

**ADDRESS BY CHIEF JUSTICE RMM ZONDO ON THE OCCASION OF
THE RELEASE TO THE PUBLIC OF THE ANNUAL JUDICIARY
REPORT FOR THE 2021/2022 FINANCIAL YEAR ON JUDICIARY DAY
ON 24 FEBRUARY 2023**

As the Chief Justice of the Republic of South Africa and as the Head of the Judiciary of South Africa it gives me great pleasure to be part of this special gathering on this very special day, our Judiciary Day, and to present on behalf of the Judiciary of this country its fifth Annual Judiciary Report. The first Annual Judiciary Day took place in 2018. The second happened in 2019. I am particularly pleased that we have been able to have an in person gathering such as we have today because the past two Judiciary Days happened during the period of Covid 19 restrictions which did not permit us to meet in the great numbers we see today and were, consequently, held virtually. This was after Covid-19 had spread throughout the world including our own country and a national lockdown had been instituted.

Judiciary Day is an important annual occasion on the calendar of the South African Judiciary. It is on Judiciary Day that, through the Chief Justice as the Head of the Judiciary, the Judiciary of South Africa accounts to the people of South Africa for the performance of its judicial functions.

Section 55(2)(a) and (b) of the Constitution place an obligation on the National Assembly to provide for mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it

and to maintain oversight of the exercise of national executive authority including the implementation of legislation and also to maintain oversight of any organ of state. Section 92 of the Constitution deals with the accountability and responsiveness of the President and his or her Ministers for the exercise of executive functions entrusted to them. Section 92(2) provides that members of the Cabinet – which includes the President but excludes Deputy Ministers – “are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.” Section 92(3) requires members of the Cabinet to act in accordance with the Constitution and to “provide Parliament with full and regular reports concerning matters under their control.” Section 93(2) ensures that Deputy Ministers are also accountable to Parliament for the exercise of their powers and the performance of their functions. There are no similar provisions in the Constitution in respect of the accountability of the Judiciary to Parliament or to the Executive in respect of the performance of its judicial functions. This does not mean that the Judiciary does not need to account for the performance of its judicial functions. Indeed, we take section 165(2) read with (6) of the Constitution as providing the constitutional basis for Judiciary Day and for our Annual Judiciary Reports through which we account to the public of South Africa for the performance of our judicial functions.

Section 165(2) of the Constitution provides:

“The courts are independent and subject only to the Constitution and the law which they must apply impartially and without fear, favour or prejudice.”

Section 165(6) of Constitution places upon the Chief Justice as the Head of the Judiciary the responsibility for the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts. In respect of the Superior Court the Chief Justice exercises this responsibility with the assistance and support of the Heads of Court which are the President of the Supreme Court of Appeal and the Judges President of the various Provincial Divisions of the High Court and of the Specialist Superior Courts. In respect of the Lower Courts the Chief Justice exercises this responsibility with the assistance and support of the Judges President, the Regional Court Presidents, the Chief Magistrates and other members of the leadership of the Regional and District Courts. Therefore, the holding of Judiciary Day and the presentation of the fifth Annual Judiciary Report are the results of collaboration and co-operation among various structures within the Judiciary and the support from the leadership of the Office of the Chief Justice (OCJ) and other officials at the OCJ. The holding of Annual Judiciary Days and the release to the public of Annual Judiciary Reports constitute irrefutable evidence that the Judiciary unequivocally and unconditionally embraces the notion that it must account for the exercise of its judicial functions.

Scope of the Annual Judiciary Reports

What is the scope of the performance of judicial functions covered by the Annual Judiciary Report?

The scope of the Annual Judiciary Report that I am presenting today, like its predecessors, covers only the following matters within the Judiciary's performance of its judicial functions:

- (a) matters finalised by each Superior Court – assessed against the target fixed in relation to each Superior Court.
- (b) delivery of reserved judgments against targets set for delivery of reserved judgments.
- (c) the reduction of criminal case backlogs.

