

Judicial appointment in Zimbabwe: defining the concept of “fit and proper person” research paper submitted to the Faculty of Law of the Midlands State University

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Introduction

As in other progressive jurisdictions,² the Constitution of Zimbabwe provides that a person to be appointed to the office of a judge must be “a fit and proper person”³ although this concept is not defined in the Constitution. No guidance is given by the Constitution to the Judicial Service Commission (JSC) in determining what criteria to apply in selecting candidates and to ensure that the candidate for judicial appointment or promotion has all the necessary attributes. Constitutions have numerous open-ended definitions to allow the legislature and other subordinates to creatively formulate a comprehensive meaning of the open-ended terms. This allows for flexibility rather than rigidity in interpretation.

In Zimbabwe, the Courts have defined the concept in respect of the admission and re-admission of legal practitioners.⁴ The Courts have opined that the requirement alludes to personal qualities of the applicant or candidate, with the object of maintaining the integrity and honour of the profession.⁵ The Courts decide whether the applicant is fit and proper in relation to such matters as prestige, status and dignity of the profession, and the integrity, standards of professional conduct and responsibility of legal practitioners. However, in practice, courts do not actually interrogate whether a candidate for admission as an attorney or legal practitioner has a good character or not. In the absence of objections, it will be assumed that the candidate is of good standing.

As regards appointment of judges, it is submitted that given the public importance of judicial office which is a public trust (since judicial authority derives from the people), there must be a more proactive approach from both the recommending authority and the appointing authority which should interrogate whether a candidate for appointment to the bench is suitable for and deserving of such a position.

The word ‘fit’ has been taken to mean ‘qualified or suited to purpose, competent and deserving’, whilst the word ‘proper’ has been taken to mean ‘excellent, admirable, commendable, fine, goodly, of high quality, of good character or standing, honest, respectable, worthy, fit, apt, suitable’.⁶ The main consideration in this context is therefore whether in relation to the prestige, status, and dignity of the profession, and the responsibility,

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³ See Sections 177(2); 178(2) and 179(2)

⁴ See *In re Chikweche* 1995(1) ZLR 235 (S); See also *Kaplan v Incorporated Law Society, Transvaal* 1981 (2) SA 762 (T)

⁵ *In re Chikweche* supra, p 244.

⁶ *Kaplan* (supra), p 783

standards of professional conduct and integrity of practitioners, the applicant or candidate has shown himself or herself to be a fit and proper person.

It is submitted that the above definition of ‘fit’ and ‘proper’ can also be applied to the selection and appointment or promotion to judicial office, having regard to international standards and principles relating to the judiciary. Historically, judges were appointed exclusively from the ranks of advocates (legal practitioners) with good standing.

Although there is no agreement in international law as to the method of appointment, States are required to appoint judges through strict selection criteria and in a transparent manner. Although the Constitution of Zimbabwe does not expressly detail the content of these criteria, we are called upon to interpret them having regard to the nature and function of the judicial office as well as the powers that vest in the judiciary. To a large extent, international standards and principles also assist in this regard.⁷

In this paper, the author proposes to deal with the most pertinent ethical considerations, having regard to international standards and principles as well as the constitutional provisions and, lastly, with the physical and mental attributes of the candidate.

Most of the standards and principles to be discussed here, such as integrity, independence, equality, impartiality, competence and diligence, have already been given recognition to and found expression in the Judicial Service (Code of Ethics) Regulations, 2012⁸, and in the Judicial Services Act [*Chapter 7:18*]. The former provides for the standards and principles *in extensor*,⁹ whilst the latter provides for service regulations prescribing the codes of ethics for judicial officers.¹⁰ To that extent, the norms pertaining to “fit and proper”, in the context of this paper, have been codified. It would appear therefore that there may be no need for further legislative intervention in this regard since the provisions of these instruments appear to conform to the Constitution, and to international standards and principles.

Appropriate qualifications

Sections 177,178 and 179, respectively, of the Constitution of Zimbabwe deal with the qualifications of judges of the Constitutional Court, the Supreme Court, the High Court, the Labour Court and the Administrative Court. A person who is not appropriately qualified in terms of these provisions of the Constitution may not be appointed as a judge.

