



JUDICIAL SERVICE COMMISSION ANNUAL REPORT 2019/20



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA



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REPUBLIC OF SOUTH AFRICA

JUDICIAL SERVICE COMMISSION

ANNUAL REPORT

2019/20 FINANCIAL YEAR

DEPARTMENT'S GENERAL INFORMATION

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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 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 Tribunals. That includes the number of matters outstanding and progress in relation thereof.

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 2020 in terms of Section 6 of the Judicial Service Commission Act, 1994 as amended.

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

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One of the founding values provided for in our Constitution is the rule of law. The inclusion of the rule of law as one of our founding values is attributed to our shameful past of apartheid which was centred on inequality, discrimination and denial of human rights. When we emerged from this scourge, which was correctly characterized by the international community as “a crime against humanity”, we consciously decided that ours would be a constitutional democracy based on, amongst others, the rule of law. It is for that reason that post 1994, the rule of law has been considered as one of the cornerstones of our democracy and the only basis upon which individuals, private corporations, public bodies and the Executive can order their lives and activities. Its importance can be traced back to what my former colleague Justice Ackermann referred to it as the “supreme principle of a civilised constitutionality”.

The observance of the rule of law is largely dependent on an independent Judiciary. Judicial independence dictates that Judges should be true to the oath or affirmation of office that they are constitutionally obliged to take prior to assumption of office. There is no doubt that the Judiciary, as an important Arm of the State, plays a significant role in the lives of many people. Whenever people have legal disputes, their first port of call is the Judiciary. For that reason it is widely accepted that the Judiciary is the bulwark of our democracy. And if this bulwark were to fail, chances for our democracy to survive would diminish.

For the Judiciary as an institution to enjoy its legitimacy from the public, it must be comprised of men and women who are not only able to settle disputes

between litigants but those who subscribe to the highest standards of integrity. This is so because by its nature, judicial responsibility requires Judges to be accountable to the Constitution and the law.

The task to transform our Judiciary with capable Judges, particularly in terms of gender and race, still remains the Commission’s priority. During the period under review, the Commission had an opportunity to recommend candidates to fill 27 vacancies in the Superior Courts, including the position of the Deputy President of the Supreme Court of Appeal and Judges of the Constitutional Court. Of these 27 vacancies, the Commission recommended 26 candidates for which the President appointed 23 Judges. Amongst the 23 Judges appointed by the President during the period under review, Justice Xola Petse was appointed as the Deputy President of the Supreme Court of Appeal. He became the second black Judge to be appointed as the Deputy President of the Supreme Court of Appeal in the history of that Court. The President also appointed two black Judges to the Constitutional Court, namely Justices Stevan Majiedt and Zukiswa Tshiqi. The appointment of Justice Tshiqi to the Constitutional Court increased the number of female Judges to that Court to four out of the 11 Judges. This is very significant and serves as a clear indication of our collective commitment to the realisation of the ideal espoused in section 174(2) of the Constitution to ensure that the Judiciary reflects the gender and racial composition of our country.

The Commission had an opportunity to welcome new Commissioners following the elections that took place during the period under review. Minister R O Lamola replaced the former Minister of Justice and Correctional Services, Adv T M Masutha and duly became a member of the Commission as provided for in terms of section 178(1)(d) of the Constitution. Both the National Assembly and National Council of Provinces designated new members to the Commission in terms of sections 178(1)(h) and 178(1)(i) of the Constitution respectively. The National Assembly designated Ms T R Modise, Mr G Magwanishe, Mr V C Xaba, Mr J S Malema, Adv G Breytenbach and Mr N Singh as members of the Commission. The National Council of Provinces designated Ms S E Lucas, Mr T C S Dodovu, Mr K Mmoiemang and Mr A J Nyambi as members of the Commission.

As a result, the Commission had to bid farewell to former Commissioners Masutha, Didiza, Magadzi, Schmidt, Mampuru and Stock following their redeployment to other portfolios. On behalf of the Commission, I take this opportunity to thank the former Commissioners for their valuable and meaningful contribution to the work of the Commission over the years.

Additionally, I also wish to acknowledge the valuable contribution to the work of the Commission made by the late Ms Lynette Bios, a former member of the Secretariat who sadly passed on in September 2019. May her soul rest in eternal peace!

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.



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



JOHANNESBURG

THE HIGH COURT OF
SOUTH AFRICA
JUDICIAL DIVISION
JOHANNESBURG
DE HOOGGERECHTSHOF VAN

DE HOOGGERECHTSHOF VAN
SOUTH AFRICA
JUDICIAL DIVISION
JOHANNESBURG

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 R O Lamola, MP
Section 178(1)(e) of the Constitution, two practising advocates nominated from within the advocates' profession and appointed by the President.	Adv D C Mpofo 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 L Sigogo 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.	Ms T R Modise Adv G Breytenbach Mr G Magwanishe Mr J S Malema Mr N Singh Mr V C Xaba
Section 178(1)(i) of the Constitution, four permanent delegates to the National Council of Provinces designated by the Council.	Ms S E Lucas Mr T S C Dodovu Mr K E Mmoiemang Mr A J Nyambi
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; 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; and
- (iii) Adv T Norman SC

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 K Moretlwe: Senior State Law Adviser;
- (iii) Ms T Phaahlamohlaka: Administrative Officer; and
- (iv) Ms T Ramonyai: Personal Assistant.



