

JUDICIAL SERVICE COMMISSION

“A Zimbabwe in which world class justice prevails!”



PERFORMANCE APPRAISAL: TOWARDS A ZIMBABWEAN MODEL

BY THE

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1. INTRODUCTION AND BACKGROUND

The evaluation of performance of the Courts is viewed as a good governance tool used to hold courts accountable for the tax-payers money¹. As far back as 1993, countries like Kenya started developing performance management initiatives prompted by a huge backlog of cases arising from inadequate physical structures, considerably long distances to courts for citizens, inadequate human resource capacity, unfriendly court processes and procedures, inherent delays in court determination and high litigation costs.

In Zimbabwe, courts' performance evaluation has been used as a way of accounting for the Courts' judicial authority which derives from the people of Zimbabwe². At the beginning of each year, the Honourable Chief Justice as the Head of the Judiciary has, in his State of the Judiciary address, given statistics on how the Courts would have performed in the preceding year.

A recent phenomenon that has been developing is the narrowing down of performance evaluation of Judges- there has been a

¹ 'Institutionalising performance management and measurement in the Judiciary' (Kenya) and 'Assessment of the Performance Evaluation of Judges in Moldova', 27 June 2014 report.

² Section 162 of the Constitution of Zimbabwe

zeroing in on the performance of individual Judges in countries like Belgium, United States, Australia and Kenya.

Generally, the purposes of performance management differ from jurisdiction to jurisdiction for example to enhance the performance and professional accountability of judges; to increase public confidence in the judiciary, to aid judicial institutions in deciding upon issues of promotion within the judiciary, and to identify the needs of judges in terms of on the job training.

There is therefore no one size suits all methodology in performance management and it is necessary to develop a system responsive to each individual jurisdiction. What is clear though is that while the purposes may differ, performance evaluation of individual judges is important to strengthen capacity and professionalism on the one hand, and to lend transparency and accountability to judges on the other.

Zimbabwe is now ready to develop its own model of judicial performance management and training. As a starting point, the Honourable Chief Justice has set up a Performance Management and Training Committee comprised of the Honourable Deputy Chief Justice, The Honourable Judge President of the High Court,

the Senior Judge of the Labour Court and any other members that the Committee may wish to co-opt. The mandate of the Committee is to spearhead the development and implementation of a judicial performance management system for Zimbabwe. The Committee has met to brainstorm on issues related to this mandate and also to consider experiences from other countries to assist in the formulation of a tailor made road map best suited to our needs.

THE CURRENT MODEL

You will note that the traditional topic on '**Performance of the Courts**' is on the programme. However, for purposes of the current Symposium which is happening before the whole process has taken off, the Committee considered it appropriate that only court based statistics be presented. In past symposia statistics relating predominantly to a quantitative analysis of individual judges' performance were presented. These placed much emphasis on the number of cases placed before a Judge and the number of cases disposed of by a Judge by way of judgments handed down, orders made, withdrawals, postponements *sine die*, removal from the roll and so on. The compilation of these statistics was within the purview

of Registrars who submit monthly statistics to the Secretariat. These statistics then fed into the quarterly statistics which are presented at the end of term symposia and colloquia. They are also used to compile annual reports which inform part of the Chief Justice's address at the official opening ceremony of the succeeding legal year. Collection of statistics was done by Judges' Clerks who were expected to cross check with their respective Judges in terms of accuracy, before submitting them to the Registrars for compilation. Judges invariably raised concern at the manner in which the individual statistics were compiled. In particular, the judges were concerned about not always being consulted in the process of compiling the statistics and also, about the lack of a qualitative component to the assessment of their work.

It is this model of performance management that the Committee, with input from the judges, is mandated to review, improve and expand. Key considerations are first, how exactly should the performance of our judges, both quantitative and qualitative, be assessed? Secondly, how do we get the judges themselves to be involved in and be an integral part of the process of formulating this home-grown model for the assessment of their own work?

You will note from the programme that Judges will have an opportunity to address this issue in their various court based groups. It is expected that they will address the matter based on considerations pertaining to experiences in their respective courts. Specifically, judges are implored to brainstorm on the issue and hopefully come up with ideas, thoughts and suggestions that will assist in the crafting of evaluation methods appropriate for their specific courts. Put together, the input from the various courts would greatly assist the Committee in formulating and implementing a comprehensive national model which we can call our own and which identifies with needs and circumstances of our judiciary. Needless to say, such a model would enable us to judge whether or not as a judiciary we are meeting the requirements of our constitutional mandate. (See Sec 165 of the Constitution)

This presentation is meant to stimulate debate and kick-start the process of crafting an inclusive, home-grown judicial performance management and training system for our Judiciary. It gives insight into how a number of countries have tackled the issue, how they implement their various models and the benefits derived from it. It

is always healthy to learn from the experiences of others and thereafter address the issue at hand in a more informed manner.

TOWARDS A ZIMBABWEAN MODEL: LESSONS FROM OTHER JURISDICTIONS

Criteria for evaluation

A peek into performance evaluation systems the world over points to two scopes- one which is narrow and quantitative and another which is wider focusing on the qualitative aspect of performance. The quantitative aspect focuses mainly on productivity, for example the number of matters that have been received and disposed of, with a drop in those figures pointing to a drop in case backlog.