The first two features of the scope of the Report apply to all courts whereas the last one only applies to criminal courts at High Court level as well as in the Magistrates' Courts. I will deal later with other features of the assessment of the Judiciary's performance of its judicial functions which do not fall within the scope of the Annual Judiciary Report but which are nevertheless important. For now, it is appropriate to share with you some of the important information in the Report concerning the Judiciary's performance of its judicial functions.

COURT PERFORMANCE

The fifth Annual Judiciary Report provides an overall picture on how the Superior Courts performed during the period under review.

The Annual Judiciary Performance Plan (AJPP) indicators for the Judiciary as reflected in the Annual Judiciary Report 2020/2021 remain relevant for this reporting period. The AJPP defines and identifies performance indicators and targets for the various Courts. The performance indicators and targets are measures that allow for the monitoring of performance on one or more aspects of the overall functions and mandate of the Judiciary.

PERFORMANCE OF THE SUPERIOR COURTS

For the period under review, ten (10) of thirteen (13) performance targets were achieved. This represents a 77% achievement. Only three (3) performance targets were not achieved. Those relate to the percentage of Competition Appeal Court Cases Finalised (50%), the percentage of the Land Claims Court Cases Finalised (49%) and the reduction percentage of criminal case backlogs (49%). The performance of the Superior Courts

Finalised matters

All the Superior Courts fixed targets for matters that they would finalise during the period under review. That is, of course, the 2021/2022 financial year. That means the period from 1 April 2021 to 31 March 2022. The targets that the Superior Courts fixed for themselves and what they achieved or failed to achieve are reflected as follows in respect of all the Superior Courts:

Court	Target fixed	Achievement
(d) Constitutional Court	70%	70%
(e)(a) Supreme Court of Appeal in respect of appeals	80%	80%
(b) Supreme Court of Appeal in respect of applications	80%	80%
(f) (a) Labour Appeal Court in respect of appeals	80%	85%

(b) Labour Appeal Court in respect of applications	90%	100%
(g) Criminal matters finalised in all Divisions of the High Court	75%	89%
(h) Civil matters finalised in all Divisions of the High Court	64%	88%
(i) Matters finalised by the Labour Court	58%	60%
(j) Matters finalised by the Electoral Court	90%	100%
(k) Matters finalised by the Competition Appeal Court	85%	50%
(l) Matters finalised by the Land Claims Court	60%	49%

It will be seen from this that the overwhelming majority of the Superior Courts performed excellently. They either reached their targets or exceeded their targets. It will also be noted that, although the courts fixed their own targets, generally speaking, they fixed very high targets for themselves, very often 70% and above and they mostly achieved the targets and mostly exceeded them. Only two of the Superior Courts fared badly. The Competition Appeal Court achieved 50% instead of the 85% it had fixed for itself and the Land Claims Court achieved 49% instead of the 60% it had fixed for itself.

The Competition Appeal Court has ascribed its failure to achieve its target to the fact that it struggles to get High Court Judges to sit in the Competition Appeal Court when it needs them. This arises from the fact that the cases heard by the Competition Appeal Court are not enough to justify that the High Court Judges who have to perform duties in the Competition Appeal Court should stay in that Court for a whole term at a time. In the Competition Appeal Court there would generally in the region of six or so matters – sometimes more but not more than 10. So, the system that has been used was to ask for the Judges to come and deal with the Competition Appeal Court matters while they were busy with other High Court matters which did not work well, hence the unacceptable performance of the Competition Appeal Court, however this should change now. For some time the Competition Appeal Court had no permanently appointed Judge President. Now a permanent Judge President has been appointed. A new arrangement has been put in place for the involvement of High Court Judges in Competition Appeal Court work that should work better than what happened during the period under review.

The Land Claims Court is another Court that did not do well. The Land Claims Court faces a number of challenges. One of them is that for more than ten years it has not had a permanently appointed Judge President. Its most senior Judge was appointed Acting Judge President around 2011 and has been acting in that position since then. There is also uncertainty about the Court because there is a Bill which has been pending for a long time that was initiated by the Minister of Justice and Correctional Services which seeks to bring about certain changes in the Land Claims Court but it has not

been passed into an Act. Covid-19 restrictions seriously affected the performance of the Land Claims Court during the period under review because the Judges of that Court could not travel to hear cases that could not be heard virtually.