4.1 MEETINGS OF THE COMMISSION

During 2019, the full Commission met on two occasions: 01 to 05 April 2019 at the Headquarters of the Office of the Chief Justice, Midrand and on 07 to 10 October 2019 again at the Office of the Chief Justice. These meetings were convened as part of the Commission's bi-annual sittings to receive briefings 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 various Divisions of the Superior Courts.

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.

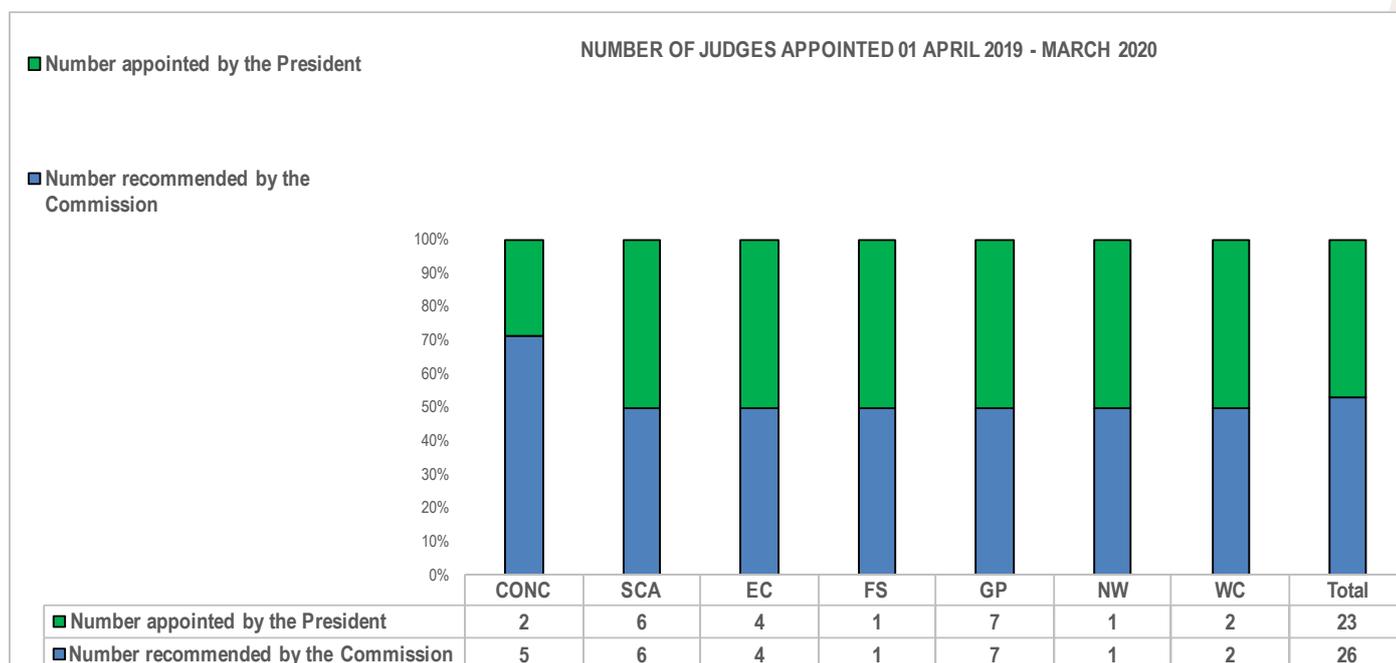
During the period to which this report relates, the Commission advised the President, with respect to vacancies that occurred during the year under review as follows:

4.3 JUDGES APPOINTED DURING THE PERIOD 1 APRIL 2019- 31 MARCH 2020

Court and Position	Names recommended by the Commission	Judges appointed by the President
Constitutional Court Judges (2)	Judge Annali Christelle Basson Judge Patricia Lynette Goliath Judge Narandran Jody Kollapen Justice Stevan Arnold Majiedt Judge Zukiswa Laura Lumka Tshiqi	Justice Stevan Arnold Majiedt Judge Zukiswa Laura Lumka Tshiqi
Supreme Court of Appeal Deputy President	Justice Xola Mlungisi Petse	Justice Xola Mlungisi Petse
Supreme Court of Appeal Judges (5)	Judge Daniel Vuminkosi Dlodlo Judge Caroline Elizabeth Heaton Nicholls Judge Fikile Eunice Mokgohloa Judge Yvonne Thokozile Mbatha; Judge Clive Michael Plasket	Judge Daniel Vuminkosi Dlodlo Judge Caroline Elizabeth Heaton Nicholls Judge Fikile Eunice Mokgohloa Judge Yvonne Thokozile Mbatha Judge Clive Michael Plasket
Electoral Court Member (1)	No candidate was recommended.	No candidate was appointed by the President.
Eastern Cape Division of the High Court Judges (5)	Adv Phillip Horatius Siggqibo Zilwa SC Adv Motilal Sunil Rugunanan. Judge Bulelwa Myra Pakati Adv Nyameko Wellman Gqamana SC No candidate was recommended for the one vacancy.	Adv Phillip Horatius Siggqibo Zilwa SC Adv Motilal Sunil Rugunanan. Judge Bulelwa Myra Pakati Adv Nyameko Wellman Gqamana SC No candidate was appointed by the President for one vacancy.
Free State Division of the High Court Judges (1)	Ms Nokuthula Sylvia Daniso	Ms Nokuthula Sylvia Daniso
Gauteng Division of the High Court Judges (7)	Adv Avrille Maier-Frawley Mr David Makhoba Adv Moleboheng Mamorena Pascalina Mdalana-Mayisela Ms Shanaaz Christine Mia Mr Marcus Lekgaloa Senyatsi Dr Elmarie Van der Schyff Adv Rean Strydom SC	Adv Avrille Maier-Frawley Mr David Makhoba Adv Moleboheng Mamorena Pascalina Mdalana-Mayisela Ms Shanaaz Christine Mia Mr Marcus Lekgaloa Senyatsi Dr Elmarie Van der Schyff Adv Rean Strydom SC
Limpopo Division of the High Court (Deputy Judge President)	No candidate was recommended.	No candidate was appointed by the President.
Northern Cape Division of the High Court (Deputy Judge President)	No candidate was recommended.	Limpopo Division of the High Court (Deputy Judge President)
North West Division of the High Court (Deputy Judge President)	Judge Ronald Deon Hendricks	Judge Ronald Deon Hendricks
Western Cape Division of the High Court Judges (2)	Adv Deidre Susan Kusevitsky Adv Hayley Maud Slingers.	Adv Deidre Susan Kusevitsky Adv Hayley Maud Slingers.

