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Title: OPINION: Suspension of two SA judges has opened debate about poor delivery of justice

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A 2022 research report by the University of Cape Town's democratic governance unit points to concerns about poorly maintained libraries, no telephones, outdated computers and the crumbling state of high court buildings, writes Narnia Bohler-Muller



QUESTIONED: Tshifhiwa Maumela, who was presiding over the Senzo Meyoia murder trial, is one of that judges who was suspended. Picture: THULANI MBELE

The suspension of two judges in SA for tardiness – failing to process cases in a reasonable amount of time – has sparked fierce debates around the conditions under which judges work. There are implications for the administration of justice in a young democracy.

The decision to suspend the judges caught the attention of the media because both were involved in high profile murder cases. Both cited ill-health and personal problems as a reason for their tardiness.

The decision to suspend them was not unanimous, according to media reports. Two judges on the Judicial Service Commission panel that considered the cases argued that suspension was too harsh. They argued for a more open-minded approach that recognised the judges' mental health and working environment.

Based on my close to three decades of legal experience I would argue that empathy is understandable but the judiciary must be held to account. One reason judges need to do their jobs well is that confidence in the courts in SA is low and on the decline. This is illustrated by a longitudinal study conducted by the Human Sciences Research Council's South African Social Attitudes Survey for the period 1998 - 2022.

Poor performance affects perceptions of the judiciary and must be addressed. Nevertheless, it's important to acknowledge that SA's judges work in less than optimal conditions. These have been well documented. But they haven't been addressed. It's time the state did so.

The challenges facing South African judges were highlighted by Judges Matter, part of the Democracy, Governance and Rights Unit at the University of Cape Town, which considers matters related to judicial independence. They included:

- the high number of unfilled vacancies for judges, exacerbated by COVID-19 pandemic;
- increase in misconduct complaints against judges;

- case backlogs; weak judicial governance on the part of the Office of the Chief Justice;
- lack of accountability and lack of transparency in the Judicial Service Commission, which has been overly politicised;
- increased work load, particularly in the light of the judicial commission of inquiry into corruption;
- constant attacks by political figures.

When the Judicial Service Commission, established in terms of section 178 of the constitution to advise the national government on any matters relating to the judiciary or administration of justice, interviewed Constitutional Court Judge Mandisa Maya in December 2021 for the position of chief justice, her responses were telling. She was forthright in describing the administrative and infrastructural challenges facing the judiciary.

Maya described how she and her support staff at the Constitutional Court had been forced to run a parallel office and physically manage court files to ensure that basic but essential administrative functions were carried out – work that is not meant for judges.

She described the court's internet as "highly unreliable" and recounted an instance where an online hearing was only made possible when one of the lawyers lent the court an internet router. She added that the court did not even have a working telephone system.

Maya, who was eventually appointed deputy chief justice in February 2022, was not voicing new concerns.

A 2022 research report by the University of Cape Town's democratic governance unit shows that other judges echoed Maya's concerns about poorly maintained libraries, no telephones, outdated computers and the crumbling state of high court buildings. The challenges faced by judges in the higher courts are even more prevalent in magistrate's courts.

As things stand, the Office of the Chief Justice is responsible for some aspects of judicial administration, and the department of justice and constitutional development for others. The department of public works and infrastructure is responsible for maintaining court buildings.

The first step should be to establish clear reporting and accountability structures. At the moment three different entities responsible for running different aspects of the judiciary don't seem to be getting it right.

Secondly, modernisation of the court system would go a long way in improving the working conditions of judges. As far back as 2007 there was an extensive review of the criminal justice system.

This resulted in cabinet approving an integrated programme towards a modernised and efficient criminal justice system underpinned by a package of seven fundamental changes in 2006.

The Seven Point Plan was also presented to the chief justice and judge presidents in February 2008 and to the senior leadership of the magistracy since then. The plan was endorsed and welcomed by the judiciary and government was requested to prioritise implementation thereof.

In summary, it proposed:

- a single set of objectives, priorities and targets to be followed by the Justice, Crime Prevention and Security Cluster;
- a single co-ordinating and management structure; substantial changes to improve the performance of courts;
- priorities to improve capacity of a new court system;
- an integrated and seamless information and technology database;
- modernised and integrated systems and equipment (docket management systems, court case management systems and parole management systems);
- involving the public in the fight against crime by changing community police forums to deal with all matters in the system.

The department of justice and constitutional development stated in parliament that the modernised Integrated Justice System would be fully functional by the end of 2018/19. This has clearly not happened.

In particular, the Covid-19 pandemic almost brought the country's courts to a standstill due to a lack of technological support.

Judges work under difficult and stressful conditions. They are mere mortals. But much more is expected from the judiciary as one of the arms of state in a constitutional democracy. Judges are appointed the guardians of the constitution. This is no small task.

Failing to do their work optimally diminishes trust in the judiciary, which is already under severe unwarranted attack. Diminished trust in the judiciary, and the low trust in government and its institutions, places SA's democracy at risk. — This article was originally published by *The Conversation*

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