It will also have been seen above that there must be a lot of room for improvement in the performance of the Labour Court. It set for itself a low target of 58% and achieved 60%. It needs more posts for Judges in order to cope with its workload. In fact, as of October last year, it was not able to set down any matters for hearing until 2024. That is an unacceptable situation but it is because it needs more Judges and more court rooms. This is a matter which has been discussed with the Executive and they are the ones who need to make decisions concerning the creation of more posts for Judges and making available more court rooms. It is not accepted that matters, particularly, labour matters are subject to long delays before they are adjudicated. I hope that the Executive will resolve these issues soon.

Reduction of criminal case backlogs

With regard to the reduction of criminal case backlogs, the various Divisions of the High Court had fixed 30% as their target which they would reduce their backlog. However, collectively they failed to achieve this target and managed to only reduce the criminal case backlog to 49%. On this they did not do well.

Reserved judgments

As far as reserved judgments are concerned, collectively the Superior Courts had fixed 70% as their target for the handing down of judgments reserved

during the period under review. They succeeded in handing down 75% of the judgments reserved during the period under review, thus exceeding their target by 5%.

CONSTITUTIONAL COURT OVERVIEW

A total of 389 matters of a total of 554 were finalised by the Constitutional Court. The performance for the reporting period is in line with the set annual target of 70%. This is an improvement of 9% compared to the achievement percentage (61%) recorded during the previous reporting period. The total number of matters dealt with by the Constitutional Court increased by 24% from 445 matters during 2020/2021 to 554 matters during 2021/2022.

SUPREME COURT OF APPEAL OVERVIEW

During the period under review, the Supreme Court of Appeal (SCA) completed 194 appeals out of a total of 242 appeals. This was 80% of the appeals. The SCA achieved the target of 80% it had set for itself.

The Supreme Court of Appeal finalised 1 075 applications / petitions out of a total caseload of 1 113 applications / petitions. This was a 97% achievement. This means that the SCA exceeded its set target of 80% by 17%. Compared to the previous year, the SCA managed to exceed the set target of 80% during both reporting periods by finalising 1 082 and 1 075 applications and petitions, respectively.

SPECIALISED COURTS OVERVIEW

During the period under review, the Labour Appeal Court finalised 78 appeals out of a total caseload of 92 appeals. This is an achievement of 85%. The LAC exceeded the annual set target of 80% by 5%.

The Labour Appeal Court also completed 152 petitions out of a total caseload of 152 petitions. This was 100% performance. This means that it exceeded its set target of 90% by 10%.

Labour Court

- The Labour Court completed 2580 matters out of a total of 4 307 matters. This represents a 60% achievement. This means that it exceeded the set annual target of 58% by 2%. It also represents an improvement of 8% to its performance recorded for the previous reporting period. During the period under review, 3% more Labour Court matters were received, whilst 18% more matters were finalised.

The Labour Court sits mainly in four (4) locations, namely Durban, Gqeberha, Cape Town and Johannesburg. The case load increased in the three centres save for Durban, with the highest increase of 46% in Gqeberha. Matters finalised in the various Labour Court centres have increased by 38% (Gqeberha), 37% (Cape Town) and 26% (Johannesburg). A decline of 23% is noted in the number of matters finalised by the centre in Durban, which can mainly be ascribed to resource constraints.

Land Claims Court

- The Land Claims Court completed 98 matters out of a total of 201 matters. This represents 49%. This is an under achievement of 11% against the set annual target of 60%. This is due to the fact that the work of the Court was severely hampered by the combined impacts of the Covid-19 pandemic and load shedding during the period under review. Covid-19 negatively affected the Judges of the Land Claims Court's ability to travel to adjudicate land claims trials, which could not be heard virtually. The absence of a generator until November 2022 meant that often cases could not be heard during the frequent bouts of load shedding during the period under review. These challenges and a 35% increase in the caseload account for the number of cases that the Court was able to finalise during the period.

