



JUDICIAL SERVICE COMMISSION

ANNUAL REPORT 2020/21



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA



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JUDICIAL SERVICE COMMISSION

ANNUAL REPORT

2020/21 FINANCIAL YEAR

DEPARTMENT'S GENERAL INFORMATION

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The Honourable Speaker of the National Assembly, Ms Nosiviwe Mapisa-Nqakula, 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 2021 in terms of Section 6 of the Judicial Service Commission Act, 1994 as amended.

A stylized, handwritten signature in black ink, appearing to read 'Mogoeng'.

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

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One of the key features of our Constitution is the entrenchment of the principle of judicial independence recognised worldwide as the cornerstone of any democracy based on the rule of law. And ours is no exception. To this end I endorse the view of Chief Justice Larmer of Canada that, "Judicial independence is essential for fair and just dispute-resolution in individual cases. It is also the lifeblood of constitutionalism in democratic societies." Without judicial independence, it is unthinkable how Judicial Officers would be able to exercise their judicial functions. It is no coincidence that my predecessor, Chief Justice Ismail Mahomed, when addressing Judges in 1998 had this to say: "the principle of an independent judiciary goes to the very heart of sustainable democracy based on the rule of law. Subvert it and you subvert the very foundations of the civilization which it protects."

Section 165 of our Constitution entrenches judicial independence and binds the Legislature, the Executive and all organs of State. These structures are, in terms of this section required, to "assist and protect courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts." And judicial authority is vested in the courts, which are to be independent and subject only to the Constitution and the law.

These courts are enjoined to apply the law impartially, without fear, favour or prejudice. In ensuring that the courts discharge their constitutional mandate independently, the Constitution prohibits any person or organ of State from interfering with this function.

This underscores the separation of powers between the Judiciary, the Legislature and the Executive with a system of checks and balances. The courts are final arbiters on all legal and constitutional disputes and the guardians of our Constitution.

On 11 October 2011, I was honoured to be appointed as the Fifth Chief Justice of the democratic Republic of South Africa. That appointment came with the distinct responsibility of the Chairpersonship of the Judicial Service Commission (Commission), a multidisciplinary body whose members represents the Judiciary, Executive, Legislature and the legal profession at large.

When I took over the reins at the Commission, one of my key priorities at the time was to accelerate the transformation of our Judiciary in terms of race and gender, a task that is by no means an easy one. Upon my appointment as Chief Justice, the Judiciary comprised of 224 Judges, of which 137 were Black, and 87 White Judges. This means that 61% of all the Judges was Black while 39% were White at that time. In terms of gender representation, the Judiciary in 2011 had 61 women Judges and 163 Judges who were men. Meaning that of all the Judges at that time, women constituted only 27% of the entire Judiciary while 73% of the Judges were men.

During this reporting period, the Judiciary comprises of 234 Judges of which 161 are Black and 73 White Judges. This represents an increase of 18% in the appointment of Black Judges since 2011. As for the gender breakdown, there are currently 101 women Judges and 133 Judges who are males. This means that to date 43% of the Judges are women while only 57% are men. I am very pleased that we have made significant progress, particularly in terms of gender transformation as there has been an increase of about 66% of women Judges appointed from 2011 to date. Although we are moving on the right trajectory, more still needs to be done to achieve a more representative Judiciary as espoused in the Constitution, for it to reflect broadly the racial and gender composition of the South African population.

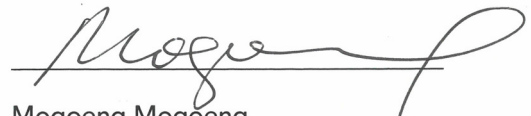
During the year under review, the Commission's operations like other institutions was also affected by the COVID-19 pandemic. As a result of this pandemic, the Commission has for the first time in its existence postponed its biannual sittings. Although other business of the Commission was done through the virtual platform, the interviews were unable to proceed. This resulted in the Commission been unable to recommend any candidates for appointment as Judges.

The Commission had an opportunity to welcome new Commissioners following the President's decision to replace the four Commissioners designated in terms of section 178(1)(j) of the Constitution. The new Commissioners designated in terms of section 178(1)(j) of the Constitution were, Adv T G Madonsela SC, Adv J M Maluleke, Ms H Matolo-Dlepu and Ms D Tshepe. The Commission also welcomed Mr E Barnard as a new member of the Commission designated by the Attorneys' profession and appointed by the President in terms of section 178(1)(f) of the Constitution.

