



ADDRESS BY JUSTICE R M M ZONDO
ACTING CHIEF JUSTICE OF THE REPUBLIC OF SOUTH
AFRICA

4th JUDICIARY DAY

14 DECEMBER 2021

Programme Director, Judge President Monica Leeuw,
Chairperson of the Judicial Accountability Committee;
Speaker of the National Assembly, Ms Nosiviwe Mapisa-
Nqakula

Chairperson of the National Council of Provinces, Mr Amos
Masondo

Judges President and Heads of the Superior Courts;

Leaders of the Regional Courts;

Leaders of the District Courts;

Other members of the Judiciary present



Valued stakeholders of the Judiciary and members of the public following these proceedings on the social media platforms of the Judiciary;

Members of the media who have joined us on this virtual platform;

Ladies and Gentlemen;

Good morning.

In 2018 the Judiciary of South Africa held its first ever Judiciary Day and presented to the public the first ever Judiciary Annual Report through which the Judiciary accounts to the public for its performance of judicial functions. That was for the period from 1 April 2017 to 31 March 2018. Since then, the presentation of the Judiciary Annual Report to the public by the leadership of the Judiciary on Judiciary Day has been an annual event. This year is no exception.



These historic developments happened under the leadership of Chief Justice Mogoeng Mogoeng, ably assisted by the collective leadership of the Judiciary of this country.

Reflecting on the period prior to 2018 Chief Justice Mogoeng Mogoeng explained in the inaugural edition of the Judiciary Annual Report:

“The leadership of the higher courts analysed the situation from a constitutional perspective, identified the inappropriateness of accounting the traditional way and resolved to delink the accounting responsibilities of the administrative office – the Office of the Chief Justice (OCJ) – from those relating to court performance, which is a shared section 165(6) responsibility of the Judiciary...while we acknowledge that judicial independence is inextricably



linked to judicial accountability, we are satisfied that we bear a direct responsibility to account to the nation ourselves...”

The Chief Justice retired from active service on 11 October 2021 after a long and illustrious career of dedicated service to the country. This Report and the attendant culture of direct accountability is one of his many legacies. I take this opportunity to thank Chief Justice Mogoeng Mogoeng on behalf of the Judiciary of this country for his great leadership of the Judiciary over a period of ten years. I thank him, too, for the enormous contribution he made during his term of office as Chief Justice to the building of a strong, independent, effective and efficient Judiciary.

We have chosen today as our Judiciary Day for this year. We regard Judiciary Day as very important because it gives us an



opportunity to account to the public and we take accountability very seriously. We believe that, when we account to you, the people, our legitimacy as the Judiciary is enhanced and the trust you have placed in us is deepened. The basis for this belief is a clear understanding on our part as the Judiciary that the judicial power we have and exercise is derived from you the people who have given it to us through the Constitution. In this regard President Mandela had this to say to the first Judges of the Constitutional Court on the occasion of the inauguration of the Constitutional Court:

“Your tasks and responsibilities, as well as your power, come to you from the people through the Constitution. The people speak through the Constitution”

On Judiciary Day we come before the people of South Africa to account for how we have performed our judicial functions, to talk



about how many cases we have had, how many of those we have finalised, how long it has taken us to finalise them and what backlog there is in our courts.

Section 165(6) of the Constitution of the Republic of South Africa, 1996 read with Section 8(2) of the Superior Courts Act, 2013, provides that the Chief Justice is the Head of the Judiciary and exercises responsibility over the establishment and monitoring of the Norms and Standards for the exercise of judicial functions for all courts.

The Superior Courts Act stipulates that the management of the judicial functions of each court is the responsibility of the Head of that Court. The Judge President of a Division is also responsible for the co-ordination of the judicial functions of all Magistrates' Courts falling within the jurisdiction of that Division. The Heads of the various Courts will manage the judicial



functions and ensure that all Judicial Officers perform their judicial functions efficiently.

The Chief Justice and the Heads of Court have established subject-matter committees that evaluate and recommend strategies and guidelines on all aspects of judicial administration in order to fully prepare it for a Judiciary-led Court Administration. The Heads of Court designate and mandate Judges to serve on these committees. These committees are assigned to strategise on such matters such as judicial case flow management, Court performance reporting, digitisation, automation and technology and court efficiency on both a national and a provincial level.

Modernisation of the courts and digital transformation initiatives remain crucial for improving service delivery. As part of court modernisation, Court Online was partially implemented with the roll out of Case Lines at the Gauteng Division of the High Court.



The Judiciary was not spared from the impact of the COVID-19 pandemic on its operations, and had to quickly adapt to the new normal and switch from physical to virtual court proceedings and operations. We are grateful to the Office of the Chief Justice for managing this difficult transition as well as they have done under the trying circumstances of lockdown.

The 2020/21 Performance Plan for the Judiciary has been developed. It 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 mandates of the Judiciary.