The UN Basic Principles establish that:

“Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, sex, religion, political or other opinion, national, or social origin, property, birth or status, except that a requirement that a

⁷ See (i) The Commonwealth (Latimer House) Principles on the Three Branches of Government, 2009; (ii) The Universal Charter of The Judge, 2009; (iii) The Bangalore Principles of Judicial Conduct, 2002

⁸ Statutory Instrument 107/2012

⁹ See Part II sections 4 to 20

¹⁰ See section 18 of the Act

candidate for office must be a national of the country concerned, shall not be considered discriminatory”¹¹.

The African Principles and Guidelines on the Right to a Fair Trial state that:

“The sole criteria for appointment to judicial office shall be the suitability of a candidate for such office by reason of integrity, appropriate training or learning and ability. No person shall be appointed to judicial office unless they have the appropriate training or learning that enables them to adequately fulfil their function.”¹²

Similarly, the Universal Charter of the Judge stipulates that:

“The selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualifications.”¹³

The above principles relate to, among others, the candidate’s professional qualifications as an important criterion for appointment to, or promotion on the bench. This selection criterion is based on merit having regard to the candidate’s qualifications, skills, experience, ability and efficiency in assessing legal matters and applying the law. The candidate must have the ability to adequately fulfil their judicial function by virtue of the appropriate training and learning.

However, academic qualification on its own does not suffice to satisfy this criterion. Legal knowledge, skill and experience must form part of that requirement. The following might be used as a guide: forensic skills, intellectual capacity, writing and analytical skills, ability to handle complex issues, knowledge and understanding of the law and its underlying principles, application of the law to the facts, knowledge of courtroom procedures, language skills, capacity of articulation, communication skills, administrative skills and breadth of professional experience.¹⁴ The latter includes quasi-judicial experience relating to administrative or arbitration tribunals. In addition, the candidate’s appreciation of the judicial role in resolving disputes according to the facts and the law as well as in protecting individual rights should also be taken into account. These skills would ensure that the candidate will perform their duties with the requisite competence, diligence, efficiency and punctuality, and to enable improvements to the weaknesses and imperfections existing in the system of administration of justice, thereby fulfilling the judicial function. The assessment and views of professional colleagues, organisations that play a role in the administration of justice, and other relevant interest groups are also useful for the enquiry.

¹¹ UN Basic Principles and Guidelines on the Independence of the Judiciary, Principle 10

¹² Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, Principle A

¹³ Universal Charter of the Judge, Article 9

¹⁴ Susannah Cowen, *Judicial Selection in South Africa* (University of Cape Town Democratic Governance and Rights Unit. Working Paper Series, p. 37

Integrity

‘Integrity’ may be defined as: moral uprightness; honesty; wholeness; soundness.¹⁵ Members of the judiciary are associated with, among other things, honour, honesty and integrity and for these reasons they are viewed with special respect from society.

In his address to the meeting of judges and resident magistrates held in Arusha, Tanzania on 5 March, 1984, the late President Julius Nyerere had this to say:

“There are jobs in our society which can be done by undisciplined people whose personal integrity can be called into question; being a Judge or Magistrate is not among them”.¹⁶

Judges must show high moral character not only in the discharge of their duties but also in their private life, so as to protect the good reputation of their office. They must act honourably and avoid all conduct which would damage their reputation. The integrity of judicial officers serves to re-affirm the public’s faith in the judiciary and to uphold its reputation of honour. For the public to have confidence in the judiciary, the Bench should be free from blemish.

In his paper titled “The Rule of Law and Human Rights: A Case Study of Kenya”, presented to the Law Society of Zimbabwe,¹⁷ Otiende Amollo cites the case of the removal of the then Deputy Chief Justice of Kenya, Nancy Baraza, from the judiciary. The case related to her conduct at a shopping mall in Nairobi, Kenya, on 31 December, 2011 where she allegedly bypassed a security personnel conducting body-screening, pinched her nose and threatened to shoot her. Following a public outcry, a tribunal was set up to investigate the conduct. The tribunal subsequently made a report to the President of Kenya with a finding that the Deputy Chief Justice was unfit to hold office on account of gross misconduct. Although she had appealed, she later opted to resign.

