



JUDICIAL SERVICE COMMISSION
ANNUAL REPORT 2018/19



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

ANNUAL REPORT 2018/19 FINANCIAL YEAR

JUDICIAL SERVICE COMMISSION

JUDICIAL SERVICE COMMISSION ANNUAL REPORT 2018/19



I have the pleasure to present the following report on the activities of the Judicial Service Commission for the financial year which ended on 31 March 2019 in terms of Section 6 of the Judicial Service Commission Act, 1994 as amended.

A handwritten signature in black ink, appearing to read 'Mogoeng', written over a horizontal line.

Mogoeng Mogoeng
Chief Justice of the Republic of South Africa
Chairperson of the Judicial Service Commission

The Honorable Speaker of the National Assembly, Ms Thandi Modise, MP and the Honourable Chairperson of the National Council of Provinces, Mr Amos Masondo, MP.

This report is prepared in compliance with section 6(1) and (2) of the Judicial Service Commission Act, 1994, which provides that the Commission shall within 6 months after the end of every year submit a written report to Parliament for tabling. The report is required to include information relating to the: (1) activities of the Commission during the year in question; (2) section 8 matters that the Judicial Conduct Committee dealt with on behalf of by the Commission; (3) all matters relating to, including the degree of compliance with, the Register of Judges' Registrable Interests as reported by the Registrar of Judges Registrable Interests; and (4) all matters considered by the Commission regarding the Judicial Conduct Committee and Judicial Conduct Tribunal. That includes the number of matters outstanding and progress in relation thereof.

TABLE CONTENTS

1.	Foreword by the Chief Justice	5
2.	Functions and Legal Mandate of the Commission	7
3.	Composition of the Commission	8
3.1.	Committees of the Commission	9
3.2.	Secretariat of the Commission	9
4.	Report on the Activities of the Commission	9
4.1.	Meetings of the Commission	9
4.2.	Appointment of Judges	10
4.3.	Judges Appointed During the Period 1 April 2018 to 31 March 2019	10
5.	Report on the Activities of the Judicial Conduct Committee	15
5.1.	Composition of the Judicial Conduct Committee	15
5.2.	Meetings of the Committee	15
5.3.	Consideration of Complaints by the Committee	16
5.4.	Meetings of the Judicial Conduct Tribunals	17
6.	Report on the Register of Judges' Registrable Interests	19
7.	Report on Other Matters	20
7.1.	Litigation against the Commission	20
7.2.	Budget of the Commission	21
8.	Conclusion	22



FOREWORD BY THE CHIEF JUSTICE



Before the advent of our democracy, Judges were appointed by the President after consultation with the Minister of Justice applying a criterion that was not known to the public. In order to bring about a credible and transparent process in the appointment of Judges, the founding mothers and fathers of our Constitution, in their wisdom, (which I must add was visionary) provided for the establishment of the Judicial Service Commission (Commission). The Commission was mandated to interview and recommend candidates to the President for appointment. In fulfilling its mandate, the Commission is faced with the important constitutional imperative provided for in section 174(2) of the Constitution, that the Judiciary should reflect broadly the racial and gender composition of South Africa.

I should point out at the outset that judicial transformation has been remarkable, particularly when looking at the road that we have traversed. We seem to take it for granted that in 1994, during the advent of our democracy, there were 165 Judges of which 160 were white males, three black men and two white women. There was no black woman Judge in 1994. Today, the Judiciary comprises 251 Judges across the country, of which, 98 are black men, 68 black women, 56 white males and 29 white females. More still needs to be done.

Despite this remarkable achievements, and in realisation that more still needs to be done, transformation of the Judiciary remains high on the Commission's agenda.

There is no doubt that we must continue on our path to transform the Judiciary until the constitutional ideal espoused in section 174(2) of the Constitution becomes a reality. With this in mind it is no surprise that during the year under review, out of the 19 candidates that the Commission recommended and subsequently appointed by the President, 10 (ten) of these candidates are women and 9 (nine) are black males.

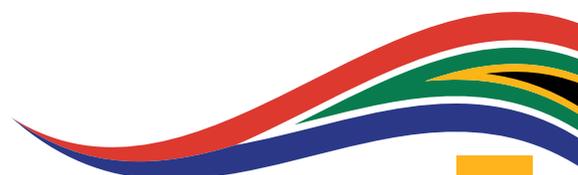
During the period under review, the Commission had an opportunity to welcome Judge President Leeuw, the Judge President of the North West Division of the High Court who was designated by the Judges President as their representative in the Commission in accordance with the provisions of section 178(1) (c) of the Constitution. She replaced Judge President Hlophe of the Western Cape Division of the High Court. In the same breath, the Commission bid farewell to Dr Motshekga following his redeployment from the Portfolio Committee on Justice and Correctional Services. On behalf of the Commission, I take this opportunity to thank both Judge President Hlophe and Commissioner Motshekga for their valuable and meaningful contribution to the work of the Commission.

I wish to thank my fellow Commissioners and the staff of the Commission who have been diligent in enabling the Commission to carry out their important mandate of recommending for appointment, men and women of ability and integrity to the Bench.

I am confident that this report will give insight into the activities of the Commission for the past year.

A handwritten signature in black ink, appearing to read 'Mogoeng Mogoeng', written over a horizontal line.

Mogoeng Mogoeng
Chief Justice of the Republic of South Africa
Chairperson of the Judicial Service Commission





REPORT OF THE JUDICIAL SERVICE COMMISSION





This is a report on the activities of the Judicial Service Commission for the period 01 April 2018 to 31 March 2019.

2 FUNCTIONS AND LEGAL MANDATE OF THE COMMISSION

The Commission is a constitutional body established in terms of section 178 of the Constitution of the Republic of South Africa, 1996. The terms and conditions of office of the members of the Commission are governed by the Judicial Service Commission Act, 1994 as amended (hereinafter referred to as the JSC Act). The primary functions of the Commission are to:

(a) Interview candidates for judicial positions and make recommendations for appointment to the bench;

- (b) Deal with complaints brought against the Judges;
- (c) Manage the Register of Judges' Registrable interests; and
- (d) Advise national government on matters relating to the Judiciary.