The 2020/21 Performance Plan for the Judiciary sees the introduction of new performance indicators and targets, as determined by the Judiciary itself. These include the additional



indicators on the finalisation rate of applications and petitions in the Supreme Court of Appeal, the finalisation rate of appeals in the Labour Appeal Court and the introduction of new measures on the reduction of the percentage of criminal trial backlog cases.

The following legislative framework supported an accountability mechanism for the South African Judiciary:

- The Constitution
- The Superior Courts Act, 2013
- Norms and Standards for the performance of judicial functions
- Judicial Service Commission Act, 1994 and its Regulations
- Disclosure of Judges' Registrable Interests;
- Judges Remuneration and Conditions of Employment Act, 2001 and its Regulations; and
- The South African Judicial Education Institute Act, 2008.



It is important to note that as contemplated in section 8(3) of the Superior Courts Act, 2013, the Chief Justice may issue written protocols or directives, or give guidance or advice, to judicial officers:

- (a) in respect of norms and standards for the performance of the judicial functions as contemplated in subsection (6);
- (b) regarding any matter affecting the dignity, accessibility, effectiveness, efficiency or functioning of the courts.

The targets of finalized matters and the actual performance

Constitutional Court

The Constitutional Court had set for itself a target of 70% of finalized matters. It had 445 matters and finalized 273 of those. That was a 61% performance. Although it fell short of its target, there was a 10% increase in its caseload.



The Supreme Court of Appeal

The Supreme Court of Appeal had set for itself a target of 80% of finalized matters during the period under review. It had a total of 241 matters and it finalized 196 of those. That was an achievement of 81%. In regard to its applications or petitions it finalised 99%. It had a 1% over achievement in respect of finalized matters.

Divisions of the High Court.

The Divisions of the High Court had set for themselves the target of 75% of finalised criminal matters and they achieved 85%. The various Divisions of the High Court had a total of 11413 criminal cases and they finalised 9749 of those cases. That translated to 85%. That was a great achievement. They exceeded their target. They had set for themselves the target of 64% finalised civil matters. They had a total of 83 080 civil cases and finalised 69 908 of those cases. That translated to 84%. That means that the



Divisions of the High Court exceeded their target by 20%. That was a pleasing performance. They also set for themselves the target of reducing the percentage of criminal trial backlogs to 30%. They were not able to achieve this target but they reduced the percentage of criminal trial backlogs to 41%. They were 11% short of their target.

Specialist Courts

The Labour Court and the Labour Appeal Court had set for themselves the target of 58% finalised labour matters. They were unable to achieve that target but achieved 52%. They had 4168 cases and finalised 2188. The Land Claims Court had set for itself the target of 60% finalised matters. It had a total of 149 cases and finalised 108 of them. That translated to the achievement of 72%. That was 12 % above the target. The Competition Appeal Court had set for itself a target of 85% finalised matters. It had a total of 10 cases and it did all of them



and, therefore, achieved 100% which was 15% above the target it had set for itself. The Electoral Court had set for itself the target of 90% finalised matters. It received a total of 9 cases all which it did and, therefore, achieved 100% of finalised matters which was 10% above the target it had set for itself.

Reduction of criminal backlogs in the Divisions of the High Court

All the Divisions of the High Court had set for themselves the target of reducing the backlog of criminal trials to 30%. However, many of the Divisions failed to achieve that target. Only about three Divisions of the High Court managed to reduce the backlog of criminal trials.

Reserved judgments.

All Superior Courts had set for themselves the target of 70% finalised reserved judgments. They collectively exceeded this target by 8% and achieved 78% finalised reserved judgments.



The Superior Courts had 4526 reserved judgments and they delivered 3511 within three months.

The Leadership of the Magistracy for both the Regional Courts and District Courts identified and adopted performance indicators which will allow reporting on the Court Performance of the Magistrates' Courts. This was a significant step in ensuring that the Judiciary as a whole accounts to the public for its performance and also allows the Head of each Court to manage court and judicial performance to ensure the efficient and effective running of the courts. For the collection and collation of the performance information of the Magistrates' Courts the Judiciary relies on the Integrated Case Management System for the Department of Justice and Constitutional Development.

As a result of the well-known and most unfortunate system failure caused by an ICT security breach in the Department of



Justice and Correctional Services, the Leadership of the Magistracy resolved that the performance information for the reporting period should not be published. The Heads of the Superior Courts supported this decision as the accuracy of the performance information could not be tested.

Gender transformation in the Judiciary

We have made substantial progress in the gender transformation of the Judiciary but we have not reached the right level of representation of women in the Judiciary. At the end of the reporting period under review, the establishment for Judges comprised 234 Judges in active service. 44% of all Judges are women. The number of Magistrates in active service is 1726 of which 49% are women.