Electoral Court

- The Electoral Court only had 13 matters and it finalised all 13 of them. This represents a 100% performance which is an over achievement of 10% against the set annual target of 90%.

Competition Appeal Court

- The Competition Appeal Court finalised 3 matters out of a total of 6 matters. This represents 50% achievement. It represents an under achievement of 35% against the set annual target of 85%. The reasons for the underachievement of the Competition Appeal Court have been dealt with above and there is no need to repeat them.

REDUCTION PERCENTAGE OF CRIMINAL CASE BACKLOG (ALL HIGH COURT DIVISIONS)

The Judiciary is committed to the reduction and, ultimately, the elimination of backlogs in the various courts. The reduction percentage of criminal case backlog refers to the percentage by which it was intended to reduce the case backlog during the period under review and the percentage by which the case backlog was actually reduced.

The annual target for all Superior Courts is set on 30% and mainly aims to ensure the finalisation of criminal matters within 12 months from the date of the accused's first appearance in the High Court.

At the end of the period under review, the total number of outstanding criminal cases in the various Divisions of the High Court was 917, whereas the total number of backlog cases was 453, which represented a backlog percentage of 49%. The performance during the reporting period is, therefore, an under achievement of 19% against the set target of 30%.

Compared to the previous reporting period, the number of outstanding criminal trials increased by 5% compared to the 870 outstanding trials and 28% in the criminal case backlog compared to the 353 reported criminal case backlog. The reason for this increase is ascribed to logistical challenges mainly due to the continuous load shedding, which had an adverse impact on the operations of the courts.

Compared to the previous reporting period, the number of outstanding criminal cases increased by 5% compared to the eight hundred and seventy (870) outstanding cases and 28% in the number of criminal case backlog compared to the three hundred and fifty-three (353) reported criminal case

backlog. This increase is also ascribed to logistical challenges mainly due to the continuous load shedding which had an adverse impact on the operations of the courts.

It should be noted that in order to successfully attain the indicator on backlogs, the percentage of backlogs should be less than the annual target of 30%.

The target was achieved in the Eastern Cape Local Division, Bhisho and the Western Cape Division of the High Court.

PERCENTAGE OF CRIMINAL MATTERS FINALISED (ALL HIGH COURT DIVISIONS)

During the period under review, the various Divisions of the High Court managed to finalise 9 853 criminal matters out of a total 11 098 criminal matters which represents 89%. The annual target of 75% was exceeded by 14%.

Compared to the previous reporting period, a marginal reduction of 3% is noted in the total number of criminal matters (11098 compared to the 11 413 reported during previous year), whilst an increase of 1% is noted in the total number of criminal matters finalised 9 853 criminal matters were finalised compared to 9 749 reported during the previous year.

From the above national overview, it is evident that the majority of the Divisions of the High Court managed to achieve the set annual target of 75% with the exception of the Eastern Cape Division, Mthatha (45%); Eastern Cape Local Division, Gqeberha (55%), Gauteng Division, Pretoria (66%), Gauteng Local Division, Johannesburg (57%), Kwazulu-Natal Division, Durban (58%) and Limpopo Division, Thohoyandou (61%). The reason for this under performance is ascribed to logistical challenges due to the continuous load shedding.

The highest percentage was achieved by the Free State Division, Bloemfontein (97%), followed by the Western Cape Division (96%) and the Limpopo Division, Polokwane (89%). The Gauteng Division achieved 62% performance which represents 13% below the target of 75% and can mainly be ascribed to the complex nature of the cases that the Courts have to deal with coupled with the multiple accused persons involved in many of the cases.

PERCENTAGE OF CIVIL MATTERS FINALISED (ALL HIGH COURT DIVISIONS)

During the period under review, a total of 104 231 civil cases were finalised out of a total of 118 575 cases. This represents an 88% performance against the set annual target of 64%. This means that the target was exceeded by 24%. During the period under review, all the Divisions of the High Court achieved or exceeded the set annual target of 64%. Compared to the previous reporting period, an increase of 43% (35 495) performance is noted

in the total civil matters finalised. The total number of civil matters finalised increased by 49% (34 323).