3 COMPOSITION OF THE COMMISSION

The Commission comprises of 23 members appointed as follows:

Section of the Constitution under which designated	Member of the Commission's Name
Section 178(1)(a), Chief Justice of the Republic of South Africa.	Justice M T R Mogoeng, Chairperson of the Commission
Section 178(1)(b) of the Constitution, the President of the Supreme Court of Appeal.	Madam Justice M M Maya
Section 178(1)(c) of the Constitution, a Judge President designated by the Judges President.	Madam Justice M M Leeuw
Section 178(1)(d) of the Constitution, the Cabinet Minister responsible for the administration of Justice.	Honourable T M Masutha (Adv), MP
Section 178(1)(e) of the Constitution, two practising advocates nominated from within the advocates' profession and appointed by the President.	Adv D Mpofu SC Adv J Cane SC
Section 178(1)(f) of the Constitution, two practising attorneys nominated from within the attorneys' profession and appointed by the President.	Mr. M Notyesi Mr. C P Fourie
Section 178 (1)(g) of the Constitution, a teacher of law designated by the teachers of law at South African universities.	Prof N Ntlama
Section 178(1)(h) of the Constitution, six persons designated by the National Assembly from among its members.	Dr M S Motshekga, MP Ms A T Didiza, MP Ms D P Magadzi, MP Mr H C Schmidt, MP Mr J S Malema, MP Mr N Singh, MP
Section 178(1)(i) of the Constitution, four permanent delegates to the National Council of Provinces designated by the Council.	Ms T R Modise, MP Ms T K Mampuru, MP Mr D Stock, MP Mr A J Nyambi, MP
Section 178(1)(j) of the Constitution, four persons designated by the President as head of the national executive.	Adv T Norman SC Adv L Nkosi-Thomas SC Adv T Masuku SC Mr S Msomi

3.1 COMMITTEES OF THE COMMISSION

The Commission has established the following Committees to enable it to discharge its constitutional and legislative mandate more efficiently:

3.1.1 Sifting Committee

The Sifting Committee is responsible for compiling a shortlist of candidates to be interviewed by the Commission at its sittings. It is composed of the following members of the Commission:

- (i) President M M Maya: the Convenor of the Committee;
- (ii) Adv T Norman SC;
- (iii) Adv L Nkosi- Thomas SC;
- (iv) Adv J Cane SC;
- (v) Mr C P Fourie;
- (vi) Mr A J Nyambi, MP; and
- (vii) Prof N Ntlama.

3.1.2 Litigation Committee

The Litigation Committee is responsible for ensuring that all litigation pursued by and against the Commission is handled properly. Its members are:

- (i) Adv T Norman SC: Convenor of the Committee;
- (ii) Adv T Masuku SC;
- (iii) Mr S Msomi; and
- (iv) Prof N Ntlama.

3.1.3 Rules Committee

The Rules Committee is responsible for ensuring that the rules and procedures of the Commission are up to date. The following are its members:

- (i) Adv D Mpofu SC;
- (ii) Adv J Cane SC;
- (iii) Adv T Norman SC;
- (iv) Ms T A Didiza, MP; and
- (v) Mr H Schmidt, MP

3.2 SECRETARIAT OF THE COMMISSION

Section 37 of the JSC Act makes provision for the assignment of a number of personnel within the Office of the Chief Justice, one of whom must be designated as the Secretary of the Commission, to provide administrative support to the Commission.

The Secretariat of the Commission is required to:

- (a) provide secretarial and administrative support to the Commission;
- (b) cause all records of matters dealt with by the Commission to be safeguarded;
- (c) maintain a register of all complaints dealt with by the Judicial Conduct Committee; and
- (d) perform such secretarial and administrative tasks related to the work of the Commission, Committee or any Tribunal, as may from time to time be directed by the Chief Justice.

The Secretariat is made up of the following officials:

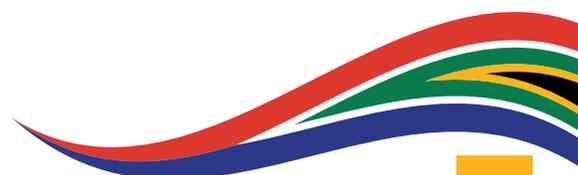
- (i) Mr S Chiloane: Secretary of the Commission;
- (ii) Ms L Bios: Senior State Law Adviser;
- (iii) Ms M Mondlane: State Law Adviser;
- (iv) Ms T Phaahlamohlaka: Administrative Officer; and
- (v) Ms T Ramonyai, Personal Assistant.

4 REPORT ON THE ACTIVITIES OF THE COMMISSION

4.1 MEETINGS OF THE COMMISSION

During 2018, the full Commission met on two occasions: 09 to 12 April 2018 at the Headquarters of the Office of the Chief Justice, Midrand and on 01 – 02 October 2018 again at the Office of the Chief Justice. These meetings were convened as part of the Commission's bi-annual sittings to receive a briefing from both the Chief Justice and the Minister about matters that affect the courts, to address issues that affect the Commission and to interview and recommend candidates for vacancies that arose in the Superior Courts.

The Commission, sitting without members designated in terms of sections 178(1)(h) and 178(1)(i) of the Constitution, met on 02 June 2018 at the Headquarters of the Office of the Chief Justice to consider the report of the Judicial Conduct Tribunal (Tribunal) established to deal with complaints lodged against Judge Motata.



4.2 APPOINTMENT OF JUDGES

In terms of section 174(6) of the Constitution, the President must appoint Judges of all courts, with the exception of the Constitutional Court, on the advice of the Commission. In the case of Judges of the Constitutional Court, the Commission is required to submit to the President a list of nominees with three names more than the number of appointments to be made, whereafter the Judges are appointed from the list by the President, as head of the national executive, after consulting the Chief Justice

and the leaders of parties represented in the National Assembly.

