

The Expectations of the Performance of the Judiciary by the Zambian Public

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1. Introduction

“He appointed judges throughout the nation in all the larger cities, and instructed them: Watch your step – I have not appointed you – God has; and he will stand beside you and help you give justice in each case that comes before you. Be very much afraid to give any other decision than what God tells you to. For there must be no injustice among God’s judges, no partiality, no taking of bribes.” (2 Chronicles 19:5-7)(TLB)

He appointed judges throughout the nation in all the fortified towns, and he said to them, “Always think carefully before pronouncing judgment. Remember that you do not judge to please people but to please the Lord. He will be with you when you render the verdict in each case. Fear the Lord and judge with integrity, for the Lord God does not tolerate perverted justice, partiality or taking of bribes” (NLT).

I start my presentation by making special and relevant reference to the Holy Scriptures for two reasons. Firstly, because although I am making a presentation on general public expectations on the performance of the Zambian judiciary, I am an evangelical Christian cleric and therefore my submission and orientation of thoughts are from that background. That is why I have found it appropriate to use the above Biblical citation. Secondly, this is a Christian nation and therefore it is important to link the general practices of the wings of government and public life to what the Bible says because of the supremacy of

the Holy Scriptures. It is common that many Zambians want to see the Christian declaration bearing a positive influence on the Zambian society and public life. People give regular comments like “***But we are a Christian nation***”. Therefore my opening Bible reference is placed right at the beginning of this paper from the book of 2 Chronicles 19:5-7. In this Bible reference, we observe how King Jehoshaphat made some critical pronouncements that judges are appointed for *all cities* countrywide, secondly that God demands that judges perform their duties bearing in mind that *God is standing with them in determining each case*, thirdly God warns judges *against injustice perpetrated by partiality and taking of bribes*.

If we are going to assess the “***Performance of the judiciary in Zambia***”, we should bear in mind some pertinent issues on this matter. We cannot talk about assessing performance unless we know what to measure and how to measure it. To discuss performance it means we should consider the following:

- i. In order to measure performance we should identify the performance variables. What are we going to measure? What is performance? – are we measuring time of handling the cases or the integrity of the outcome? Or the ethical conduct of the bench? We can't talk about performance unless we have set the necessary variables that will be used to understand and measure performance.
- ii. We should also have someone responsible for carrying out that measurement. The measurement should have a frequency in terms of time periods how often performance

is measured. What is the outcome of underperformance by a judge? There is no reason to measure performance if there are no consequences for not reaching expected thresholds.

- iii. The individual judges whose performance is being assessed should know the variables being used in that performance. In this case, they will be fairly assessed and they can commit themselves to those expectations of their work and the interest of the people.
- iv. The variables should then link to the Key Performance Indicators (KPIs). Performance Indicators will help in maintaining a '**Performance Tracking System**' for each court corporately and for each judge individually.
- v. Performance measurement can be based on quantifiable and qualitative measures on the work of the judiciary.

Examples of quantifiable measures may include the *number* of cases a judge handles within a particular time period, number of appeals made against the judgements made, number of cases that have been overturned by the higher court or by another judge in another court, the timeliness by which cases are disposed of etc.

Examples of qualitative measures include elements of integrity, impartiality, consistence to professionalism, attitudinal factors, time management, number of adjournments in a given case, and other human factors.

In order to effectively carry out such performance measurement it calls for a systematic way of "**case tracking**" from entry to exit and what happens in the case at each stage.

Performance should be linked to the expectations of the judicial system and the expectations of the public. High Institutional performance rating for the judiciary will inspire public confidence. At an individual level, high performing judges should be rewarded. In the interest of the public, there should be a link between performance and contract renewal of each judge. This may inspire the judges to raise their own performance bar because of the rewards and fear of consequences for underperformance.

I now proceed to discuss the issues of expectations from the general public on the Zambian judiciary as follows:

2. Timeliness of justice

When cases are brought before the courts of law the parties involved (i.e. plaintiffs, defendants, witnesses etc) expect that the cases will be heard and concluded within a reasonable timeframe. Defence lawyers and counsels have financial benefits from cases that take a long time because their fees are linked to time. In such a case, the judiciary needs to help the general public by addressing this as a moral and ethical problem – that cases should be deliberately delayed for financial gains? Any case before the courts affects both parties on the '**Plaintiff – Defendant**' continuum because they both are affected by the length of time that it takes for the case to be concluded. Such time of waiting raises emotional problems, worries, frustrations, discouragements, this causes anxieties and

has cost implications. In addition, delays to dispose of the cases lead to excessive overcrowding in our correctional services, causes unbearable dangers of risk to health threatened by the spread of communicable diseases and other inhuman conditions. Overcrowding also poses administrative challenges to prison officials. Everyone who plays a role in the judicial process should bear in mind the negative impacts of delay and poor time management on various individuals and interest groups.