As a result, the Commission had to bid farewell to Commissioners Norman, Masuku, Nkosi-Thomas, Msomi and Fourie. 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 wonderful contribution to the work of the Commission made by Commissioner Fourie who was the spokesperson for the Commission for a number of years and carried out that task admirably.

I wish to thank my fellow Commissioners and the staff of the Commission who have been diligent in enabling the Commission to carry out its 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

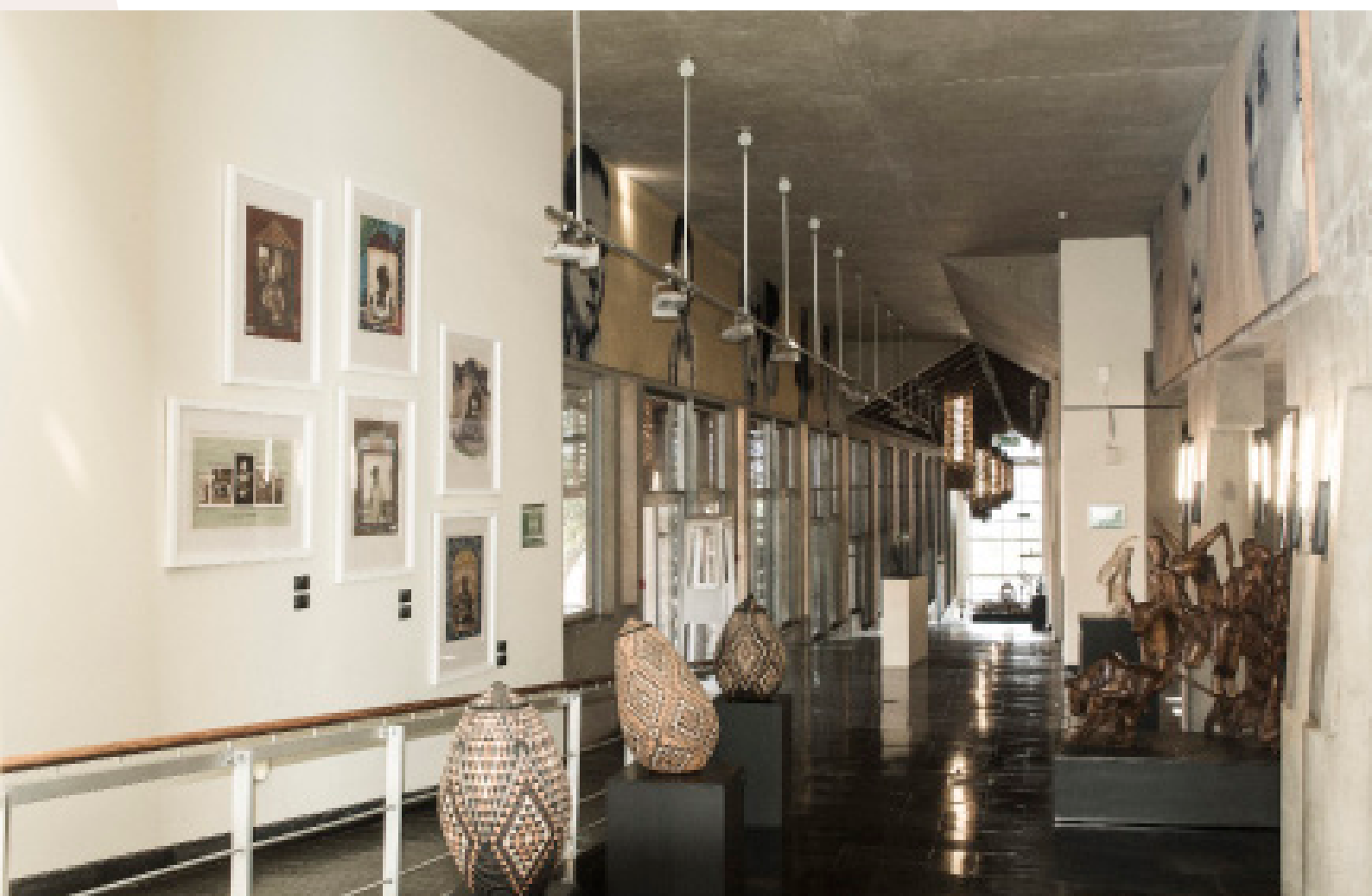


JOHANNESBURG

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

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 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 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, MP Adv G Breytenbach, MP Mr G Magwanishe, MP Mr J S Malema, MP Mr N Singh, MP Mr V C Xaba, MP
Section 178(1)(i) of the Constitution, four permanent delegates to the National Council of Provinces designated by the Council.	Ms S E Lucas, MP Mr T S C Dodovu, MP Mr K E Mmoiemang, 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 G Madonsela SC Adv M J Maluleke Ms H Matolo-Dlepu Ms D Tshepe