During the period to which this report relates, the Commission advised the President, with respect to vacancies that occurred during the year under review as follows:

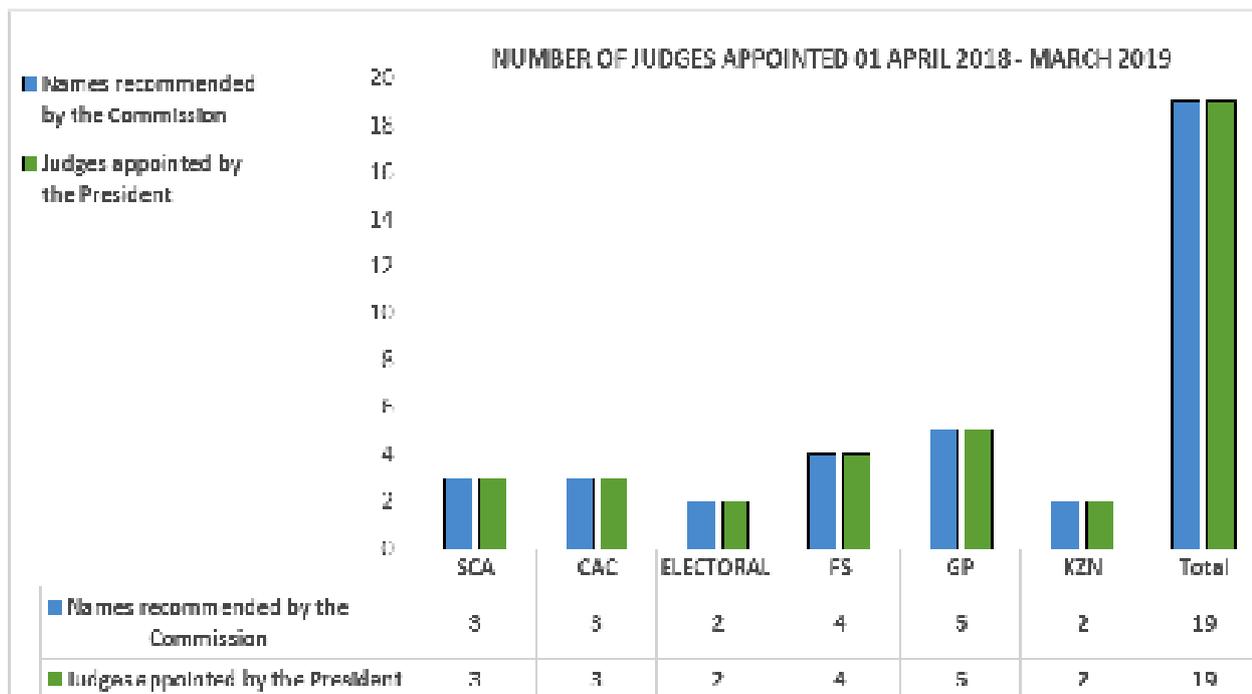
4.3 JUDGES APPOINTED DURING THE PERIOD 1 APRIL 2018 - 31 MARCH 2019

Court and Position	Names recommended by the Commission	Judges appointed by the President
Supreme Court of Appeal Judges (3)	Judge Tati Moffat Makgoka Judge President Mahube Betty Molemela Judge Ashton Schippers	Judge Tati Moffat Makgoka Judge President Mahube Betty Molemela Judge Ashton Schippers
Competition Appeal Court Judges (3)	Judge Bhekisisa Jerome Mnguni Judge Bashier Vally Judge Margaret Victor	Judge Bhekisisa Jerome Mnguni Judge Bashier Vally Judge Margaret Victor
Electoral Court Chairperson	Judge Henry Boissie Mbha	Judge Henry Boissie Mbha
Member of the Electoral Court	Ms Sungaree Pather	Ms Sungaree Pather
Free State Division of the High Court Judges President Judges (4)	Acting Judge President John Cagney Musi Ms Sharon Chesiwe Mr Pitso Ephraim Molitsoane Ms Mareena Opperman	Acting Judge President John Cagney Musi Ms Sharon Chesiwe Mr Pitso Ephraim Molitsoane Ms Mareena Opperman
Gauteng Division of the High Court Judges (5)	Adv Evette Fiona Dippenaar SC Ms Selemeng Nthabiseng Iris Mokose Mr Mokhine Jonas Mosopa Adv Brenda Neukircher SC Adv Seená Yacoob SC	Adv Evette Fiona Dippenaar SC Ms Selemeng Nthabiseng Iris Mokose Mr Mokhine Jonas Mosopa Adv Brenda Neukircher SC Adv Seená Yacoob SC
KwaZulu-Natal Division of the High Court Judges (2)	Ms Khosi Qondeni Hadebe Mr Sidwell Bongani Mngadi	Ms Khosi Qondeni Hadebe Mr Sidwell Bongani Mngadi

During the period under review, there were 21 vacancies in the Superior Courts for which the Commission had to interview and recommend candidates to the President for appointment as Judges. Of these 21 vacancies, the

Commission was only able to recommend 19 candidates and the President appointed them. The Commission could not recommend candidates to fill the other two vacancies which were in the Electoral Court.