During the period under review, there were 27 vacancies in the Superior Courts for which the Commission had to interview and recommend candidates to the President for appointment as Judges. Of these 27 vacancies, the Commission recommended 26 candidates and the President appointed 23 Judges. The Commission could not recommend candidates to fill the other four vacancies.

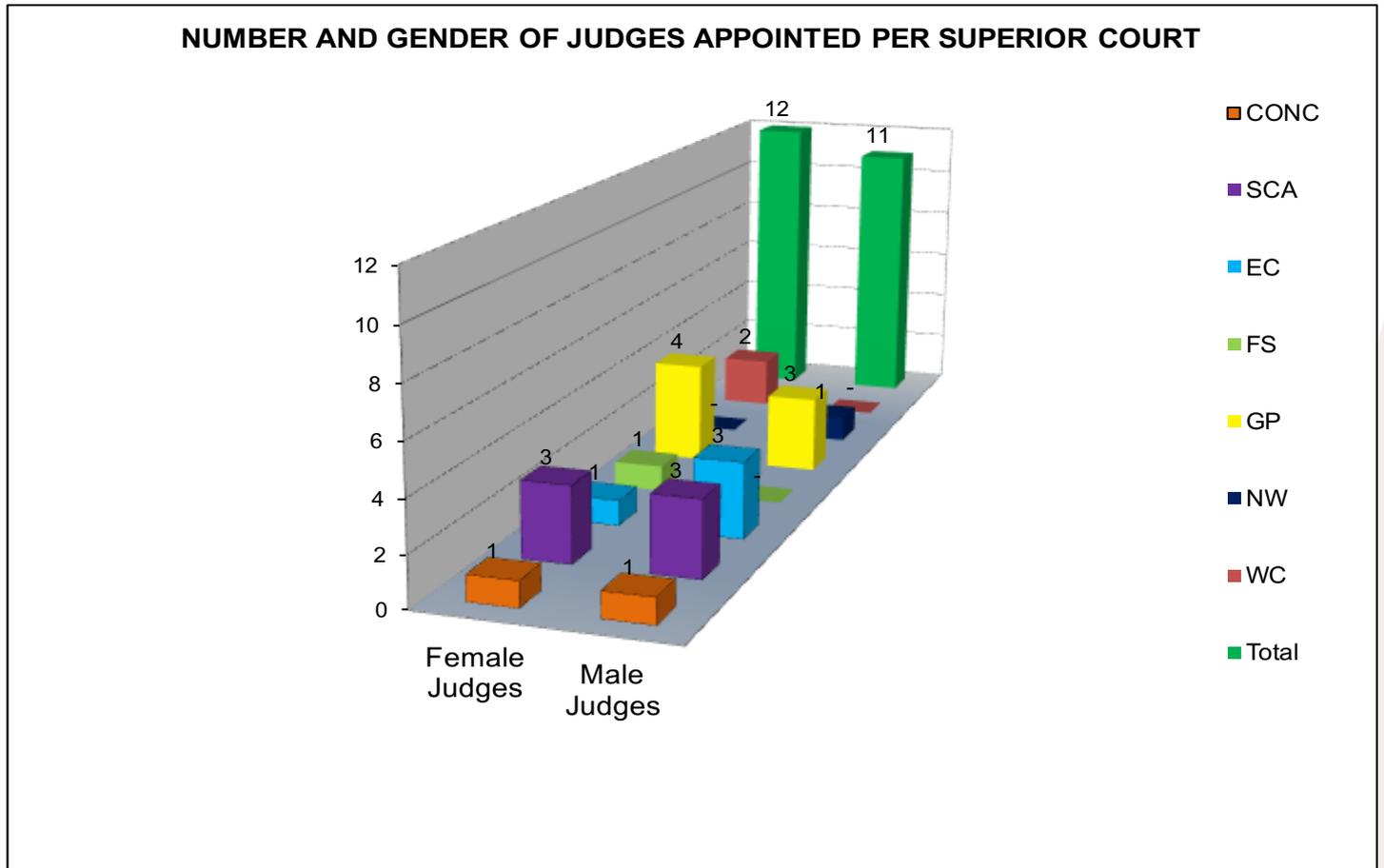
GRAPH ILLUSTRATING THE JUDGES RECOMMENDED BY THE COMMISSION AND THOSE APPOINTED BY THE PRESIDENT



