

The Public Service and Public Service Commission

Some Basic Principles

As the name implies, the Public Service exists to serve the public. Public servants are paid by the public and should serve the public impartially and in a professional manner, irrespective of their own political views or those of the members of the public with whom they are dealing.

On the other hand, the public service has a duty to put into effect the policies of the government of the day. It should also do this in a professional manner, bearing in mind that in a democracy the government may change and the incoming government may have different policies. The public service should implement the new government's policies loyally and not seek to thwart the government.

Current System in Zimbabwe

Appointment of the Public Service Commission

In terms of the Constitution:

- there is a Public Service Commission [PSC] which consists of a chairman and not less than 2 and not more than 7 other members appointed by the President
- the persons to be appointed to the PSC must be chosen for their ability and experience in administration or their professional qualifications or their suitability otherwise for appointment, and the chairman and at least one other member shall be persons who have held a post or posts of a senior grade in the Public Service for periods which in the aggregate amount to at least five years.

The appointment of members of the PSC is therefore entirely in the hands of the President. He is not required to consult anyone about who should be appointed. The qualifications required for membership are not particularly onerous. The conditions of service of commissioners are fixed by the President.

The functions of the Public Service Commission

The Constitution states that the functions of the PSC shall be to tender such advice and do such other things in relation to the Public Service as are provided for by the Constitution or by or under an Act of Parliament.

The Public Service Act goes into some more detail, stating the functions to be:

- to appoint persons to the Public Service, whether as permanent members or on contract or otherwise, to assign and promote them to offices, posts and grades in the Public Service and to fix their conditions of service;
- to appoint persons from approved services to offices, posts and grades in the Public Service;
- to conduct examinations for candidates for entry to and promotion within the Public Service;
- to inquire into and deal with complaints made by members of the Public Service;
- subject to Part V, to exercise disciplinary powers in relation to members of the Public Service;
- to exercise any other functions that may be imposed or conferred upon the Commission in terms of this Act or any other enactment.

Public Service Commission's Role in Appointing the Secretary to Cabinet and Permanent Secretaries of Ministries

Under the Constitution the power to appoint persons to hold the office of Secretary to the Cabinet or Secretary of a Ministry vests in the President after consultation with the PSC. Although this consultation is a must, the President can disregard the Commission's recommendations. All that happens if he or she does disregard a recommendation, is that the Senate must be advised. The Constitution is silent about what the Senate is expected to do in this situation, so there is nothing the Senate actually can do, even if it did not agree with the President.

Again, this effectively leaves the matter entirely in the hands of the President. The President can, in effect, appoint whoever he likes, even if the PSC has recommended otherwise. Heads of ministries may be removed by the PSC, but only with the concurrence of the President.

Political Activities by Public Servants

There is no prohibition in the Public Service Act against public servants being members of political parties. At one time, such a provision did exist. There are, however, some restrictions on political activities by public servants. A member of the public service may, with the permission of the PSC, seek election to a local authority. Such permission must be accompanied by a declaration that the person in question has ceased to be a public servant from that date. The person may be reinstated if he fails to secure nomination or election. A public servant may stand for election to Parliament, but is deemed to have resigned on the date he is nominated. If he withdraws his candidacy or is not elected, he may apply for re-appointment to the Public Service. The PSC is not obliged to reappoint.

What is the Position in Other Countries?

Appointment of Public Service Commissions in other countries

Kenya: In Kenya, the members of the PSC are appointed by the President with the approval of the National Assembly.

Uganda: The Ugandan Constitution has a similar provision.

South Africa: The South African Constitution provides for the appointment of certain of the commissioners by the President, with the approval of the National Assembly. The commissioners must be (a) nominated by a committee of the National Assembly that is proportionally composed of members of all parties represented in the Assembly and (b) approved by the Assembly by a resolution adopted with a supporting vote of a majority of its members. The other commissioners must be nominated by the premiers of the several provinces, following a similar procedure.

Namibia: The Namibian Constitution provides for the reverse situation: the President nominates members of the PSC and the National Assembly appoints them.

Political activity by public servants in other countries

The position in Zimbabwe is not far different from that in the United Kingdom. There, civil servants are legally barred from standing for election as Members of Parliament or any other political office. Also, under regulations first adopted in 1954 and revised in 1984, members of the Senior Civil Service (the top management grades) are barred

from holding office in a political party or publicly expressing controversial political viewpoints, while less senior civil servants at an intermediate (managerial) level must generally seek permission to participate in political activities. The most junior civil servants are permitted to participate in political activities, but must be politically neutral in the exercise of their duties.

In Australia, public servants may be members of political parties and participate in political activities. If they do participate in such activities, they are expected to avoid creating the impression that the government department they work for endorses such activities or that queries or applications will be handled otherwise than impartially. Public servants may not stand for Parliament. Any public servant seeking election to Parliament must resign before being nominated. However, public servants may stand for election to local government bodies.

What Should the New Constitution Provide?

There can be no doubt that the present Public Service is, certainly at the higher levels, heavily politicised, with the appointment of the PSC and of heads of ministries entirely in the hands of the Executive. This could be corrected by including provision in the new constitution along the following lines:

1. Direct political control of the Public Service should, as far as possible, be eliminated.
2. The process of nomination and appointment of the members of the PSC should be more open and transparent. If commissioners are to be appointed or approved by Parliament, then at least there is a chance for debate, even if in the end the will of the party with a majority in Parliament prevails.
3. As for heads of ministries, their appointment should not be in the hands of the executive. There is, on the other hand, no reason why heads of ministries should necessarily have been career public servants with their appointment merely being the final step in their public service career. A lot of dead wood can accumulate in the public service and individuals can get very set in their ways. In principle, it should be possible to appoint suitably qualified outsiders to be the heads of ministries. Appointment could be by the PSC, with an open system of nomination, coupled with public hearings.
4. On the subject of political activities by public servants, it would probably be safer, in a very politically polarised country and in the absence of a vigorous free press, to insist that public servants should not be members of political parties. Any public servant who wishes to be involved in political activities should resign, as identification by a public servant with a particular political party is contrary to the principle that the public service should be apolitical.