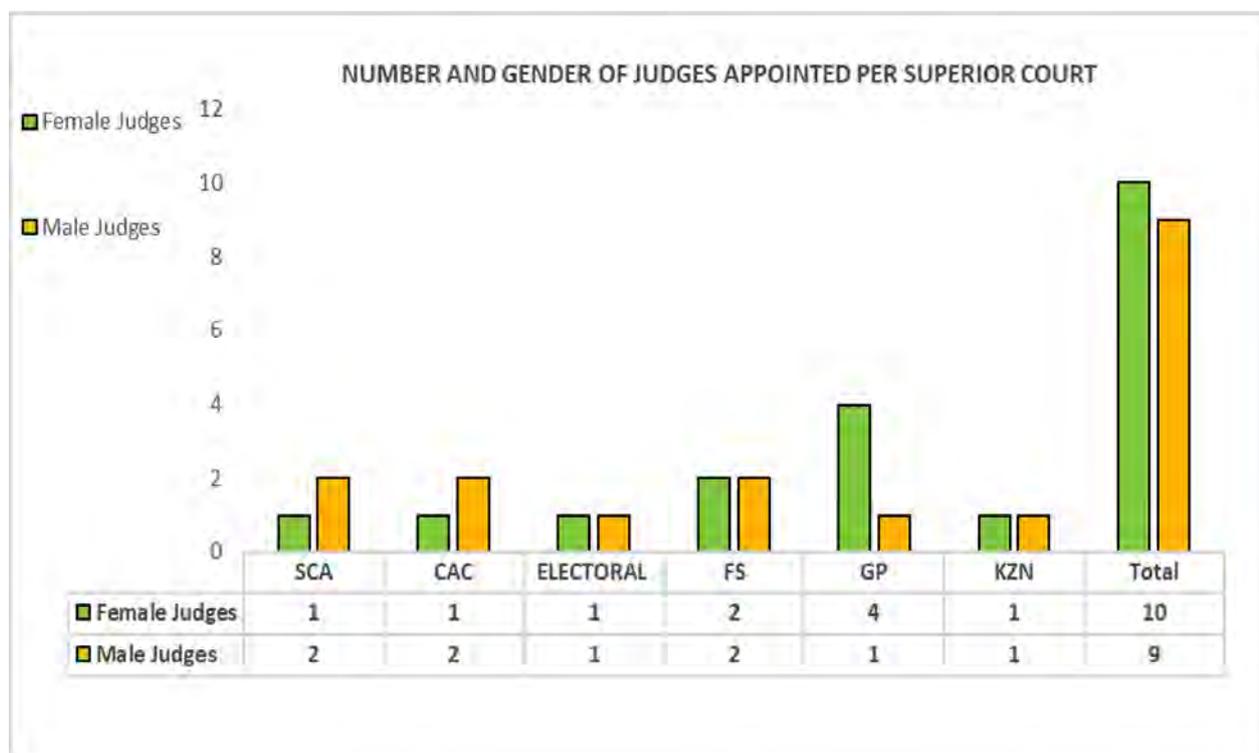
GRAPH ILLUSTRATING THE JUDGES RECOMMENDED BY THE COMMISSION AND THOSE APPOINTED BY THE PRESIDENT



NUMBER OF JUDGES APPOINTED DURING THE PERIOD 01 APRIL 2018 TO 31 MARCH 2019 SPECIFYING GENDER AND RACE

Court	Number of Judges recommended by the Commission	Number of Judges appointed by the President	Number of Females & Race	Number of Males & Race
Supreme Court of Appeal	3	3	1 (African)	1 (African) 1 (Coloured)
Competition Appeal Court	3	3	1 (White)	1 (African) 1 (Indian Origin)
Electoral Court	2	2	1 (Indian Origin)	1 (African)
Free State Division of the High Court	4	4	1 (African) 1 (White)	1 (African) 1 (Coloured)
Gauteng Division of the High Court	5	5	1 (African) 2 (White) 1 (Indian)	1 (African)
KwaZulu-Natal Division of the High Court	2	2	1 (African)	1 (African)
Total	19	19	10	9

GRAPH ILLUSTRATING NUMBERS AND GENDER OF JUDGES APPOINTED DURING THE PERIOD 01 APRIL 2018 – 31 MARCH 2019



35

HIGH C
HOOGG
INKUNDL

HIGH COURT
HOOGGEREGSHOF
INKUNDLA EPHAKAMILEYO

HIGH COURT
HOOGGEREGSHOF
INKUNDLA EPHAKAMILEYO

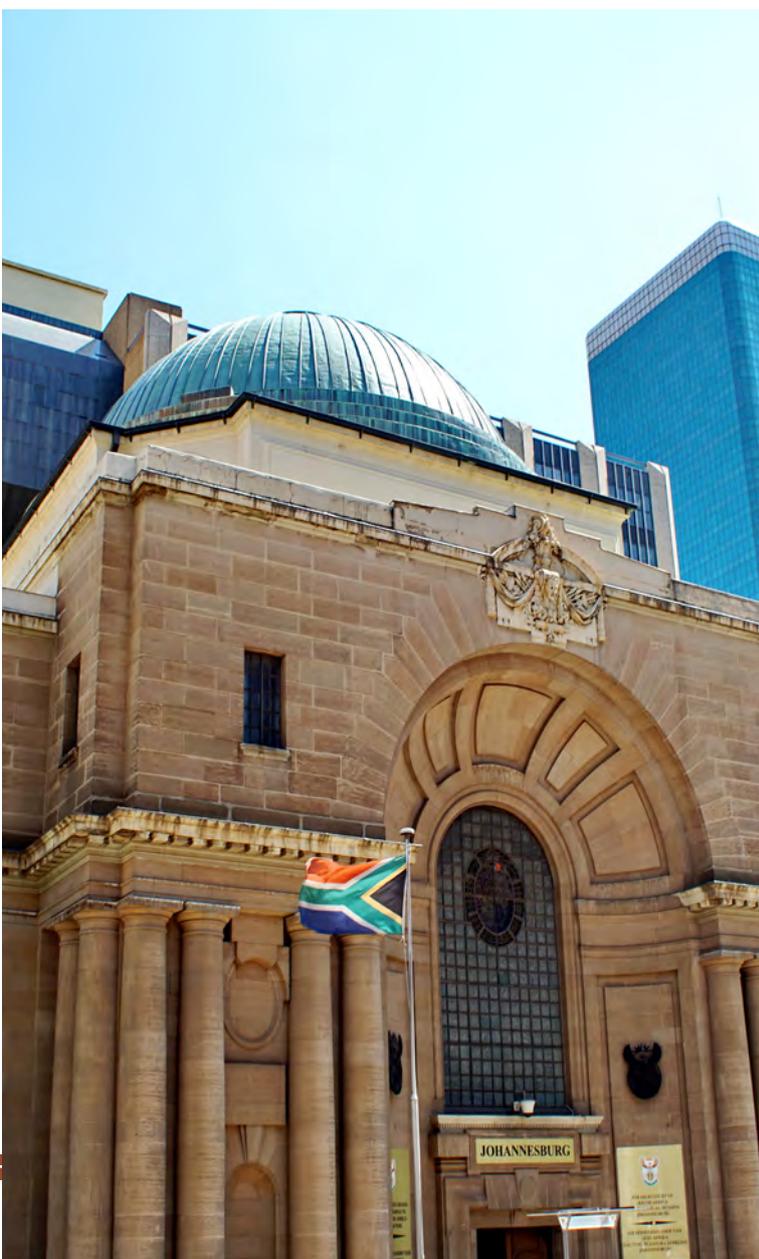
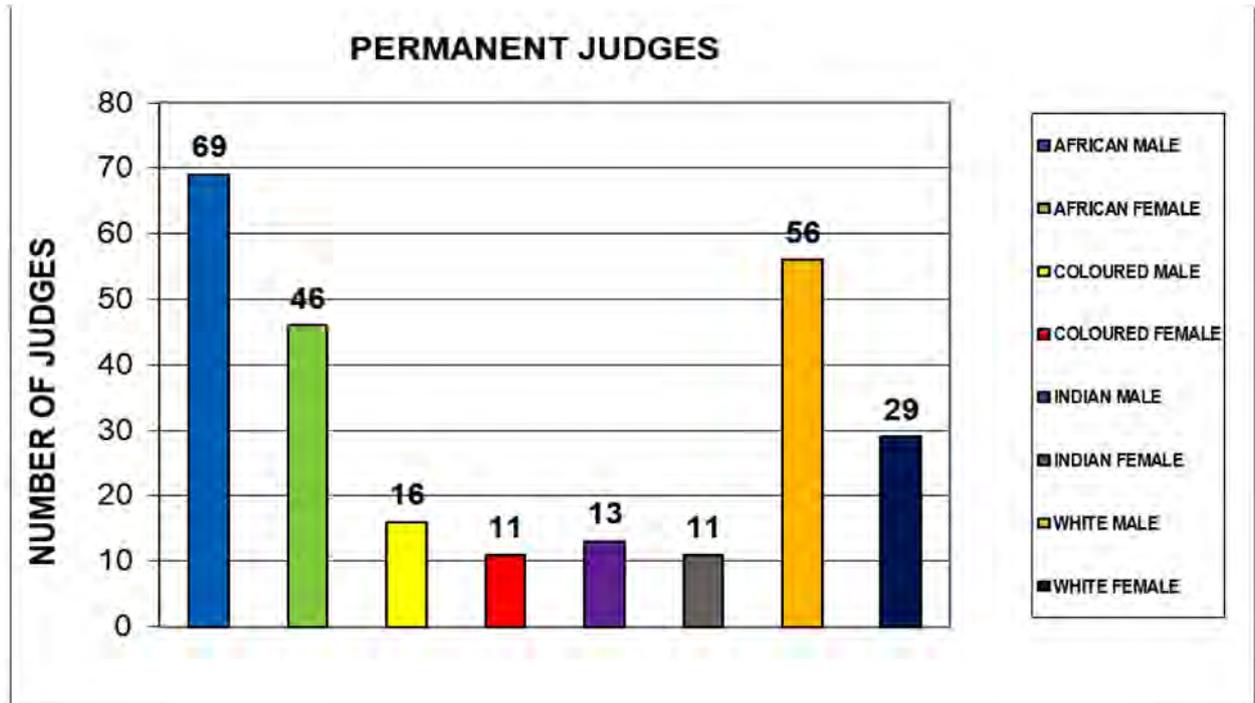