Quantitative performance evaluation helps to account to the public, and maintains the important balance between judicial independence and accountability- in that it informs policymakers and the general public on the 'productiveness' of the courts. However, the danger posed by the quantitative evaluation model is that a focus will only be on productivity which compromises

quality and may not help the development of jurisprudence in this country.

Qualitative performance management has been used to measure skills, professional competence, ability to conduct trials, capacity to write reasoned judgments, ability to cope with workload, ability to decide cases correctly and promptly, openness to using technology and judicial decorum. Qualitative assessment has been used within the judiciary to form a basis for training.

Members of the Committee late last year, visited Kenya and its judiciary with the aim of gaining some exposure and insight into how their judicial performance management system works.

Kenya serves as a model for performance management on the basis that it is closer to home, more easily identifies with our needs and therefore can be a useful starting point from which we can draw some inspiration as we grapple with the issue at hand.

By way of background, Kenya conceptualised a formal performance management system in 2012 following feedback from the public that they were not seeing what the judiciary was doing. The then Chief Justice, Dr Justice Willy Mutunga launched a five year Judiciary Transformation Framework (JTF) 2012-2016 which

basically laid the foundation for Judiciary transformation. From 2017 to 2021 the focus is now on sustaining that transformation through a programme dubbed 'Sustaining Judiciary Transformation' (SJT). At a glance, these programmes identify with what we call Strategic Plans in the Judicial Service Commission.

The broad aspects of this performance management system are hinged on answering the following questions:-

- i. What are we doing to account for our oath of office?
- ii. How do we account for our time?
- iii. Do we reward those those who do well, and if so, how?
- iv. How do we assist those that lag behind?

The scope is therefore both qualitative and quantitative.

To develop their own system, Kenya for example first established a Committee which included Judges to spearhead the process. A gap analysis was seen as an important step towards the development of the Kenya model. To this end, a Directorate of Performance Management with a dedicated staff complement of twenty members of staff with backgrounds in economics, statistics and business management was mandated to conduct an in-depth analysis of the existing framework, a needs analysis and an

expectations analysis. A case census was also done to conduct evidence based conversations on the allocation of judicial officers, support staff and financial resources, to mention but a few.

Frequency of evaluation: Some international experiences

Italy has a system of evaluating Judges every four year and looks at professional skills, productivity, diligence and commitment. Statistics play a major role in measuring the productivity of a Judge.

Assessment of Judges in **Hungary** is regularly conducted by the Head of Division or a Judge assigned by the Head. The assessment checks judicial skills, combining both quantitative and qualitative aspects. Judges are evaluated in the third and sixth year after their appointment and every eight years following it. Evaluation is done through assessment which looks at the number of judgments handed down, the annual professional activity of the Judge and the opinion of the Head of Division among other elements.

In **France**, immediate supervisors of a Judge conduct individual evaluations after every two years and this includes a professional interview between the Judge and the Head of Court. In **Finland**, yearly development meetings are held with the Judge's supervisor. The Judge is also subject to a statistical check on their workload.

Methods of gathering information

In other jurisdictions³ the method of gathering data for performance evaluation has not been confined to case files only, but has been extended to a Board specifically set up to monitor performance (Evaluation Board) interviewing the evaluated Judge, opinions from the Heads of Courts, observation of hearings on notice to the Judge and gathering of other information for example court recordings by the Evaluation Board; confidential interviews with fellow judges and court personnel based at the Judge's duty station. This works specifically in a jurisdiction where the evaluation is both qualitative and quantitative, but, as stated earlier- performance evaluation is not a one size fits all methodology. In the long run, this may be considered having walked the baby steps first and gotten the quantitative analysis right.

TOWARDS A ZIMBABWEAN MODEL: THE PLACE OF TRAINING IN PERFORMANCE MANAGEMENT

'A judicial officer shall take reasonable steps to maintain and enhance the judicial officer's

³ Moldova

*knowledge, skills and personal qualities necessary for
the proper performance of judicial duties'*

(Section 18 (1)-Judicial Code of Ethics)

What has emerged is that training is corollary to performance management.

Be that as it may, the current presentation is limited to developing methodology of performance evaluation. It is important to develop the performance model first then, from the outcome of such an exercise gain insight into indicators that emerge as to the areas to focus on with regards the training of Judges. The training component will be informed by shortcomings and gaps in the performance of Judges as opposed to training not based on an informed position.

Lessons drawn from other jurisdictions are not cast in stone but may be a useful guide as we craft our own model, one that we not only own but can claim ownership of.

CONCLUSION

As shown above, we have to date operated on the basis of a rough framework for judicial performance assessment. We lacked ownership of the process. That must now be rectified as we work

towards the development of our own model. What I have presented is to be taken as an appropriate guide in this process. However the final word rests with us. At the end of the day we need a system that serves a purpose, is identifiable with the bench and capable of giving credence to judicial accountability.

I THANK YOU.