NUMBER OF JUDGES APPOINTED DURING THE PERIOD 01 APRIL 2019 TO 31 MARCH 2020 SPECIFYING GENDER AND RACE

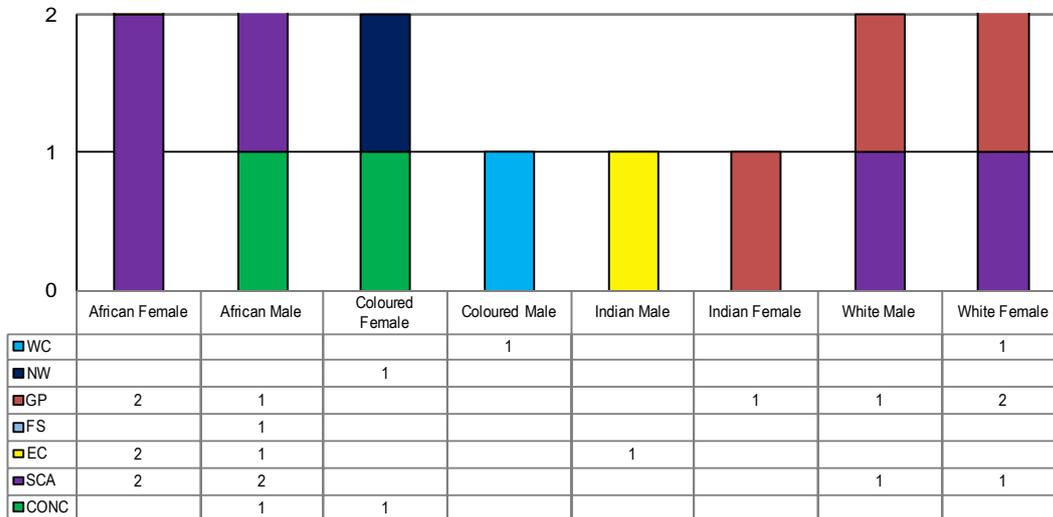
Court	Number of Judges recommended by the Commission	Number of Judges appointed by the President	Number of Females & Race	Number of Males & Race
Constitutional Court	5	2	1 (African)	1 (Coloured)
Supreme Court of Appeal	6	6	2 (African) 1 (White)	2 (African) 1 (White)
Eastern Cape Division of the High Court	4	4	1 (African)	2 (African) 1 (Indian Origin)
Free State Division of the High Court	1	1	1 (African)	
Gauteng Division of the High Court	7	7	1 (African) 2 (White) 1 (Indian Origin)	2 (African) 1 (White)
North West Division of the High Court	1	1		1 (Coloured)
Western Cape Division of the High Court	2	2	1 (White) 1 (Coloured)	
Total	26	23	12	11

GRAPH ILLUSTRATING NUMBERS AND GENDER OF JUDGES APPOINTED DURING THE PERIOD 01 APRIL 2019 – 31 MARCH 2020



GRAPH ILLUSTRATING NUMBERS AND RACE OF JUDGES APPOINTED DURING THE PERIOD 01 APRIL 2019 – 31 MARCH 2020

NUMBER AND RACE OF JUDGES APPOINTED DURING 01 APRIL 2019 - 31 MARCH 2020



Following the two sittings of the Commission during the reporting period, the Judiciary as on 31 March 2019 comprised 246 Judges, of which 64 were African males, 48 African females, 16 Coloured males, 13 Coloured females, 14 males of Indian origin, 10 females of Indian origin, 51 White males and 30 white females.



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

PERMANENT JUDGES DURING THE PERIOD UNDER REVIEW

PERMANENT JUDGES: 31 March 2020

DIVISIONS	AFRICAN		COLOURED		INDIAN		WHITE		TOTAL
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
Constitutional Court	4	3	1	1	-	-	1	-	10
Supreme Court of Appeal	6	6	1	-	3	1	5	1	23
Northern Cape Division, Kimberley	1	2	-	1	-	-	1	-	5
Eastern Cape Division, Grahamstown	2	1	1	-	1	-	3	1	9
Eastern Cape Local Division, Port Elizabeth	2	1	-	-	-	-	3	2	8
Eastern Cape Local Division, Bhisho	1	-	-	-	-	-	0	2	3
Eastern Cape Local Division, Mthatha	2	2	-	-	-	1	2	-	7
Western Cape Division, Cape Town	4	3	6	6	2	1	7	4	33
North West Division, Mahikeng	1	2	1	-	-	0	-	-	4
Free State Division, Bloemfontein	4	3	1	-	-	1	3	3	15
Gauteng Division, Pretoria	13	9	-	2	3	-	8	7	42
Gauteng Local Division, Johannesburg	7	5	3	1	2	2	7	7	34
Limpopo Local Division, Thohoyandou	3	-	-	-	-	-	-	-	3
Limpopo Division, Polokwane	3	1	-	-	-	-	1	-	5
Mpumalanga Division, Mbombela	2	2	-	-	-	-	-	-	4
Mpumalanga Local Division, Middelburg	0	1	-	-	-	-	-	-	1
KwaZulu-Natal Division, Pietermaritzburg	3	2	1	-	2	1	6	-	15
KwaZulu-Natal Local Division, Durban	3	2	1	1	1	3	1	1	13
Labour and Labour Appeal Court	3	3	-	1	-	-	3	2	12
TOTAL	64	48	16	13	14	10	51	30	246