Following the two sittings of the Commission during the reporting period, the Judiciary as on 31 March 2019 comprised 251 Judges, of which 69 were African males, 46 African females, 16 Coloured males, 11 Coloured females, 13 males of Indian origin, 11 females of Indian origin, 56 White males and 29 white females.

The table below illustrates the breakdown of the Judges in terms of race per Court:

DIVISIONS	AFRICAN		COLOURED		INDIAN		WHITE		TOTAL
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
Constitutional Court	4	2	-	1	-	-	2	-	9
Supreme Court of Appeal	6	5	2	-	3	1	4	1	22
Northern Cape Division, Kimberley	1	3	-	1	-	-	1	-	6
Eastern Cape Division, Grahamstown	3	1	1	-	-	-	4	1	10
Eastern Cape Local Division, Port Elizabeth	1	-	-	-	-	-	2	2	5
Eastern Cape Local Division, Bhisho	1	-	-	-	-	-	1	2	4
Eastern Cape Local Division, Mthatha	2	2	-	-	-	1	2	-	7
Western Cape Division, Cape Town	5	3	6	5	2	1	7	3	32
North West Division, Mahikeng	1	3	1	-	-	1	-	-	6
Free State Division, Bloemfontein	5	2	1	-	-	1	3	3	15
Gauteng Division, Pretoria	14	10	-	2	3	-	11	8	48
Gauteng Local Division, Johannesburg	9	5	3	-	2	2	7	6	34
Limpopo Local Division, Thohoyandou	3	-	-	-	-	-	-	-	3
Limpopo Division, Polokwane	3	2	-	-	-	-	1	-	6
Mpumalanga Division, Mbombela	1	-	-	-	-	-	-	-	1
KwaZulu-Natal Division, Pietermaritzburg	3	3	1	-	2	1	6	-	16
KwaZulu-Natal Local Division, Durban	4	2	1	1	1	3	1	1	14
Labour and Labour Appeal Court	3	3	-	1	-	-	4	2	13
TOTAL	69	46	16	11	13	11	56	29	251

GRAPH ILLUSTRATING PERMANENT JUDGES DURING THE PERIOD UNDER REVIEW



5

REPORT ON THE ACTIVITIES OF THE JUDICIAL CONDUCT COMMITTEE

Section 8 of the JSC Act provides for the establishment of the Judicial Conduct Committee to receive, consider and deal with complaints against Judges.

5.1 COMPOSITION OF THE JUDICIAL CONDUCT COMMITTEE

Section 8 of the JSC Act provides for the establishment and composition of the Committee, comprising of the Chief Justice, Deputy Chief Justice, and four other Judges, two of whom should be women. During the period under review, the four Judges designated by the Chief Justice, after consultation with the Minister of Justice and Correctional Services were:

- (a) Justice V Ponnar;
- (b) Judge President M B Molemela;
- (c) Deputy Judge President P Goliath; and
- (d) Deputy Judge President P Mojapelo.