In the United States, Oklahoma judge, Donald Thompson is reported to have been convicted of using a sex toy for his in-court masturbation!¹⁸

In the matter of *Barak Singh v Jyoti Basu*,¹⁹ India’s Supreme Court had this to say:

“Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary took utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the judicial-delivery system resulting in the failure of public confidence in the system”.

Further, in re *Bombay v Uday Singh*,²⁰ the High Court of Judicature stated as follows:

¹⁵ *Concise Oxford Dictionary of Current English* (8th Edition)

¹⁶ See *Daily News* (Tanzania), 16 March, 1984, p. 1.

¹⁷ On the Walter Kamba Rule of Law Day Harare – Zimbabwe, 6 December, 2012

¹⁸ *Sydney Morning Herald*, 30 June, 2006 “Judge convicted of using penis pump in court”

¹⁹ (2005) 1 SCC 201

²⁰ (1997) 5 SCC 129

“Acceptability of judgements depends upon the credibility of the conduct, honesty, integrity and character of the officer. The confidence of the litigating public gets affected or shaken by lack of integrity and character of the Judicial Officer. “

Thus, where a candidate for judicial office has previously engaged in or is likely to engage in any dishonourable or improper conduct, such as conflict of interest to advance personal interest or those of family members or associates, soliciting for or accepting bribes, corruption, engaging in business or financial dealings that adversely reflect on their character or standing in society, disclosure of confidential information for the purpose of furthering or advancing personal financial or business dealings, or those of family members or associates, misappropriation of trust funds, subverting the law, or some other gross misconduct, he or she would not be a fit and proper person for appointment to judicial office or elevation.²¹

A candidate for judicial appointment or promotion must have a good record of trustworthiness, candour, honesty, avoidance conflict of interest, deference to the rules of recusal,²² and honouring his or her word. Integrity checks which include criminal record, lawsuits and civil judgments (including sequestration orders) against the candidate, findings of disciplinary and administrative tribunals relating to the candidate, business and financial dealings, financial propriety/probity or malfeasance, sources of extra income or livelihood (bequests, gifts and loans received), lifestyle, social networks and social habits, would illuminate the integrity of the candidate. The assessments and views of professional colleagues are also useful for the evaluation of the candidate.

In addition, the candidate’s appreciation of ethical rules and duties designed to protect the integrity of the bench should also be assessed.

Temperament

This refers to the manner of thinking, behaviour, or reaction expected of a judge,²³ and to his or her demeanour. A fit and proper person for judicial office or promotion is one who recognises that judges hold office as a public trust, and that the courts belong to the people. He or she must recognise that the courts administer the law as a public service and the public must feel that their disputes will be resolved fairly and impartially. Therefore, with regards to the candidate’s temperament, the evaluation must consider his or her industriousness, diligence, dignity, humility, courtesy, patience, open-mindedness, receptiveness, and freedom from bias. The Bangalore Principles of Judicial Conduct (2002) regard the courtesy and patience with which a judicial officer treats litigants, witnesses, lawyers and others as an essential part of his or her competence and diligence.²⁴ Whilst a judicial officer is expected to be thorough and decisive, animosity, unnecessary interruptions, ill-tempered remarks, and arrogance have no place on the bench.²⁵ Equally, sloth and tardiness in disposing of matters the candidate is seized with should not be tolerated.

²¹ See *Paradza v Minister of Justice and Others* 2012 (1) ZLR 1 (S)

²² See *S v Paradza* 2004 (2) ZLR 324 (S)

²³ Susannah Cowen, *supra*, p.47

²⁴ See Article 6.6

²⁵ See *Jesse v Pratt & Anor* 2001 (1) ZLR 48 (H); *S v Musindo* 1997 (1) 395 (H),412H-413B

The evaluation of a candidate must therefore aim at ascertaining whether he or she embodies these ethical values and will be guided by them in performing his or her judicial functions.

EQUALITY AND IMPARTIALITY

A fit and proper person for judicial appointment should recognise the diversity and pluralism in society, and the equality of all persons before the law. Since the law applies to all regardless of rank, status or standing within society, differences arising from race, ethnicity, colour, gender, religion, culture, belief, language, conscience, national origin, disability, age, marital status, sexual orientation and economic status are not material to, or determinative of any issue with which a judicial officer is seized.²⁶

In his article,²⁷ Lubert remarked:

“In a democracy, the enforcement of judicial decrees and orders (of courts) depends upon the public cooperation. The level of cooperation, in turn, depends upon a widely held perception that judges decide cases impartially. Should the citizenry conclude, even erroneously, that cases were decided on the basis of favouritism or prejudice rather than according to law and fact then regiments would be necessary to enforce judgements.”