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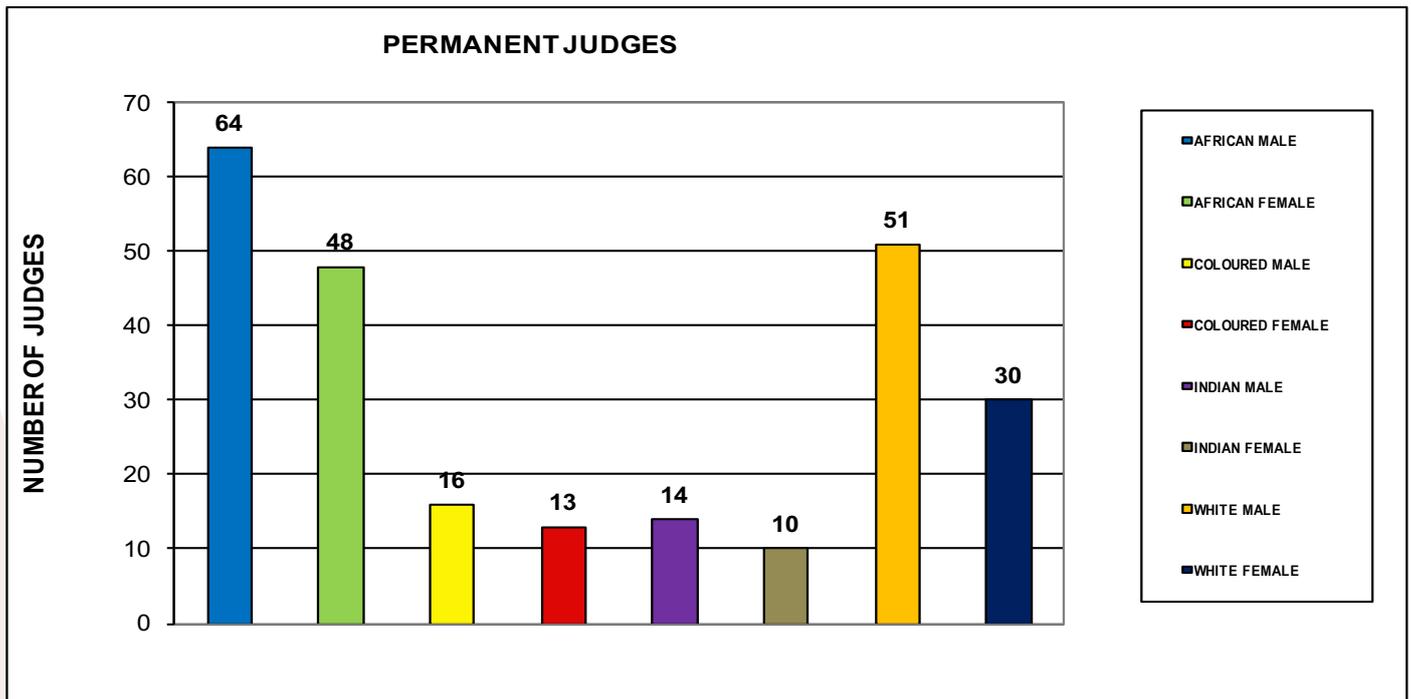
HIGH C
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HIGH COURT
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GRAPH ILLUSTRATING PERMANENT JUDGES DURING THE PERIOD UNDER REVIEW



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 Zondo, 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 D H Zondi;
- (b) Justice N Dambuza;
- (c) Deputy Judge President P L Goliath; and
- (d) Deputy Judge President P M Mojapelo.