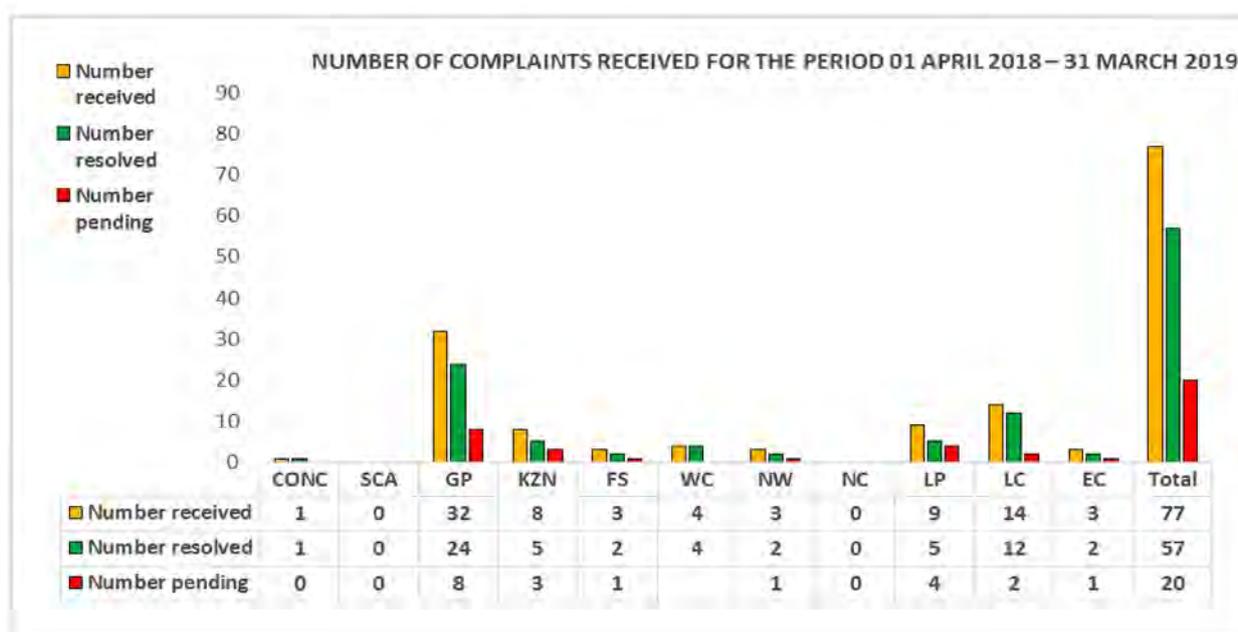
5.2 MEETINGS OF THE COMMITTEE

Section 9(1) of the JSC Act provides for the meetings of the Committee to be determined by the Chairperson. During the period under review, the Committee met on three occasions, 28 May 2018, 27 October 2018 and on 25 January 2019.

COMPLAINTS RECEIVED FROM 01 APRIL 2018 – 31 MARCH 2019

COURT	NUMBER RECEIVED	NUMBER RESOLVED	NUMBER PENDING
Constitutional Court	1	1	0
Supreme Court of Appeal	0	0	0
Gauteng Division of the High Court (Pretoria and Johannesburg)	32	24	8
KwaZulu–Natal Division of the High Court (Pietermaritzburg and Durban)	8	5	3
Free State Division of the High Court	3	2	1
Western Cape Division of the High Court	4	4	0
North West Division of the High Court	3	2	1
Northern Cape Division of the High Court	0	0	0
Limpopo Division of the High Court (Polokwane and Thohoyandou)	9	5	4
Labour Court & Labour Appeal Court (Johannesburg, Port Elizabeth, Durban & Cape Town)	14	12	2
Eastern Cape Local Divisions (Bhisho, Grahamstown, Mthatha & Port Elizabeth)	3	2	1
Total:	77	57	20

GRAPH ILLUSTRATING NUMBER OF COMPLAINTS RECEIVED



For the period under review, the Committee received 77 complaints lodged against Judges. Of this number, 57 complaints were resolved while 20 are still pending. In 2017/18 financial year, the Committee dealt with 90 complaints, of which 71 were finalised while 19 were outstanding. A large number of complaints are against Judges of the Gauteng Division of the High Court. These complaints mostly relate to litigants who are aggrieved by an order or judgment of the court which the Committee invariably has to dismiss in terms of section 15(2)(c) of the JSC Act. The same sentiment can be expressed about the Labour Court which has the second highest number of complaints.

5.4 MEETINGS OF THE JUDICIAL CONDUCT TRIBUNALS

Section 19 of the Act provides for the Commission to request the Chief Justice to appoint a Judicial Conduct Tribunal on account of a recommendation by the Committee or where there are reasonable grounds that a Judge is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct. During the period under review the following Tribunals had their meetings:

5.4.1 Tribunal on Reserved Judgments

The Tribunal established to investigate and report on complaints lodged against Judges Mavundla, Poswa, Preller and Webster had its meeting on 22 June 2018 to discuss the way forward regarding the Tribunal hearings. At this meeting, the Tribunal resolved to commence with hearings on 18 to 21 September 2018. The Tribunal duly commenced with hearings with Judges Mavundla and Preller completing their evidence before the Tribunal. The hearing relating to Judge Poswa was postponed to 05 to 06 December 2018 as he requested for more time to prepare for the Tribunal. He duly appeared on these abovementioned days wherein the Tribunal concluded the hearings. The Tribunal was unable to hear Judge Webster due to his ill health. His matter was postponed indefinitely. It is envisaged that the Tribunal will submit its report to the Commission in the new financial year commencing, April 2019.

5.4.2 Tribunal on Judge Motata

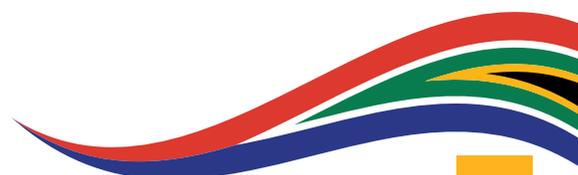
With regard to the Tribunal established to deal with complaints lodged against Judge Motata, the Tribunal President Judge President Jappie of the KwaZulu-Natal Division of the High Court, submitted the Tribunal's

report and a copy of the record, on 12 April 2018 to the Commission as required by the provisions of section 33 of the JSC Act. In its report, the Tribunal found that Judge Motata's conduct at the scene of the accident and the remarks he made were racist and thus impinge on and were prejudicial to the impartiality and dignity of the courts. Similarly the lack of integrity in the manner in which Judge Motata allowed his defence to be conducted at his trial was incompatible with or unbecoming of the holding of judicial office. As a result of these findings, the Tribunal recommended that the Commission should invoke the provisions of section 177(1)(a) of the Constitution, thereby commence with the impeachment process.