High percentages were maintained by all High Court Divisions, with the Gauteng Division of the High Court achieving the highest percentage of 93%. Both the Mpumalanga Division and the Gauteng Division both achieved very good results. The Mpumalanga Division achieved 92% performance.

PERCENTAGE OF RESERVED JUDGMENTS FINALISED IN ALL SUPERIOR COURTS

During the period under review, a total of 4 070 reserved judgments was delivered within three (3) months from the date on which they were reserved. This was out of a total of 5 463 judgments delivered which represents an achievement of 75% performance. The target of 70% was therefore exceeded by 5%.

Compared to the previous year, the total number of reserved judgments delivered increased by 19% (853 more judgments), whilst the number of reserved judgments delivered within three (3) months increased by 14% (481 more judgments delivered within 3 months).

The highest percentage in delivery of reserved judgments within 3 months is recorded in the Labour Appeal Court (96%) whilst the Constitutional Court achieved 8% in the delivery of reserved judgments within 3 months. The Constitutional Court delivered some of its reserved judgments after three

months and others after six months. In considering the performance of the various Superior Courts in the handing down of reserved judgments within three months of the last date of hearing, it is important to bear in mind that it is easier for a Judge who sat alone in a matter to hand down his or her judgment within three months than it is for a Judge who sat with other Judges in a matter.

When a Judge writes a judgment in a matter in which he or she sat with two or four other Judges, it may take longer to hand down the judgment because he or she must discuss and debate their judgment with the other Judges to persuade them to agree with their judgment.

In the High Court a Judge normally sits alone but will sometimes sit with one or two others. In the Supreme Court of Appeal, a Judge will sit with either two or four other Judges. In the Constitutional Court a Justice sits with 10 other Justices with whom he or she must discuss and debate his or her judgment. Those discussions and debates are important in order to try and achieve a unanimous judgment rather than a multiplicity of judgments in one matter which may happen when there is no proper opportunity to discuss and debate issues. Furthermore, the Justices of the Constitutional Court are always aware that, since the Constitutional Court is the highest court in the land and there is no further appeal to another court if they give a wrong judgment, in each matter they should seek to do all they can to ensure that each judgment they hand down is correct.

Therefore, it is not surprising that there is a low percentage of reserved judgments that the Constitutional Court handed down within three months of the date of hearing.

The Constitutional Court's performance concerning delivery of reserved judgements within three months must also be seen against the increased jurisdiction of the Court. The Court is the Apex Court and the Court of final appeal on all matters. This amendment resulted in a significant increase in the workload of the Court. Despite these increases in the jurisdiction of the Court, the Judicial establishment remained unchanged, thereby placing increased pressure on the Justices to ensure that access to justice is upheld.

Regional Courts Criminal Court Performance Overview

For the period under review the Regional Courts utilised a combined total of 63, 913 court days, a combined total of 171349:10 court hours. A total of 40, 771 New Cases were registered. A total of 41, 927 cases were disposed of by the Regional Courts.

The performance of the Regional Court divisions can be summarised as follows:

- Average Court Hours: 02h40

This is below the set norm and standard of 04h30, but the combined hours for both criminal and civil adds up to 04h42.

- Average Clearance rate: 103%

Though most courts are able to keep up with the incoming new cases, this is not the position in all Regional Courts, which indicates that additional courts are needed to deal with the increase in the workload.

- Finalised cases per day: 0.28
- Cases disposed of per day: 0.67
- Cases enrolled per day: 2.38
- Throughput: 09h25

Cases in the Regional Courts seem to take much longer to finalise which may be indicative of the increasing complexity of cases in the Regional Courts.

A comparison between the current financial year and the previous financial year indicates that the court days increased by 8%, new cases increased by 9%, cases that were disposed of increased by 20% and the court hours increased by 18%.

It should be noted that the 2020/21 period fell during the hard lock down that impacted severely on the ability of courts to function.