Judges Discharged from Active Service



Eleven (11) Judges were discharged from active service during the reporting period and no Judges resigned. No new appointments were made during the reporting period due to the fact that the Judicial Service Commission could not conduct interviews. This was as a result of the lockdown measures implemented as part of the declaration of the national state of disaster in response to the COVID-19 pandemic.

Judicial Education and Training

Continuous training and development of our Judiciary is essential and undertaken by the South African Judicial Education Institute. A total of 123 judicial education courses for Judicial Officers were conducted during the period under review, and the courses were attended by 3 297 delegates. Due to the country's lockdown and related regulations, the OCJ had to leverage new technologies by conducting some of these



educational courses virtually as a measure to ensure continued Judicial education.

Sadly 10 Judges passed away during the reporting period. We remember our departed colleagues and we thank them and their families for serving to the people of this country.

Gender-based violence

Before I conclude let me say something about gender-based violence:

Every year, during the Women's Month in August or during the 16 Days of Activism there is an incident that reminds us of how just horrific and dangerous this country is for women and children and that makes the promise and purpose of both these two periods feel depressingly hollow. This year it was the murder and



dismemberment of Nosiselo Mtebeni whose boyfriend murdered her after flying into rage because of texts he had seen on her phone. He believed the texts, which read “I love you” and “I miss you” were from another man. It wasn’t until weeks after his trial his started that he realised that these were texts he had sent her months before her brutal murder. In 2019, again in August, it was the shocking and terrifying murder of 19-year-old Uyinene Mrwetyana in broad daylight at a Post Office.

When the lockdown was implemented in March 2020 women’s advocacy groups raised the possible impact of having women and children locked into their homes with their abusers. Indeed, shortly after the lockdown began several Southern African countries noted a significant uptick in the frequency of domestic violence calls into hotlines and police stations as well as deaths



related to GBV¹. “A pandemic within a pandemic” as described by Mrs Graca Machel.² However, even those fears could not have predicted the report of the Gauteng Department of Health, also delivered during Women’s Month, that girls between the ages of 10 and 14 had given birth to 934 children between April 2020 and March 2021.³ Some of those pregnancies would have occurred during the lockdown when these children – of school-going age – were at home. These raises disturbing questions about who the fathers of those babies are and when and how these children fell pregnant. We must work much harder to implement agreed upon measures to deal with gender based violence – such as specialised Sexual Offences Courts and improve access to justice, resources and protective measures for vulnerable persons. However, this is not enough. The

¹ <https://www.amnesty.org/en/latest/press-release/2021/02/southern-africa-homes-become-dangerous-place-for-women-and-girls-during-covid19-lockdown/>

² <https://www.globalcitizen.org/en/content/graca-machel-quotes-gender-based-violence/>

³ <https://www.iol.co.za/the-star/news/girls-aged-between-10-and-14-gave-birth-to-934-babies-in-gauteng-mec-6a33eac4-fd15-42d2-8bf9-12e5e07f7fd2>



attitudes and views that create a culture that condones, normalises and justifies violence of any kind against women and children runs through the very fabric of South African society and cultures. In the same way that we will not defeat the COVID-19 pandemic in isolation and without working together, the Courts alone cannot defeat the scourge of gender-based violence. The Constitution envisions a different kind of thread that must run through our society – that of human dignity, the achievement of equality and the advancement of human rights and freedoms. Our democracy is not complete without these values. Until women and children can freely and fully be free from the forms of violence that strip them of their dignity, their equality and their human rights and freedoms – our democracy will not be complete.



Earlier on I made the point that as the Judiciary we understand very well that we derive the judicial power we have and exercise from the people through the Constitution. On Friday last week our Constitution turned 25 years old since it was signed on the 10th December 1996. It is this Constitution that, in section 16, provides as follows:

“(1) The judicial authority of the Republic is vested in the courts.

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

Our Courts are the guardians of our Constitution. I believe that over the past 25 years our courts have done very well in the performance of their role as the guardians of the Constitution. This has sometimes attracted serious attacks against the Judiciary. Over the past 25 years there have been storms that



the Judiciary has gone through but it has managed to continue to play its role to protect and uphold the Constitution and the rights contained in the Bill of Rights. We do not know for certain how the next 25 years will be but there is one thing we know. It is that the Courts and the Judiciary must continue to protect our constitutional democracy for the next 25 years and beyond. In this regard I am reminded of what President Mandela said about the Constitutional Court and our democracy on the occasion of the inauguration of the Constitutional Court on the 14th February 1995. President Mandela had this to say about the Constitutional Court and democracy:

“The last time I appeared in court was to hear whether or not I was going to be sentenced to death. Fortunately for myself and my colleagues we were not. Today I rise not as an accused but, on behalf of the people of South Africa, to



inaugurate a court South Africa has never had, a court on which hinges the future of our democracy.”

It has been an honour to present this report to the citizens of the country today.

Thank you.

