**COURT WATCH 11/2020**

**[8th August 2020]**

**Public Interviews for Five Constitutional Court Judges**

**Monday 7th to Wednesday 9th September**

The Judicial Service Commission has given public notice that it will conduct public interviews of the twelve candidates who have been validly nominated to fill the five vacancies on the Constitutional Court that have existed since 22nd May 2020.  How these vacancies arose is explained in the paragraph headed Background to the Vacanciesbelow.

**The interviews will take place on Monday 7th September to Wednesday 9th September at Meikles Hotel in Harare.**   Further details – names of the candidates, times etc – are given in the Commission’s notice, the full text of which is set out at the end of this bulletin.

These public interviews constitute the third step in of the process under section 180 of the Constitution which the Commission must follow when the appointment of a judge other than the Chief Justice, the Deputy Chief Justice or the Judge President of the High Court is required.  The first two steps have already been taken.  In early June the vacancies were advertised and invitations issued to members of the public and the President to make nominations [see Court Watch 9/2020 of 5th June *[*[*link*](http://www.veritaszim.net/node/4222)*]*].  The deadline for submission of nominations was 30th June.  The twelve candidates listed in the Commission’s latest notice are the nominees meeting the basic qualifications for appointment to the Constitutional Court.

**After the interviews have been completed**, the Commission must prepare a list of its nominees for submission to the President. The President is obliged to make his appointments from the list, although in the unlikely event that he considers that there are not enough suitable candidates to fill the five vacancies, he can ask the JSC for a further list which will then be binding on him.

The JSC's list must be long enough to allow the President a limited choice when making the appointments.  For a single appointment, a list of three nominees is required, but no more.  For five appointments a longer list will necessarily be required.

**Background to the Vacancies**

Until Friday 22nd May 2020 – the seventh anniversary of the partial coming into force of the 2013 Constitution on 22nd May 2013 – the composition of the Constitutional Court was regulated by the transitional provisions of paragraph 18(2) and (3) of the Sixth Schedule to the Constitution.  Under those transitional provisions the Constitutional Court was to consist of the Chief Justice and the Deputy Chief Justice and seven other judges of the Supreme Court sitting together as a bench to hear any constitutional case.

This was the situation until  22nd May this year under the transitional provisions mentioned above, no need arose for appointments of Constitutional Court judges – because Supreme Court doubled as members of the transitional Constitutional Court.  On the 22nd May this year this transitional arrangement expired automatically by operation of law.  Its place was taken by the permanent provisions of section 166 of the Constitution, under which the Constitutional Court is an entirely separate court consisting of   the Chief Justice, the Deputy Chief Justice and “*five other judges of the Constitutional Court*”, i.e., judges appointed specifically as judges of the Constitutional Court.

Chief Justice Malaba and Deputy Chief Justice Gwaunza, therefore, automatically became judges of the new, separate Constitutional Court *ex officio*.  But there were no existing judges who had been appointed specifically as judges of the Constitutional Court – those Supreme Court judges who had been members of the Constitutional Court had done so under the expired transitional provisions of the Constitution, not by virtue of specific appointments as judges of the Constitutional Court.

As a temporary expedient the Chief Justice appointed the five senior judges of the Supreme Court to act as judges of the Constitutional Court pending the making of substantive appointments.  The acting judges are Justices Garwe, Gowora, Hlatshwayo, Makarau and Patel, all of whom are candidates to be interviewed, and listed as “AJCC”, the abbreviation for Acting Judge of the Constitutional Court.  The acting appointment were made by the Chief Justice in terms of section 166(2) of the Constitution:

*“(2)  If the services of an acting judge are required on the Constitutional Court for a limited period, the Chief Justice may appoint a judge or a former judge to act as a judge of the Constitutional Court for that period.”*

The five, however, remain substantive judges of the Supreme Court.

**The Judicial Services Commission’s Notice**

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**INTERVIEWS IN PUBLIC OF CANDIDATES NOMINATED FOR THE FIVE (5)**

**POSITIONS OF JUDGE OF THE CONSTITUTIONAL COURT OF ZIMBABWE**

Following the invitation to members of the public and to His Excellency, the President, to nominate suitably qualified persons for appointment to five (5) positions of Judge of the Constitutional Court, in terms of **section 180 (4)(b) of the Constitution**, the Judicial Service Commission received twelve (12) valid nominations.

Starting at **0830hrs** on **Monday 7 September** to **Wednesday 9 September 2020**, at **The Meikles Hotel in Harare**, the Commission will conduct interviews in public for the following 12 candidates: -

1.     Hon. Mr Justice David George Bartlett (Rtd)

2.     Hon. Mr Justice Energy Chinembiri Bhunu, JA

3.     Mr. Donald Stevenson Corke

4.     Hon. Mr Justice Paddington Shadreck Garwe, AJCC

5.     Hon. Mrs Justice Anne Mary Gowora, AJCC

6.     Hon. Mr Justice Ben Hlatshwayo, AJCC

7.     Hon. Mr Justice Charles Hungwe, JA

8.     Hon. Mrs Justice Rita Tambudzai Makarau, AJCC

9.     Mr Smart Mirirai

10.   Hon. Mr Justice Bharat Patel, AJCC

11.   Mr Arnold Tsunga

12.   Hon. Mr Justice Happias Zhou, J

The interviews are open to the media and members of the public but remain subject to adherence to COVID-19 health regulations.

The Commission shall post a detailed programme of events at the venue of the interviews.

Anyone with queries or who requires more information on the interviews may visit the Judicial Service Commission, 2nd Floor, Causeway Building, Central Avenue, Harare; contact us on telephone numbers **0242-706260/704118** or send an email to **info@jsc.org.zw.**

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