Regional Courts Civil Performance Overview

For the period under review the Regional Courts utilised a combined total of 11, 827 court days and a combined total of 24 069:13 court hours.

In respect of civil matters, the performance of the Regional Court Divisions can be summarised as follows:

- Average Court Hours = 02h02

This is below the set norm and standard of 04h30, but the combined hours for both criminal and civil sittings adds up to 04h42. It should be noted that many Regional Courts are doing both criminal and civil cases on a daily or weekly basis, with only a few Regional Courts doing civil cases only.

- Finalised civil applications per day = 1.15
- Finalised civil trials per day = 2.19

A comparison of the current financial year with the previous financial year indicates that the court days increased by 42%, enrolled cases increased by 13%, finalised cases increased by 18% and the court hours increased by 39%.

Case Flow Blockages / Challenges

A number of factors contribute towards case flow blockages, which entails the unavailability of stakeholders, the unavailability of court rooms, defective court recording equipment and intermediary systems, load shedding, natural disasters, and bad / adverse weather conditions, among others. Below is an indication of the blockages / challenges experienced per key stakeholder.

Reserved Judgments

Regional Courts do not reserve judgments for longer than three months.

District Courts

The collection and collation of the performance information of the Magistrates' Courts relies on the Integrated Case Management System for the Department of Justice and Constitutional Development. In September 2022 the Heads of the

Administrative Regions of the District Courts resolved that as a result of the system failure caused by an ICT security breach in the DoJ&CD, the performance information for the reporting period would not be published. The Heads of the Superior Courts supported this decision as the veracity of the performance information could not be tested.

JUDICIAL EDUCATION AND TRAINING

In the period under review, SAJEI conducted one hundred and sixty-eight (168) courses, exceeding the planned target of one hundred and five (105). This success is attributed mainly to the technological innovation in virtual platforms. However, ad-hoc requests from the Leadership of the Judiciary for additional training sessions increased during the reporting period. In an effort to ensure that there are no disruptions to court proceedings, some of the webinars were conducted after working hours to allow Judicial Officers to focus on court work.

In celebration of the South African Judicial Education Institute's (SAJEI) 10th anniversary, an international webinar on judicial training was arranged and

attended by one hundred and twenty-five (125) participants from African and International countries. The overall objective was to discuss the link between judicial training and judicial performance through the lens of the International Organisation for Judicial Training principles. This highlights the importance of judicial training using participatory training methods as well as cooperation and collaboration of Regional and International judicial education institutions. To commemorate the 10th year anniversary, SAJEI is publishing a book on Judicial Education in Africa.

There was a 33% increase in the total number of participants compared to the three thousand two hundred and ninety-seven (3 297) participants in the previous year.

Furthermore, during this reporting period, a total of one hundred and forty-eight (148) newly appointed District Magistrates attended virtual training sessions. It should also be noted that the course content was expanded to include Judicial wellness, Gender Based Violence and Femicide, Equality Court skills and Illegal Wildlife Trade. To enhance contributions towards SAJEI journal, Newsletter and book on Judicial Training in Africa, Judges and Magistrates attended virtual writing skills training conducted by JUTA.

It will have been seen from what I have said above that the fifth Annual Judiciary Report reflects that during the 2021/2022 financial year the Superior Courts performed very well in regard to some of the matters on which their performance was assessed. Most performed to an average that

is above 70% and, by any standards, that is very good performance. In those areas where the Judiciary has done very well I wish to thank all Judges and Judicial Officers for their hard work and dedication. In those areas where we have not done well, I want to encourage all members of the Judiciary at all levels to rededicate themselves to working even harder in order to ensure that we improve our service to the public.

Although we do not have the performance information for the District Courts for the reason given earlier, I want to take this opportunity to acknowledge the importance of the Judicial work done by the Judicial Officers in the District Courts and the Regional Courts, but particularly the District Courts because those are the Courts with which ordinary South African interact when they seek justice. It is, therefore, vitally important that the Judicial Officers in those courts do all they can when they do their work to ensure that the people who find themselves in those courts are treated with courtesy and their human dignity is respected at all times. If Judicial officers ensure that people find justice and respect in those courts, that will go a long way to giving hope to those people and to giving those people a positive image of our courts. They must feel that these courts are their courts and that, if they take their disputes to them, they will be treated with courtesy and respect.