5.2 MEETINGS OF THE COMMITTEE

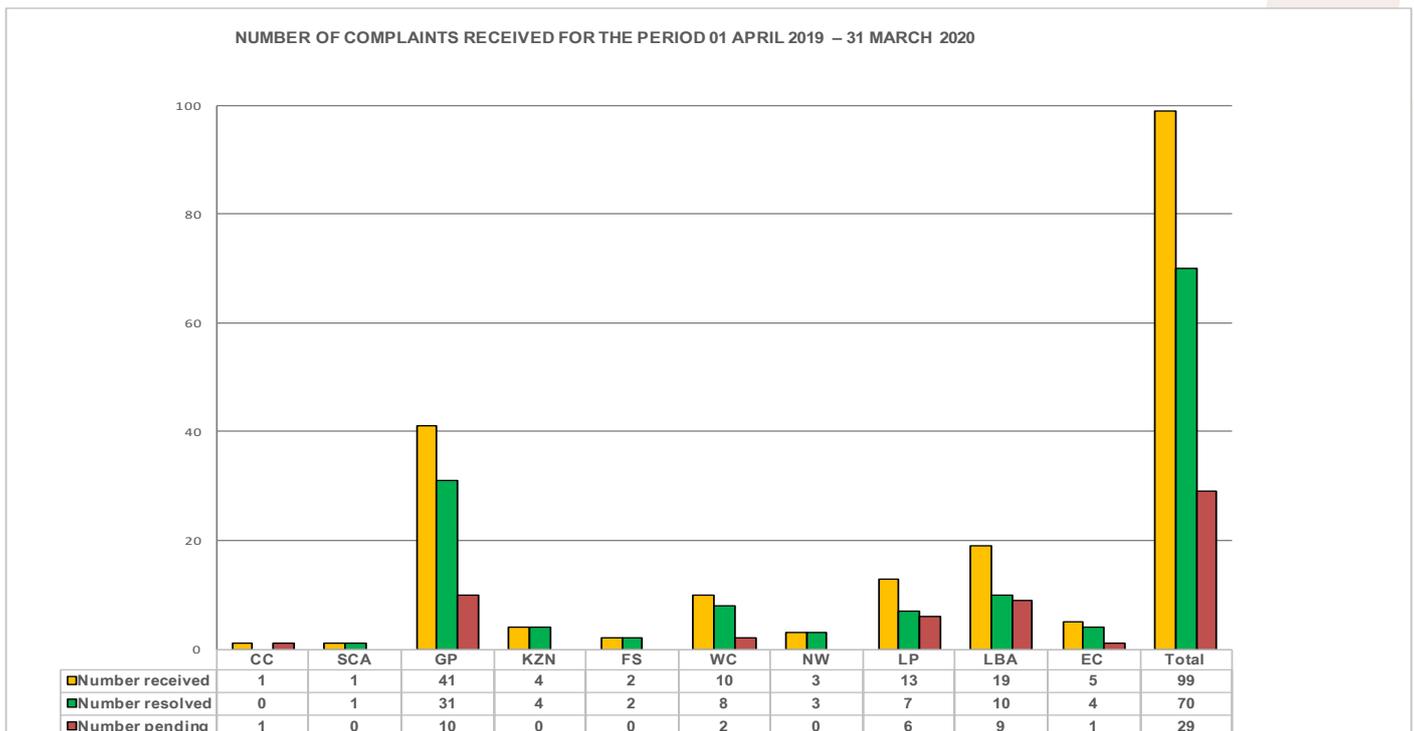
Section 9(1) of the JSC Act provides for the meetings of the Committee to be determined by the Chairperson. During the period under review, the Committee met on three occasions, 25 October 2019 and on 16 November 2019 and 20 March 2020.

5.3 CONSIDERATION OF COMPLAINTS BY THE COMMITTEE

Complaints received from 01 April 2019 to 31 March 2020

COURT	NUMBER RECEIVED	NUMBER RESOLVED	NUMBER PENDING
Constitutional Court	1	0	1
Supreme Court of Appeal	1	1	0
Gauteng Division of the High Court (Pretoria and Johannesburg)	41	31	10
KwaZulu–Natal Division of the High Court (Pietermaritzburg and Durban)	4	4	0
Free State Division of the High Court	2	2	0
Western Cape Division of the High Court	10	8	2
North West Division of the High Court	3	3	0
Northern Cape Division of the High Court	0	0	0
Limpopo Division of the High Court (Polokwane and Thohoyandou)	13	7	6
Labour Court & Labour Appeal Court (Johannesburg, Port Elizabeth, Durban & Cape Town)	19	10	9
Eastern Cape Local Divisions (Bhisho, Grahamstown, Mthatha & Port Elizabeth)	5	4	1
Total:	99	70	29

GRAPH ILLUSTRATING NUMBER OF COMPLAINTS RECEIVED:



5.4 MATTERS REFERRED TO THE JUDICIAL CONDUCT TRIBUNAL

On 20 March 2020, the Committee considered a complaint lodged by an entity called #Unite Behind against Judge T A N Makhubele of the Gauteng Division of the High Court alleging that in 2018 Judge Makhubele improperly held a dual status as a Judge of the High Court of South Africa and Chairperson of the Interim Board of Control of the Passenger Rail Agency of South Africa (PRASA). The complainant further contended that during that period, and acting in her capacity as Chairperson of PRASA, Judge Makhubele engaged in certain conduct that constitute gross misconduct. Having considered the complaint and the submissions made by the parties, the Committee was satisfied that the allegations against Judge Makhubele were very serious and if proven would likely lead to a finding that she has committed an act of gross misconduct. The Committee, acting in terms of section 16(4)(b) of the JSC Act, recommended to the Commission that the complaint be investigated by a Tribunal.

5.5 MEETINGS OF 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, grossly incompetent or is guilty of gross misconduct. During the period under review the following Tribunals had their meetings:

5.5.1 Tribunal on Reserved Judgments

The Tribunal established to investigate and report on complaints lodged against Judges Mavundla, Poswa, Preller and Webster submitted its report and a copy of the record to the Commission in September 2019 as required by the provisions of section 33 of the JSC Act. In its report, the Tribunal found that Judges Mavundla, Preller and Poswa may have made themselves guilty of misconduct not amounting to gross misconduct and that it was open for the Commission to invoke the provisions of section 20(5)(b) of the JSC Act and impose any of the remedies outlined in section 17(8) of the JSC Act. In so far as Judge Webster is concerned, the Tribunal provided the Commission with a progress report due to his non-participation in the Tribunal proceedings caused by his ill-health. In line with section 20 of the JSC Act, the Commission at its sitting held on 07-10 October 2019 decided to invite the parties to submit written submissions on the Tribunal report. The Commission will consider the Tribunal report and all the submissions at its next sitting.