Time is of essence in any case. The Bible says, give **justice in the morning**. Do not wait for the afternoon or the evening. The longer it takes to conclude the case the more unbearable the consequences exerted on the parties involved. There are various parties that are involved (directly and indirectly) in each case and so the court should bear in mind the negative implications of delay on the vast number of people. Delaying justice for whatever reasons is as bad as denying it. It is possible that some of the delays are beyond the control of the judges when it involves other wings of government or departments outside of the judiciary, delays in obtaining evidence on the cases, delays with forensic examinations, and submissions from the witnesses or institutional limitations etc. The Judiciary should reverse the trend of delays being experienced in handling cases by addressing work overload on the judges, finding reasons for the backlog and subsequently to create a “**desk clean up**” campaign. It is likely also that few judges do more work than

others – it may be the Pareto Principle at work on the “80/20 rule” – where 20% of the judges handle 80% of the cases. This can create unnecessary work overload on few judges while others have a lower rate of case discharge.

When delays occur, the reasons should be communicated to the affected parties (this is important in order to promote transparency) and the court should mitigate against such unfavourable situations by extending hours of work on the cases to regain the lost time or to maximise the output in the available time on any case.

Cases should be completed within the shortest possible time to relieve the affected parties. If artificial and unreasonable delays in a case are made by any party involved, can there be penalty for such action? We can borrow from the rules in the game of soccer where unreasonable action by the players that is tantamount to a deliberate delay is a bookable offence. If no such law exists, can we make one that will compel parties in a case to comply with time sensitivity or to cooperate in a timely manner. The courts should minimise unnecessary time overruns.

To avoid delays at the hands of the judges, I propose “**a case tracking system**” for performance of a judge. A case tracking system should have the following aspects:

- i. Setting up an expected or anticipated *lead time* for a case at the onset - *all things being equal*.

- ii. When the case has started – reasons for the delay should be clearly documented.
- iii. The appeal against the case/s
- iv. The outcome of the appeal in another court or the outcome of the hearing under a different judge.

3. Impartiality

In our multi-party Zambia, the political landscape has become very fragile and sensitive. The tribal dimensions in our politics have clearly become evident in the recent period of our elections causing clear regional divisions. Judges should remain forthright and resolute to not be unduly influenced by ethnic and political leanings or pressures. There is common knowledge that there is a political divide in our country as witnessed in the election demographics. This challenge can only be corrected by a fair and impartial judiciary. The Judiciary is the only and last hope for justice in our country and therefore its impartial performance can help to heal the country and strengthen unity in our republic. With a just judicial system it is possible to create confidence in the overall governance of our country.

The Bible forbids partiality –

“So I took the wise and respected men you had selected from your tribes and appointed them to serve as judges and officials over you.... At that time I instructed the judges, ‘you must hear the cases of your fellow Israelites and the foreigners living among you. Be perfectly fair in your decisions and impartial in your judgments. Hear the cases of those who are poor, as well

as those who are rich. Don't be afraid of anyone's anger..."
(Deuteronomy 1:15-17) NLT.

In Leviticus 19:15 we read that judges shall do no unrighteousness in judgment; and shall not respect persons based on the social status such as poverty or riches. The judge should not mind or be influenced by neither the poor person's misery nor the rich person's power.

4. Independence and autonomy of the judiciary

There can be no justice if the judges are not free from external forces or pressures such as partisan political influence, freedom from subjective interpretation of the law, judges must be seen to be freed from the interference and political infringement from the executive wing of government or even external international pressures. Some cases attract a large number of interest groups who look to the court to provide a fair outcome in the judgments. When certain individuals want to use their political connections to pervert justice, it should be incumbent upon the judges to remain courageous in landmark cases that bear on the majority of the general public. Also, bearing in mind that compromise in one case will have a bearing in setting precedence in subsequent cases unless future rulings strongly argue against such judgments and overturn them. This means that any erroneous judgment can create serious implications in future cases because of the practice of 'case referencing'.