As required by section 20 of the JSC Act, Judge Motata and the complainants were informed of the Tribunal's recommendation and were also requested to make written submissions, if any, to be considered by the Commission at its meeting. The Commission resolved to convene a special sitting on 02 June 2018 to consider the Tribunal's findings, the record, the submissions and make a finding as to whether Judge Motata has rendered himself guilty of gross misconduct as envisaged in section 177(1)(a) of the Constitution. Following deliberations, the Commission, at this meeting resolved to establish a Sub-Committee to consider the report as well as all the submissions and make a recommendation to the Commission. The Commission will finalise this matter in the 2019/20 financial year.

5.4.3 Tribunal on Judge President Hlophe

The Tribunal established to consider the complaints lodged by the Justices of the Constitutional Court against Judge President Hlophe commenced with hearings on 02 July 2018. At this hearing, the legal representatives of Judge President Hlophe informed the Tribunal President of their intention to submit an application for the recusal of one of the Tribunal members, Deputy Judge President Musi. Upon receiving the notification of the intended recusal application, Deputy Judge President Musi decided to recuse himself from the Tribunal. This therefore meant that the Tribunal could not quorate and the Tribunal President postponed the Tribunal *sine die* with the intention to request the Chief Justice to appoint a new member of the Tribunal. The Chief Justice duly appointed a new member and the Tribunal is envisaged to meet in the new financial year.





JUSTICE JATTA

JUSTICE VAN DER WESTHULZEN

JUSTICE CAPERDI

JUSTICE SHIEMVUA

DEPUTY CHIEF JUSTICE PHELEKA

REPORT ON THE REGISTER OF JUDGES' REGISTRABLE INTERESTS

Section 13(3) of the Judicial Service Commission Act requires every Judge to disclose to the Registrar particulars of all his or her registrable interests and those of her or his immediate family members where applicable. The first disclosure must be within 60 days of the date fixed by the President by proclamation, thereafter annually and in such instances as prescribed. This, the President did, by Proclamation in which the commencement of the 60 days was fixed at 29 January 2014.

Regulation 3 of the Regulations requires newly appointed Judges to disclose their registrable interests within 30 days of their appointment as Judges. During the period under review, a total of eleven (11) Judges were appointed and they all disclosed their registrable interests within the time prescribed by the Regulations.

6.1 JUDGES IN ACTIVE SERVICE

After making the first disclosure, a Judge may at any time disclose to the Registrar or inform the Registrar of such amendments as may be required in terms of Regulation 3(4).

However, in March of every year, each Judge in active service must inform the Registrar in writing whether the entries in the Register are an accurate reflection of his or her registrable interest and if applicable make such further disclosures or amendments as may be necessary.

By 31 March 2019, there was a grand total of 251 Judges in active service and of this number 241 had disclosed their interests. A total of 10 Judges did not disclose their interests with one Judge unable to do so due to ill health. The 10 Judges were subjected to the provisions of Regulation 3(6) which empowers the Registrar to invite the Judges who failed to disclose to comply within a period of 30 days to which all of them complied with the requirements to disclose.





7.1 LITIGATION AGAINST THE COMMISSION

During the 2018/2019 financial year, the following matters were still pending in the courts.

7.1.1 Helen Suzman Foundation v Judicial Service Commission

The Helen Suzman Foundation (HSF) is contending that the Commission's decision to advise the President to appoint 5 candidates to the Western Cape Division and not to appoint 3 candidates, during its October 2012 sitting as unlawful and/or irrational and invalid. In the alternative, the HSF seeks an order declaring that the process followed by the Commission before making the aforesaid decision was unlawful and/or irrational and invalid.

The Commission is opposing the matter and Counsel has been appointed to act on behalf of the Commission. Following the filing of the Commission's answering affidavit, the HSF requested that the transcripts of the Commission's deliberations of the interviews held in October 2012 should be made available as part of the record. During its October 2013 sitting, the Commission resolved against including the record and the HSF approached the Western Cape Division of the High Court for an order compelling the Commission to include the transcripts as part of the record. The interlocutory application to compel the Commission was heard by the Western Cape High Court on 8 August 2014.

On 05 September 2014, the Western Cape Division of the High Court as per Le Grange J dismissed the application holding that the knowledge that the full record of the deliberations might include extremely frank remarks and opinions of senior members of the Judiciary and the Executive as to the candidate's competence or otherwise would be made public, could deter potential candidates from accepting nominations for appointment. The Court then concluded that the HSF was not entitled to the full recordings of the deliberations. The HSF launched an application for leave to appeal against the decision by Le Grange J. On 30 October 2014, the application for leave to appeal was dismissed by Le Grange J stating that there were no prospects of success on appeal.

On 21 November 2014, the HSF petitioned the Supreme Court of Appeal seeking leave to appeal against the decision of the Western Cape Division of the High Court. On 09 February 2015, the Supreme Court of Appeal (SCA) as per Shongwe JA and Gorven AJA granted the applicants leave to appeal.

The application was heard by a panel of 5 Justices on 05 May 2016 and judgment was delivered on 02 November 2016 in which the SCA dismissed the HSF's appeal concluding that the Commission is set apart from other administrative bodies by its unique features which provide sufficient safeguards against arbitrary and irrational decisions. The SCA held that the relief sought by the HSF would undermine the Commission's constitutional and legislative imperatives by, *inter alia*, stifling the rigour and candour of the deliberations, deterring potential applicants, harming the dignity and privacy of candidates who applied with the expectation of confidentiality of the deliberations and generally hamper effective judicial selection.

The HSF lodged an application for leave to appeal with the Constitutional Court. The appeal was heard by the Constitutional Court on 31 August 2017. Judgment was delivered on 24 April 2018 in which the Court ordered the Commission to deliver a full record of the proceedings sought to be reviewed by the Helen Suzman Foundation. In doing so the Constitutional Court reversed the decisions made by the High Court and Supreme Court of Appeal. In compliance with the Constitutional Court's order, the Commission caused the Office of the State Attorney to deliver the record to the HSF.