These courts have performed in the way they have performed despite the fact that the Judges in those courts perform their judicial functions under extremely difficult conditions. Sometimes the buildings from which they operate are in conditions that are completely unacceptable. Sometimes the lifts are not working and it takes ages before technicians are sent to fix the

lifts. Sometimes they carry very huge loads of work because there is a need for more Judges to be appointed but they cannot be appointed because posts must first be created and it takes ages before they are created. Sometimes there is a need for more court rooms to be built or made available and the result is that cases which could be finalised quicker if there were more court rooms and Judges available are delayed for lengthy periods of time.

This Annual Judiciary Report, like the others before it, does not deal with certain features of the courts' performance of their judicial functions which one would ordinarily expect would feature in an assessment of a court's performance of its judicial functions. One of these features which our Annual Judiciary Reports do not take into account is the quality of the judgments that the Courts would have handed down during the period under review in a report. The quality of the judgments is obviously a very important factor in the performance of a Court's judicial functions because if a court's judgments are reputed to be of high quality, that is a source of pride to those who are associated with that Court. Indeed, a Court that is reputed to issue judgments of great quality can influence jurisprudence outside of the borders of the country in which it is located. Obviously, we would all like our Courts to occupy a position in the continental and global family of courts that makes us proud. They cannot occupy such a place in the international family of courts if they do not provide judgments of quality that are appreciated even beyond our borders.

Whenever I travel outside the borders of our country and attend conferences, whether it is on the continent or outside of the of the continent to attend conferences with Judges and lawyers I find that invariably there will be many Judges, lawyers and academics who speak in high praise of our Constitutional Court because of the jurisprudence that it has provided over the years. The most recent countries I visited to attend conferences were Indonesia which I visited in October last year to attend the World Conference on Constitutional Justice. That was a conference attended by many Chief Justices ad senior Judges from many countries in the world and many of those I had occasion to interact with spoke in high praise of our Constitutional Court and said how from time to time they look the jurisprudence developed by our Constitutional Court to guide them in deciding some of the cases before them. Another recent trip I undertook was to Uganda where I had been invited by the Chief Justice of that country to address their annual Judges' Conference and the Judges in that country told me how much guidance our Constitutional Court gives to them and the other Judiciaries on the continent on certain issues.

I mention the point about the quality of judgments in the context of today for two reasons. The one is that, although you will not find it referred to in our Annual Judiciary Report, its absence from the Report does not mean that we think the quality of judgments does not matter and what matters only is the speed with which courts hand down their judgments. Obviously, both the quality of the judgments that courts hand down and the speed with which they hand them down are very important. A judgment that is handed down the day after the hearing but which is of completely poor quality does not

help anybody. Instead, it may unnecessarily inspire a litigant who otherwise would not have appealed the judgment to appeal the judgment. Equally, a very good judgment that is handed down after too long a delay is completely unacceptable. We should therefore always seek to strike a fair balance between these two very important considerations.

Another feature of the courts' performance of their judicial functions which would be expected to be part of any assessment of such performance is how the courts have fared during the period under review in playing their role of being the guardians of the Constitution. That the Judiciary are the guardians of our Constitution and, therefore, by extension, our constitutional democracy is supported in part by the oath of office or affirmation that Judicial Officers take in terms of Schedule 2 to the Constitution. While members of Parliament, Members of the Executive and Judicial Officers all swear or affirm, among others, that they will uphold the Constitution, it is only the oath taken by Judicial Officers which requires each Judicial Officer to also swear or affirm that he or she will "protect the Constitution and the fundamental rights entrenched in it." Of course, the oath or affirmation for Judicial Officers also requires them to swear or affirm that they will administer justice to all without fear, favour or prejudice.