A judge must not adjudicate over matters he or she has an interest in, whether personal, financial or morally. Where he or she sees that he or she may have a potential bias or interest in a matter, he or she must recuse himself or herself²⁸

There can be no place within the judiciary for discriminatory attitudes, and if a judge is to dispense justice in a diverse and pluralist society, he or she needs to have respect for difference.²⁹

The evaluation of the candidate should ascertain whether the nominee recognises diversity and plurality; will be guided by ethical considerations, and treat all that appear before him or her equally.³⁰

Commitment to constitutional values

Judges are custodians of the Constitution.

The values underlying our Constitution, such as supremacy of the Constitution, the rule of law, fundamental human rights and freedoms, recognition of the inherent dignity, worth and equality of each human being, gender equality, good governance, the principle of separation of powers, justice, accountability, and due respect for vested rights are expressed in s 3 thereof. A fit and proper person for judicial appointment must be personally committed to those values and to their realisation. Further, he or she must commit to the promotion,

²⁶ See Section 165(1)(a) Constitution of Zimbabwe

²⁷ Lubert S, 'Judicial Ethics and Private Lives' (1984-85), 79 *NW University Law Review*, 983

²⁸ *ANZ (Pvt) Limited & Anor v Diamond Insurance Co. (Pvt) Ltd* 2001 (1) ZLR 226 (H)

²⁹ Susannah Cowen, *supra*, p.51

³⁰ See (i) *S v Musindo* (*supra*), 412C-G; (ii) *Eldridge v British Columbia (Attorney General)* [1997] 3 S.C.R.624 (iii) *President of RSA Rugby Football Union* 1999 (4) SA 147 (CC)

advancement, safeguarding and realisation of the fundamental human rights and freedoms provided for in Chapter 4 of the Constitution.³¹

Commitment to constitutional values also entails safeguarding and upholding the rule of law³² which judicial officers apply in resolving disputes through equal application of legal standards to all, based on the rules and principles that form the fabric and substance of the law.

A candidates' understanding and appreciation of the constitutional values and track record as a legal practitioner, state counsel, academic, magistrate or sitting judge can be a useful indication of commitment to the rule of law, the principles of democracy and to the upholding and promotion of constitutional values. Such information can be ascertained from law reports, court records, academic writings, and observations by professional colleagues as well as civic society.

Contribution to the development of jurisprudence

Ideally, a candidate for judicial appointment or promotion must have contributed significantly to the development of national jurisprudence, particularly constitutional and human rights jurisprudence, and in relation to the advancement of social and economic justice.

In this regard, the candidate's track record as a legal practitioner in private practice, as state counsel, as an academic, as a magistrate or sitting judge, can provide a useful insight into his or her contribution.

Such a record can be gleaned from the law reports on civil or criminal cases in which the candidate represented litigants or the state, of argument filed with the courts, or from the candidate's academic writings or publications, or from judgements rendered as a magistrate or sitting judge.

Independence

'Independence' assumes 'not subject to the control of any person, free to act as one pleases, autonomous, not influenced or affected by others',³³ or 'freedom from control or influence of another or others'.³⁴

In Uganda, President Museveni, in a televised address, mounted a direct attack on the Constitutional Court which had struck down an inconsistent Act of Parliament, accusing the judges of "usurping the power of the people", and claiming that "the major work for the judges is to settle chicken and goat theft cases but not to determine the country's destiny". The government of Uganda orchestrated a large demonstration against the court.