5.5.2 Tribunal on Judge Motata

At its sitting held on 07-09 October 2019, the Commission considered the report of the Tribunal established to investigate complaints lodged against Judge Motata as well as the submissions made by the parties. The Tribunal had recommended that Judge Motata had made himself guilty of gross misconduct in respect of both complaints namely uttering racist remarks at the scene of the accident and misleading the court at the subsequent criminal trial. Having considered the report and documents submitted, the Commission resolved to reject the Tribunal's recommendation and found that the conduct of Judge Motata did not meet the required standard of gross misconduct. He was accordingly found guilty of misconduct. Having found him guilty of misconduct, the Commission, acting in terms of section 20(5)(b) of the JSC Act, imposed a sanction provided for in section 17(8)(g) of the JSC Act, that Judge Motata should pay a fine of R 1 152 650. 40 (One Million One Hundred and Fifty-Two Thousand Six Hundred and Fifty-Rand and Forty Cents), which amount is the equivalent of twelve months (12 months) of his current net salary. The fine was made to be payable in full over a period of not more than twenty-four (24) months from the date of the decision.

5.4.3 Tribunal on Judge President Hlophe

On 11 July 2019, the Tribunal President convened a meeting of the Tribunal which was attended by all the parties. At this meeting it was agreed that the Tribunal hearings would commence on 21 to 25 October 2019, with the proviso that the dispute between the Office of the State Attorney and Judge President Hlophe's legal representatives on the fees would have been resolved. Regrettably, the fee dispute between the Office of the State Attorney and Judge President Hlophe's legal representatives was not resolved and the Tribunal was duly informed of the impasse. As a measure to resolve the dispute, the Tribunal President wrote to the Minister of Justice and Correctional Services on 17 October 2019 for his intervention. The Minister has since intervened and the Tribunal will determine new dates for the hearings in the next financial year.

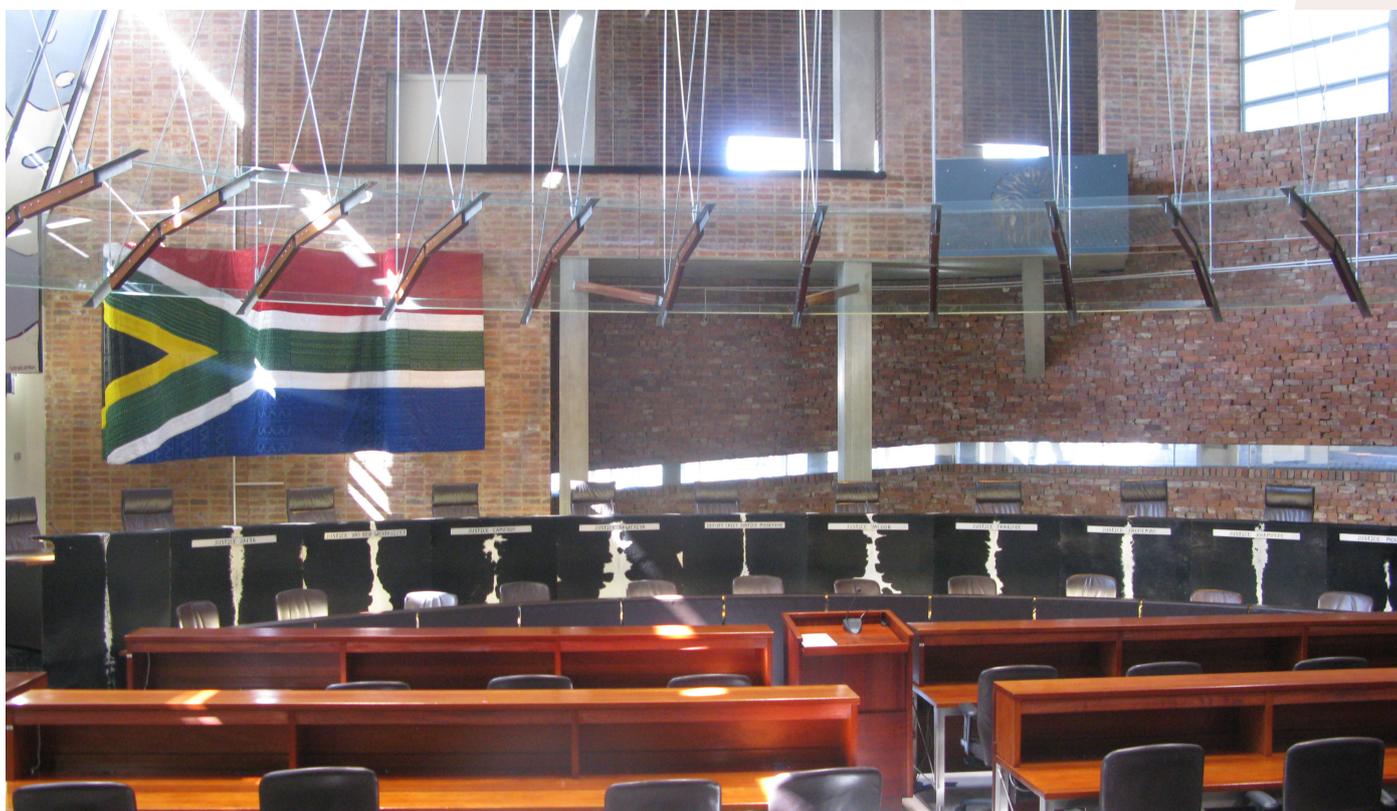
6 REPORT ON THE REGISTER OF REGISTRABLE INTERESTS

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 registrable interest and if applicable make such further disclosures or amendments as may be necessary.