Therefore, the question of whether in the performance of their judicial functions the Courts are playing their role of being the guardians of our Constitution is an important one whether it is covered in the assessment that finds its way into the Judiciary Reports or not. Therefore, consideration will have to be given in the future to how this factor can be taken into account

when we consider how the Courts have performed judicial functions because if our courts fail to properly play their role as guardians of our Constitution, our constitutional democracy will be in danger.

However, when we look at the 2021/2022 financial year we see that certain events occurred in our country which tested our Constitutional Court's role as the uppermost guardian of our Constitution to the limit. I am talking here about the attacks that we saw directed at the Judiciary in general and certain specific Judges of various courts and in particular Justices of the Constitutional Court. Most of these attacks arose from the judgments that the Constitutional Court gave in matters between the Commission that I had the honour to chair and a former Head of State, Mr Jacob Zuma following upon his defiance of a validly issued summons to appear before the Commission and remain in attendance until permitted by the Chairperson to leave when he walked out of the Commission hearing. Mr Zuma's defiance of a summons was not only a challenge to the Commission but to our entire legal system and the Constitution. The Constitutional Court as the upper guardian of the Constitution rose to the occasion and held that his conduct had been unlawful and ordered him to appear before the Commission, testify and answer questions except those that would be legitimately covered by the privilege against self-incrimination. The Constitutional Court held that as a witness in a Commission like everybody had no right to remain silent because that right belongs only to an accused in a criminal trial. Mr Zuma defied the order of the Constitutional Court – something that was completely unthinkable in our constitutional democracy. He sought to justify his conduct on the basis that the Constitutional Court had taken away from him his right

to remain silent which was simply not true because as a witness in the Commission he never had such a right.

In the subsequent contempt of court proceedings, the Constitutional Court once again rose to the occasion as the upper guardian of our Constitution and protected our Constitution and upheld the rule of law and the principle that no one is above the law. It found Mr Zuma guilty of contempt of court and sentenced him to fifteen months' imprisonment. Of course, as we know, that was followed by the July unrest during which Judges were attacked, demeaned, threatened and intimidated. This became so bad that Constitutional Court Justices had to be given special protection. All this because the Courts had sought to play their role provided for in the Constitution. The rest of what happened is history but I have no doubt in saying that the Constitutional Court played a critical role in protecting our Constitution and our democracy.

In concluding her judgment in the contempt of court matter, Justice Khampepe- had this to say:

“My duty, as I pen this judgment, is cloaked in the duty and loyalty that I owe to our Constitution and the rule of law that undergirds it. I find myself left with no option but to commit Mr Zuma to imprisonment in the hope that doing so sends an unequivocal message: in this, our constitutional dispensation, the rule of law and the administration of justice prevail.”

All of this happened in 2021. As if what happened was not enough for the Judiciary and for our country, at the beginning of 2022 – in January 2022 – a member of the Executive under President Ramaphosa who had also been a member of the Executive under the then President Jacob Zuma thought that the Judiciary, particularly the Justices of the Constitutional Court and, more particularly, the black Judges, deserved to be insulted, demeaned and degraded. That was Minister Lindiwe Sisulu who woke up one morning and decided to write an article in which she said black Judges were “house negroes” and were like puppets of white masters. She hurled these insults on black Judges who, together with their white counterparts, have worked very hard to uphold and protect the Constitution and the fundamental rights in the Constitution. The Judiciary responded to that article. While the Judiciary will not always respond to every criticism or insult, it reserves to itself the right to draw a line wherever it may draw it and respond publicly and decisively to attacks on it. Very often these attacks are from people who want Judges to decide certain cases in a certain way or who are upset that the Judiciary have decided one or other case in a certain way. I take this opportunity as Chief Justice and Head of the Judiciary to make one thing clear: the Judiciary – from the Chief Justice down to the district court Magistrate – in Eshowe, Nongoma, Thohoyandou, Mqanduli or wherever will not be intimidated by anybody – no matter his or her position in society – into giving judgments that do not accord with the Constitution, the law and the evidence in a particular case. We will always decide cases without fear, favour or prejudice. This is the oath of office we have taken and this is the oath of office we will always honour.

Thank you.