However, Honourable Bernard L. Shientag argues that:

³¹ See Section 165(1)(c) Constitution of Zimbabwe; Judge Cynthia A Baldwin 'Pursuit of Liberty: A Legal Career' *Legal Forum* Vol.6 No.4 December,1994, p.9

³² See Section 165(1)(c) Constitution of Zimbabwe

³³ Shorter Oxford English Dictionary

³⁴ WordWeb Dictionary

“There can be no government of law without a fearless, independent judiciary. The independence of the judge is the chief of all the cardinal judicial virtues. He must be entirely free from all external influence and subservient only to his conscience”³⁵

Judges must be accorded the independence to act according to their conscience and the justice of the case, free from pressures from governments, funding bodies, armies, or any other source of state power and influence that may possibly bear upon them.³⁶

In the case of *Paradza v Minister of Justice & Ors*³⁷, Malaba J.A., stated as follows:

“There are two components of judicial independence. There is individual independence, which relates to the judge when he or she is performing adjudicatory functions of the State, that is to say, hearing cases and deciding upon the facts. There is the institutional independence, which secures the judiciary office, or courts, from the other organs of the State.”

Reference to the personal independence of the individual judge is assured through s 165(3) of the Constitution, which provides that “when making a judicial decision, a member of the judiciary must make it freely and without interference or undue influence”.

It is imperative that judges are not subordinated to the executive, the legislature, or to any external control or influence. It is crucial that judicial officers have both the courage and the disposition to act with an independent mind³⁸ and they are duty-bound to uphold the law without trace of fear, favour or prejudice, independently of any adverse consequences which may personally ensue.³⁹ Judicial independence has been described as “the bedrock upon which the rule of law fundamental to a democratic society rests.”⁴⁰ The candidate must understand the doctrine of separation of powers and appreciate the boundaries of judicial powers.

Individual independence and an appreciation of the rationale or philosophical basis for such independence is a requirement for a candidate for judicial appointment, alongside the desire to benefit the public. It “is a quality which must come from within the heart ..., a quality which is part of the very fabric of existence of the Judge.”⁴¹ It goes beyond substantive and

³⁵ Benjamin N. Cardozo Memorial Lectures

³⁶ Geoffrey Robertson Q.C. - Judicial Independence: Some Recent Problems, October, 2011; see also *Union of India & Ors v Pratibha Bonnerjea & Anor* (1995) 6 SCC 765

³⁷ 2012 (1) 1 (S) ,25

³⁸ Susannah Cowen, *supra*, p.17

³⁹ Gubbay, C. J: Speech delivered at the Opening of Legal Year of the High Court, Bulawayo, on 13 January,1992-*Legal Forum* Vol. 4,No. 2, March,1992, p.4

⁴⁰ The Hon. Catherine A Fraser, Chief Justice of the Supreme Court of Alberta ,Canada ‘Judicial Independence, Impartiality and Equality: A Canadian Perspective’ paper presented during the Judges Conference in Harare, Zimbabwe on 27 April,1998 *Legal Forum*, Vol.10, No.3, September, 1998, p.54

⁴¹ Gubbay, C.J. ‘The separation of powers, with particular reference to the role of the Judiciary’ Speech delivered to the Joint Commonwealth Parliamentary Association/Inter-Parliamentary Union on 21 August,1991 - *Legal Forum*, Vol.3, No.4, December,1991, p.15

procedural independence to include the independence of mind of the judicial officer which entails a grounded knowledge on constitutionalism.⁴²

Such independence is not meant to shield judges from legitimate public scrutiny for they are accountable to the public, whom their independence will protect. The object of the enquiry should therefore be to ascertain or establish:

- whether the candidate is well-informed and understands the constitutional imperative of judicial independence and its value in the public interest; and
- whether the candidate will have the courage and the disposition to act with an independent mind.

The enquiry must also have regard to the candidate's political allegiance or affiliation, sympathies and activities, business and commercial interests (including directorships and partnerships), membership of both private and public organisations, as well as social networks. A fit and proper person must be able to transcend these allegiances and interests.

Physical and mental fitness

The candidate for judicial appointment or promotion, whether or not he or she suffers from some physical handicap, must be physically and mentally fit to be able to withstand the rigours of judicial office and to effectively carry out his function.

The appointment process

Where a vacancy on the bench arise, the JSC announces the vacancy by advertising in the Press, indicating the number of posts available, and inviting members of the public to nominate suitably qualified persons to fill the positions.⁴³ The advertisement will state the qualifications of judges as stipulated in the Constitution, including the requirement of "fit and proper person to hold office as a judge". Members of the public intending to nominate candidates are required to complete and submit to the Commission, nomination forms to which must be attached the nominee's curriculum vitae. The nominator simply completes a one-page form without giving the merits or demerits of the nominee but providing the nominee's personal details guided by the provisions of the Constitution relating to qualifications.