By 31 March 2020, 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 REPORT ON OTHER MATTERS

7.1 LITIGATION AGAINST THE COMMISSION

During the 2019/2020 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. And 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 HSF. 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 Commission caused the Office of the State Attorney to inquire as to whether HSF still intended to proceed with its application. The response received from HSF's legal representatives was that they intend to proceed with the matter. 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 Commission with a notice to compel which is opposed by the Commission.

The matter is dormant as the applicant has not filed any further documents to take the matter forward.

7.1.4. Montshiwa v President of the Republic of South Africa and Another.

Mr Montshiwa, launched an urgent application in the Gauteng Division of the High Court, Johannesburg, to interdict the President from appointing Judge Hendricks as the Deputy Judge President of the North West Division of the High Court following the Commission's recommendation that Judge Hendricks is suitable to be appointed to that position.

Mr Montshiwa further sought an order from the Court to declare the Commission's decision recommending Judge Hendricks as Deputy Judge President of the North West Division of the High Court as unlawful and irrational. The Presidency, Commission and Judge Hendricks are opposing the matter with Counsel for the JSC also representing Judge Hendricks. The urgent application was considered by the Court on 12 November 2019 and the Judge decided to remove the matter from the roll as it became moot due to the President having signed the appointment of Judge Hendricks as Deputy Judge President of the North West Division of the High Court effective from 01 December 2019.

Aggrieved by the President's decision to appoint Judge Hendricks to the position of Deputy Judge President, Mr Montshiwa lodged another urgent application on 18 November 2019 seeking an order to interdict Judge Hendricks from assuming the position of Deputy Judge President. The Commission and Judge Hendricks filed answering affidavits opposing the application. The matter was heard on 26 November 2019 and the Court dismissed the application with costs for lack of urgency. Both the Commission and Deputy Judge President Hendricks have made an application for the two matters to be consolidated and heard at the same time.

7.2 BUDGET OF THE COMMISSION

The Commission was allocated a total budget of R7 924 million in the 2019/20 financial year. The total budget allocation for the Commission consists of R3 614 million for compensation of employees, R4 310 million for goods and services with a zero budget for Transfers and subsidies and purchase of capital assets.

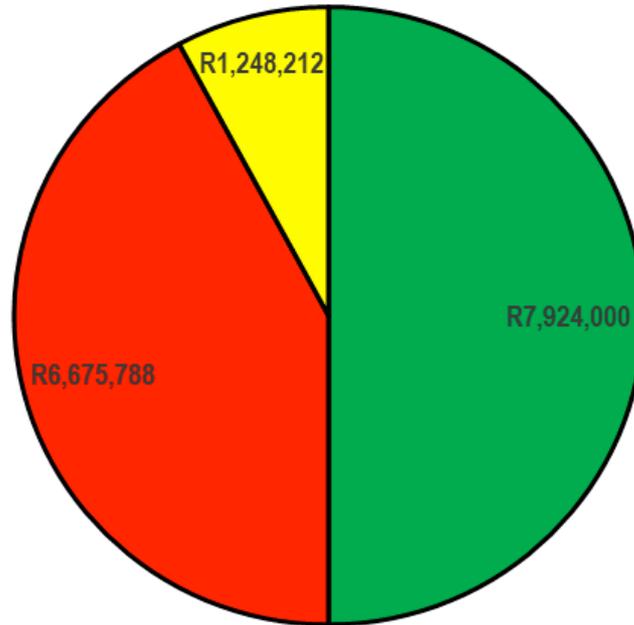
The total expenditure at the end of the financial year is R6 675 788 million which is 84% of total allocated budget during ENE. The savings in the budget were occasioned mainly by the fact that all the Commission's sittings, including Tribunal's hearings are taking place in the headquarters of the Office of the Chief Justice in Midrand which has obviated the need for the Commission to pay hotels for its sittings.

The 2019/20 JSC Budget and Expenditure report is illustrated in the table below:

ECONOMIC CLASSIFICATION	ENE	ACTUAL EXPENDITURE	BALANCE	TOTAL SPENT %
Compensation of Employees	R3 614 000	R3 063 044	R550 956	85
Goods and Services	R4 310 000	R3 509 744	R800 256	83
Purchase of Capital Assets	-	-	-	-
Total	R7 924 000	R6 675 788	R1 248 212	84

The 2019/20 JSC Budget and Expenditure report is illustrated in the table below:

2019/20 TOTAL BUDGET AND EXPENDITURE



■ ENE ■ EXPENDITURE ■ BALANCE

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 has given practical expression to our constitutional aspiration of transforming our Judiciary into a more inclusive and representative one. Great strides have been made over the past year but more still needs to be done to achieve this constitutional goal.



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