5. Moral considerations in court rulings

Because of their nature, some cases have more interest groups than others. Public interest in some cases is strong because of the impact on societal practices and morality, peace and stability, and also when there is a threat to national unity and our sovereignty the outcome is their only '**safety net**'. It is important to bear in mind that some cases will cause the public interest to rise when the public feels that they will be impacted by the outcome of the court ruling on a given matter. Also cases that have a bearing on the morality and religious virtues of the majority of the public will attract a lot of public interest such as landmark cases on advanced human rights that may require the court to determine the constitutionality of laws that criminalise homosexuality and abortion on demand. The outcome of such cases bears strongly on other aspects of public life because it can reverse and legalise practices that are not morally acceptable to the majority of the Zambian people. The judges should have their feet on the ground. The Zambian judiciary certainly will face the 'challenge of precedence' already created by the more developed nations where their federal courts have already made rulings on critical and sensitive cases that contradict common public morality and religious practice in Zambia and elsewhere. In the face of such challenges, the Zambian public is expecting our judiciary to support the status quo of protecting our moral fabric and religious virtues.

6. Confidence of the general public in the courts

The judiciary is the last hope for justice in any society or community. It is because of this confidence that people take their cases to court otherwise they would not do so. It is a confidence associated with the expectations fairness and justice. There should be no fear by the general public arising from lack of confidence or caused by doubt that justice may not always remain constant or be fairly applied. This confidence is mainly in the hope that the judges will always remain committed to the correct interpretation and application of the law without distortion caused by subjective handling of the matters or due to external influences. When fairly handled, the outcome should be acceptable to both parties. Those who lose a case should be fully satisfied that they have been fairly judged and charged and those who are compensated should also accept the integrity of the judgment made.

7. Sincerity and Integrity of the judiciary and judges

The integrity of the persons in the judiciary is intertwined with the overall judicial integrity. This means there should be a strong link between the personal integrity of the individual judges and the overall integrity of the judicial system. Judges should not fall prey to enticements for bribes or corrupt practices. Judges should be above reproach and act responsibly to avoid conduct that distorts and perverts justice in any matter. Freedom from bribery and '*golden dust*' can strengthen public confidence in the performance of the judiciary knowing very well that everyone

stands equal before the law and that everyone receives a fair trial and treatment.

8. *Courageous Justice*

In the eyes of the general public Judges should be courageous persons that don't succumb to intimidation within and outside of the court. We expect our judges to be fearless. A judge who is fearful cannot be expected to execute justice on a matter. There should be magnanimity in every judge so that nothing daunts, intimidates, discourages or frightens the judge. A fearful judge cannot be trusted with justice. Judges should fear neither individuals nor institutions those individuals represent. Judges stand in a position of authority and therefore they can attract public confidence when they are seen to be committed to justice and justice that does not respect or fear persons. Courage will also stand as a sign that the judges know what they stand for and that they have confidence in their own decisions and judgments.

9. *Consistency and precision in justice*

In passing judgment, the Zambian public expects that there will be exactness and precision in the decisions arrived at by the judges leaving no room for error, doubts or questions on the outcome of the trial. The matter should have been carefully and adequately heard, thoroughly analysed and fairly tried giving rise to an unquestionable verdict - both in the sight of God and in the sight of men. Judges should be convinced in themselves

that they have done what is right and that there has been no room for slackness or doubts in a matter or any subjective action. This gives merit to court judgments and enhances the credibility of the judiciary as an independent arm of government. At the end, everyone directly or indirectly benefits from a fair judicial system. The need for exactness and precision in judgment is because the liberties, rights, consciences, privileges and interests of individuals ought to be preserved and protected by the judiciary at all times. The lack of precision or lack of consistency is often observed when cases that have been referred to higher or different courts end up with a different outcome than the previous courts or judges. This can be avoided if at each stage of the case, the judges give their very best to ensure exactness and precision in the passing of judgment on a matter.

10. Conclusion

Judiciary is one of the three wings of government besides the Executive and the Legislature. Therefore the effective performance of the judiciary will reflect on the effectiveness in the running of government and the affairs of the nation.

The general public looks to the judiciary to do their work well and render correct and fair decisions on all the matters brought before various courts in the country. This does not necessarily mean a perfect judiciary but rather that we have a judicial system that strives towards judicial excellence at all times.

There is no doubt that Zambia can continue to sustain its reputation of a growing democracy on the continent that is proving to serve its own people fairly and justly.

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