After the nomination process, the JSC Secretariat compiles a comprehensive master-list with details of the profiles of the candidates that satisfy the qualifications provided for in the Constitution. They then draw up a shortlist of candidates using the constitutional qualifications provided.⁴⁴ No guidance is given to the Secretariat as to the criteria for "fit and proper person".

The interviewing panel consists of thirteen Commissioners only, all professionals, including the Chief Justice, the Attorney General, the Chief Magistrate, the Chairperson of the Civil

⁴² Otiende Amollo 'The Rule of Law and Human Rights: A Case Study of Kenya' op cit note 17

⁴³ See *Daily News*, Thursday, 23 June, 2016, p.15.

⁴⁴ See ss 177, 178, 179 of the Constitution

Service Commission, representatives of the legal profession, a legal academic, a public accountant, and a human resources professional.

There is no standard questionnaire for a pending interview. The set of questions for every interview is prepared and agreed upon by the Commissioners in a pre-interview meeting with a consultant on the day of the interview. This is meant to prevent the leaking of questions to the candidates before the interview and to prevent “fishing” by potential candidates for an impending interview. The Commissioners then agree on which questions each Commissioner will ask the candidate(s), after which process any member of the interviewing panel can pose any relevant question or require the candidate to expand on the answers given.

The Chief Justice commences the interview based on the questions agreed upon in the pre-interview meeting. Thereafter, he will call upon the panellists, one by one, in the order agreed, to pose questions to the candidate. The panel will ask relevant questions, including those of a personal or social nature or of a technical nature to assess the level of knowledge and appreciation of the law and legal processes as well as any others relevant to the core duties of the position.

It has been suggested that, from the interviews conducted to date, candidates should have an idea of what questions they should expect to be asked at the interview. It is submitted that there is no need for a law that obligates the JSC to publicise the criteria for selection, other than the qualifications stipulated in the Constitution, or for the candidates to know in advance the kind of questions to expect. By agreeing to nomination, and to submit themselves for selection and interview, the candidates ought to know whether their personal attributes and professional qualities qualify them as “fit and proper” persons to hold office as judge.

Deliberations after the interview are held in camera and a vote is taken if there is no consensus among the panellists, with each member being entitled to one vote per candidate. Following the interviews, the JSC selects the best three candidates for each position and presents the list to the President, whereupon he must appoint one of the nominees to the judicial office concerned. In the event that the President does not consider any of the persons on the list suitable for appointment, he must require the Commission to provide another list, in which case the President must appoint one of the nominees on the new list. It does not appear that the President is required to give reasons to the Commission for declining the initial list of nominees. It is presumed (and hoped) that he will have objectively and properly applied his mind to the constitutionally stipulated qualifications.

Conclusion

There is a need for regulations to guide the judicial selection process in Zimbabwe, and in that regard, it is necessary to mobilise all stakeholders — the JSC, the judiciary, legal practitioners, academics and civil society — to meet, debate and develop the criteria for short-listing and selection, as well as the guidelines for the judicial appointment process, within the confines of the Constitution, but having regard to the foregoing ethical values and standards. The Commission will be able to develop credible criteria for judicial appointments that will ensure that the judicial selection process not only selects the best candidates on merit, but is also non-controversial and readily acceptable to the public. One hopes that in this endeavour,

the Commission will be able to garner the views, support and contributions of all relevant stakeholders, in order to come up with the correct criteria for “fit and proper person”.

Whilst the Law Society of Zimbabwe has since 2014 been requested by the JSC to submit misconduct clearances for some of its members who have put themselves forward as candidates for judicial appointment, no comments have been received from senior counsel from the advocates chambers. Further, there has been no contribution from the faculties of law in the local universities as well as from civil society organisations such as the Zimbabwe Lawyers for Human Rights. It would be desirable for these organisations and bodies to actively assist the Commission, particularly with regards to integrity checks.

There has been criticism of the lack of transparency in the post-interview deliberations. However, it is submitted that the lack of publicity of the deliberations and final decisions is perhaps necessary to encourage robust debate so that the Commissioners freely express their views of the candidates.