The date of hearing of the merits of HSF's main application will be determined in due course.

7.1.2 Snail v Judicial Service Commission and Others

Mr Snail launched an application in the Gauteng Division of the High Court for an order, amongst others, declaring section 14(2) of the JSC Act, to be inconsistent with the Constitution and also to review and set aside the decisions of the Judicial Conduct Committee dismissing his complaints lodged in terms of section 14 of the JSC Act. The matter was set down for hearing in the Gauteng Division of the High Court but Mr Snail has since requested that the matter be stayed as he was not ready to proceed.

7.1.3 Limpopo Legal Solutions v Judicial Service Commission and Others

Limpopo Legal Solutions is seeking an order declaring the Commission's decision to advise the President to appoint Judge Makgoba as Judge President of the Limpopo Division of the High Court despite pending complaints that were lodged with the Commission, to be unconstitutional, unlawful or irregular. In the alternative,

Limpopo Legal Solutions seeks an order declaring the process followed by the Commission which culminated in the recommendation and appointment of Judge President Makgoba as irrational and unconstitutional.

The Commission is defending this matter and filed its answering affidavit as well as the record. Limpopo Legal Solutions has taken issue with the record and served the JSC with a notice to compel which is opposed by the Commission.

The Commission has written to the applicant to paginate the documents and file his heads of argument so that the matter could be ripe for hearing.

7.2 BUDGET OF THE COMMISSION

The Commission was allocated a total budget of R11 811 million in the 2018/19 financial year. The total budget allocation for the Commission consists of R3 486 million for compensation of employees, R8 325 million for goods and services with a zero budget for purchase of capital assets. During the Adjusted Estimates of National Expenditure (AENE) process, fund shifts were implemented between economic classifications and the budget was decreased to R8 280 million.

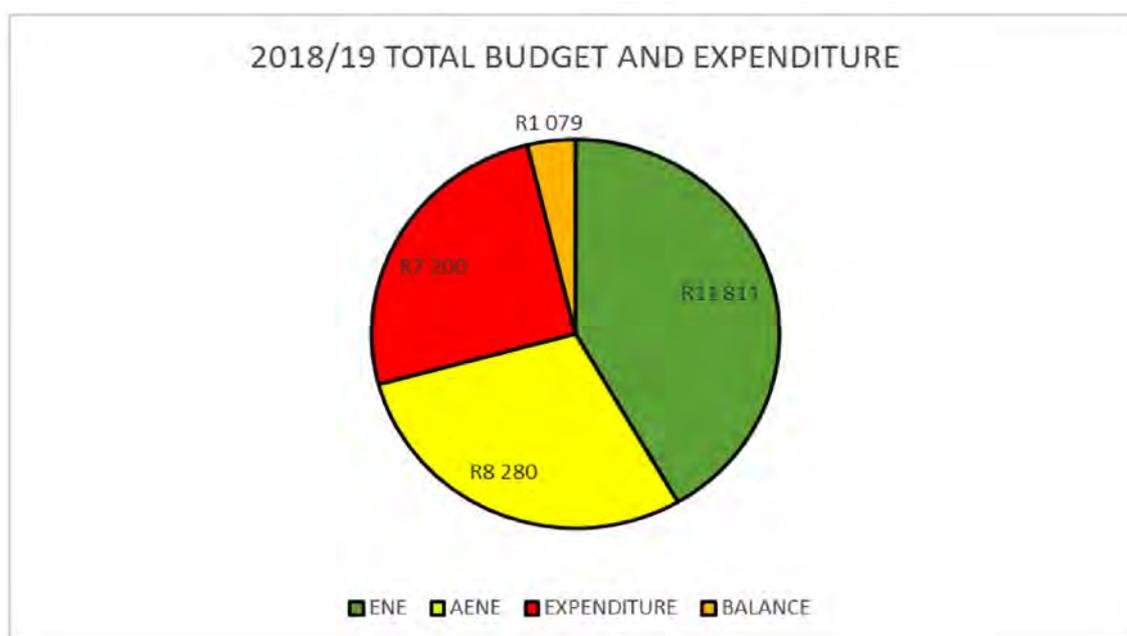
The total expenditure at the end of the financial year is R7 200 million which is 87% of total allocated budget during AENE. The savings in the budget were occasioned mainly by the fact that all the Commission's sittings, including Tribunal's hearings are taking place in the headquarters of the Office of the Chief Justice in Midrand which has obviated the need for the Commission to pay hotels for its sittings.



The 2018/19 JSC Budget and Expenditure report is illustrated in the table below:

ECONOMIC CLASSIFICATION	ENE	AENE	ACTUAL EXPENDITURE	BALANCE	TOTAL SPENT %
Compensation of Employees	R3 486 000	R3 897 000	R3 654 881	R242 119	94
Goods and Services	R8 325 000	R4 383 000	R3 545 367	R837 633	81
Purchase of Capital Assets	-	-	-	-	-
Total	R11 811 000	R8 280 000	R7 200 248	R1 079 752	87

The 2018/19 JSC Budget and Expenditure report is illustrated in the table below:



8 CONCLUSION

The Commission has continued to discharge its constitutional and statutory mandate to make recommendations on the suitability of candidates for appointment by the President as well as dealing with complaints lodged against Judges. In doing so, the Commission is alive of its role as one of the most important bodies established to assist in protecting the independence, impartiality, dignity, accessibility and effectiveness of the courts. Put differently, the mandate of the Commission lies at the very heart of our constitutional order.

And by diligently discharging its constitutional mandate, the Commission will no doubt enhance the public confidence in the Judiciary. As we know, public confidence in and the respect for the Judiciary are essential to the judicial system as well as to our democracy founded on the values of human dignity, the achievement of equality, the advancement of human rights, supremacy of the Constitution, non-racialism, non-sexism and universal adult suffrage.





Telephone number:

+27 (0)10 493 2500

Website address:

www.judiciary.org.za

Physical address:

188 14th Road
Noordwyk
Midrand
1685

Postal address:

Private Bag X10
Marshalltown
2107

