Even for magistrates not to have their own private residences and have to rent accommodation in the townships is unacceptable. It compromises their independence, definitely. So, we are hoping for a situation where magistrates form the middle class. They should have their own homes.

LM: What is the situation regarding corruption?

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JSC pledges to clear backlog

The Judicial Service Commission (JSC) says it is working flat out to clear the backlog of cases at the country's Magistrates' Courts, senior officials have said.

In an interview with *The Legal Monitor*, the JSC Secretary, Justice Rita Makarau said since the incorporation of the Magistrates' Courts into the JSC, the judicial officers were now more accountable and results showed a great improvement in the determination and disposal rate of cases.

"Because the Chief Justice (Godfrey Chidyausiku, who heads the JSC) is interested in the output of the courts, he wants reports on a regular basis and we have seen a marked improvement," said Justice Makarau.

"The Magistrates' Courts are a living example. This year we have recorded a decrease in the backlog by 65 percent because now the Chief Justice is demanding reports; what is each station doing, why they are not performing," said Justice Makarau, adding that the JSC was dealing with problems which caused courts to fail to perform.

"And because of that close monitoring by the head of the judiciary himself we have seen a marked reduction in the backlog. Magistrates are now accountable. They have time that they have to spend in court and reports are compiled every month for each and every magistrate.

"If the magistrate was not in court, say for the 60 hours, reasons have to be given. If one did not perform then the Chief Justice will come hard on that individual," the former Judge President said.

She said when the Magistrates' Courts were part of the Public Service

Commission, a fragmented judiciary resulted in lack of accountability.

"Things were left to the Chief Magistrate to run and he would simply file reports with the permanent secretary (in the Ministry of Justice and Legal Affairs) who was not in a position to then direct how things should operate."

Asked if the days of *laissez faire* at the Magistrates Courts were gone for good, the JSC Secretary said: "Gone are those days. Everybody now has to account. You have a minimum number of hours that you have to put in at court. If you don't put in those hours, you have to explain yourself. You cannot just come in and remand cases. Your disposal rate is looked at; how many cases have you completed per month? There is a

monthly report that goes to the Chief Justice and if we continue with that trend we can wipe out the backlog in two years, completely, in the Magistrates' Courts."

She said the JSC was still compiling statistics in other courts such as the Labour and Administrative Courts to measure output.

"But the same spirit pervades the entire judicial service. Everybody now knows they are being monitored not only on the quantity that they produce but the quality of work as well, so nobody wants the

Chief Justice to be constantly calling them to explain," she added.

Justice Makarau revealed that magistrates stationed at Gokwe and Chivhu courts were outstanding as they had already cleared their backlogs.

"The magistrates are actually waiting for cases to come. But instead of waiting in the courtroom for cases to come, we have begun transferring cases from other busy stations to courts where work is less busy," she said. "We are quite proud of that achievement - for the first time we have zero backlog in some areas."

Her deputy Rex Shana said assistance from the Royal Danish embassy, which provided 11 vehicles to the JSC, plus the extra effort by the JSC had eased

some of the problems experienced by magistrates such as failing to reach some remote circuit courts.



Overhauling justice delivery system

The Judicial Service Commission (JSC) is slowly attempting to overhaul the country's justice delivery system after introducing a case flow management system to track and monitor the rate of progress and determination of matters before the courts.

The case flow management system, which has been introduced at the High Court, is being implemented by the JSC on a trial basis with the assistance of its collaborating partner, the Royal Danish embassy.

The pilot project seeks to track cases from the date of filing of the initiating process to date of final determination so that the progress of a case can be monitored - not by making reference to the file or record of the matter, but by tracking where the matter is electronically. It is believed that judges and administrators can enhance justice when a court supervises case progress from the time of filing throughout the life

of a case and through the provision of credible and timely trial dates. JSC secretary Justice Rita Makarau said since the introduction of the case flow management system, court officials are now able to promptly avail information to litigants and their legal practitioners upon request and at short notice.

The information, Justice Makarau said, is made available on a computer which can be accessed from the JSC's offices and which will eventually be made available through its website portal.

She said the success of the pilot project hinges on support from the High Court Registrar and his staff, including judge's clerks, who should maintain log sheets and complete them on a daily basis even where they reflect a nil return.

Striving for world class justice

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RM: We are alive to the allegations and sometimes they have not turned out to be allegations but real cases. Where our magistrates have been arrested or complaints have been made to us and we have investigated and have found the allegations to be true, we have firmly dealt with those and quite a number have been dismissed on account of lack of integrity as judicial officers. Not only judicial officers, even some people who work in our courts like clerks, interpreters and some orderlies who were very powerful. We are not playing it down at all. If our member is guilty we do not hesitate to fire them. We do this not only to protect the public but to send a clear message to others that in the JSC we have no room for corruption.

LM: You work with other arms of government. Many are wondering how you assert your independence...

RM: We are part of a system. We are the third arm of the State and we are part of the State and not independent of it. That means at some levels we have to link with the two other arms of State and our link has always been the Minister of Justice because in the Executive he is our link if we want papers processed by the President. For instance, appointments to the Bench are made by His Excellency and for us to have appointments made we have to go through the minister. The minister is also our voice in Parliament. If an MP asks about why the court in Norton is not performing, he asks the minister because we don't sit in Parliament.

But that is as far as it goes. The minister cannot issue directives to us. The minister actually doesn't have any direct contact with our members of staff. All interactions have to be through the JSC. But it's a new phenomenon. It takes time for people to appreciate but we are always preaching that doctrine - to say the judiciary is independent, is independent under the Chief Justice. We need to have those links to Parliament and the Executive but they are just links. They are not doors through which policies can come to us. No. Because at each and every platform we get we preach that so I think people now understand that we are serious and we do make independent decisions. We tell people this is what we are going to do as the judiciary and we do it.

LM: What are some of your biggest operational problems?

RM: Lack of adequate resources for all our programmes. We have quite a few noble programmes we want to introduce but because we don't have the money we can't introduce them. Our judges should have qualified research assistants but for us to employ bright young lawyers to act as judges' clerks we need money and we don't have it. We should have a state of the art library and reference centre, but we don't have the resources to equip our library. Even our magistrates should have libraries where they can do research so that their judgments are based purely on the law. We don't have the resources for that.

LM: What have you done with the few resources that you have?

RM: We are trying slowly to computerise our systems. Computerisation enhances our efficiency and monitors progress but we are failing to have computers countrywide. We have tried though to have a computer at each magisterial station with internet connectivity but it is only one at each station. We would want to have several computers at each station. We would love to have people trained regularly, including even our own clerks so that they know how to handle people with respect. Public awareness campaigns - we would love to have our own *Legal Monitor* (she laughs) which we would publish and give people out there to inform them about the courts - how does one lodge a claim, for example.