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 G Madonsela SC;
- (iii) Ms H Matolo-Dlepu;
- (iv) Ms D Tshepe;
- (v) Mr L Sigogo;
- (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 G M Madonsela SC: Convenor of the Committee;
- (ii) Adv D Mpofu SC;
- (iii) Ms D Tshepe;
- (iv) Ms H Matolo-Dlepu; and
- (v) 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) Mr G Magwanishe.

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 N Tshubwana, State Law Adviser;
- (iv) Ms T Phaahlamohlaka: Administrative Officer; and
- (v) Ms T Ramonyai: Personal Assistant.



4.1 MEETINGS OF THE COMMISSION

During the reporting period the Commission resolved to postpone its two sittings that were scheduled for 20 – 24 April 2020 and 05 – 09 October 2020 due to the lockdown announced by the President of the Republic of South Africa and the uncertainty caused by the COVID-19 pandemic. Both sittings were deferred to the Commission's next sitting scheduled to take place from 12 – 23 April 2021. The Commission sitting without members of the National Assembly and the National Council of Provinces designated in terms of section 178(1)(h) and (i) respectively, had two virtual meetings to consider recommendations by the Judicial Conduct Committee and the Judicial Conduct Tribunal on 09 October 2020 and 15 January 2021.

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 as a result of the COVID-19 pandemic did not interview and recommend any candidate for appointment by the President. The two sittings that were scheduled to take place during the reporting period were rescheduled to take place in the 2021/22 financial year.

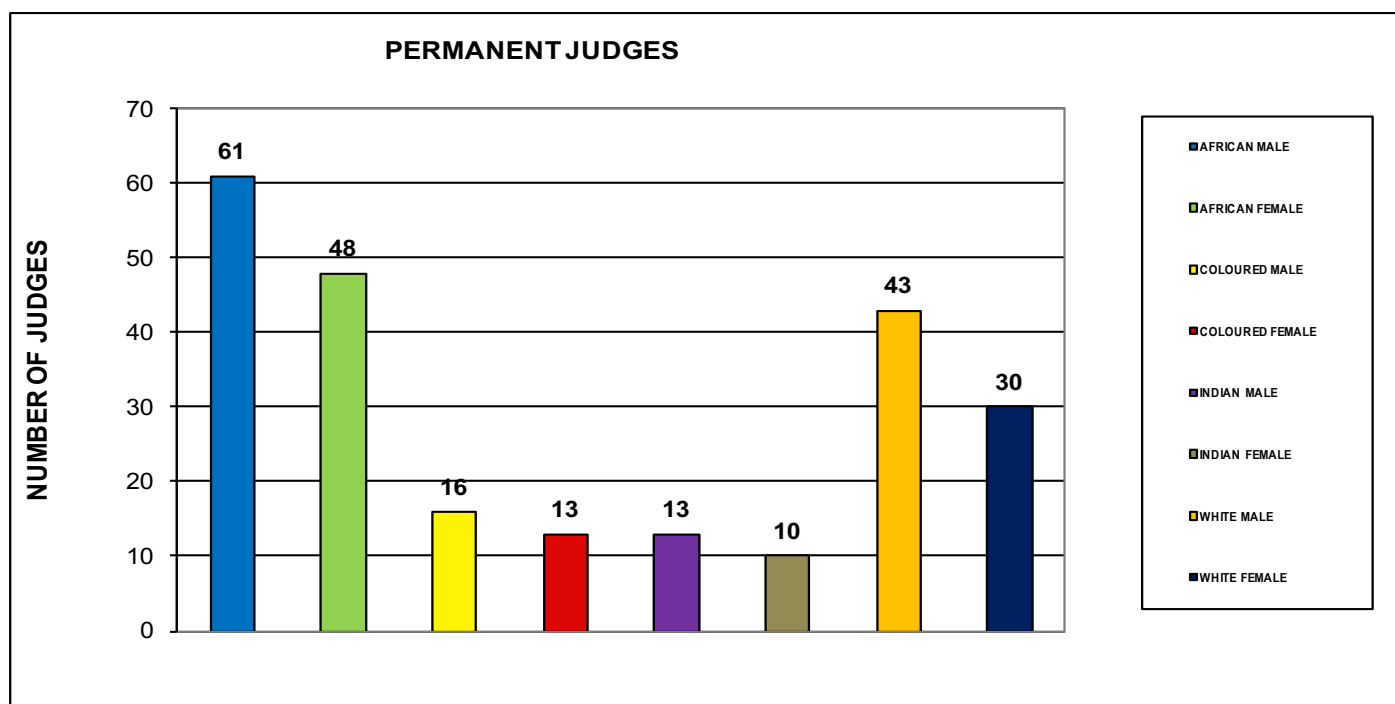
The table below illustrates the breakdown of the Judges in terms of race per Court as at the end of the period under review:

PERMANENT JUDGES DURING THE PERIOD UNDER REVIEW

PERMANENT JUDGES: 31 March 2021

DIVISIONS	AFRICAN		COLOURED		INDIAN		WHITE		TOTAL
	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	
Constitutional Court	4	3	1	1	0	0	0	0	9
Supreme Court of Appeal	6	6	1	0	3	1	3	1	21
Northern Cape Division, Kimberley	1	2	0	1	0	0	0	0	4
Eastern Cape Division, Grahamstown	1	1	1	0	1	0	3	1	8
Eastern Cape Local Division, Port Elizabeth	2	1	0	0	0	0	3	2	8
Eastern Cape Local Division, Bhisho	2	0	0	0	0	0	0	2	4
Eastern Cape Local Division, Mthatha	2	2	0	0	0	1	2	0	7
Western Cape Division, Cape Town	4	3	6	6	1	1	6	4	31
North West Division, Mahikeng	1	2	1	0	0	0	0	0	4
Free State Division, Bloemfontein	4	3	1	0	0	1	2	3	14
Gauteng Division, Pretoria	13	9	0	2	3	0	7	7	41
Gauteng Local Division, Johannesburg	5	5	3	1	2	2	7	7	32
Limpopo Local Division, Thohoyandou	3	0	0	0	0	0	0	0	3
Limpopo Division, Polokwane	3	1	0	0	0	0	1	0	5
Mpumalanga Division, Mbombela	2	2	0	0	0	0	0	0	4
Mpumalanga Local Division, Middelburg	0	1	0	0	0	0	0	0	1
KwaZulu-Natal Division, Pietermaritzburg	3	2	1	0	2	1	6	0	15
KwaZulu-Natal Local Division, Durban	2	2	1	1	1	3	1	1	12
Labour and Labour Appeal Court	3	3	0	1	0	0	0	2	11
TOTAL	61	48	16	13	13	10	43	30	234

GRAPH ILLUSTRATING PERMANENT JUDGES DURING THE PERIOD UNDER REVIEW



5 REPORT ON ACTIVITIES OF THE JUDICIAL CONDUCT COMMITTEE

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

5.1 COMPOSITION OF THE 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:

- Justice D H Zondi;
- Justice N Dambuzi;
- Deputy Judge President P M Mojapelo; and
- Judge M Victor.

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 six occasions, 25 May 2020, 29 May 2020, 06 August 2020, 14 October 2020, 14-18 December 2020 and on 20-21 January 2021.



5.3 CONSIDERATION OF COMPLAINTS BY THE COMMITTEE

For the period under review, the Committee received 162 complaints lodged against Judges in the various Superior Courts. Of this number, 81 complaints were resolved while 81 are still pending. In 2019/20 financial year, the Committee dealt with 99 complaints, of which 70 were finalised while 29 were outstanding. The numbers reflected above indicate a 64% increase of the number of complaints received by the Committee for the 2020/21 financial year.

During the period under review, the Constitutional Court showed a huge increase of 1500% in the numbers of complaints as it moved from a single complaint in 2019/2020 to 16 complaints during the year under review. This increase is attributable to litigants who are dissatisfied with the orders of that court particularly in instances where the Court grants such orders without the cases being argued in court. This to the large extent caused the sharp increase in the complaints lodged against Judges of the Constitutional Court.

The Gauteng Division of the High Court continues to be the Division where most complaints emanate. When compared to the last financial year, Gauteng has seen a slight increase of complaints from 41 to 55 during the reporting period. This represents a 34% increase of the complaints in the Gauteng Division of the High Court. It has to be said that the majority of these complaints relate to litigants who are aggrieved by an order or judgment of the court which the Committee invariably had to dismiss in terms of section 15(2)(c) of the JSC Act. As per the previous financial year the Labour and Labour Appeals Court recorded the second highest number of complaints.

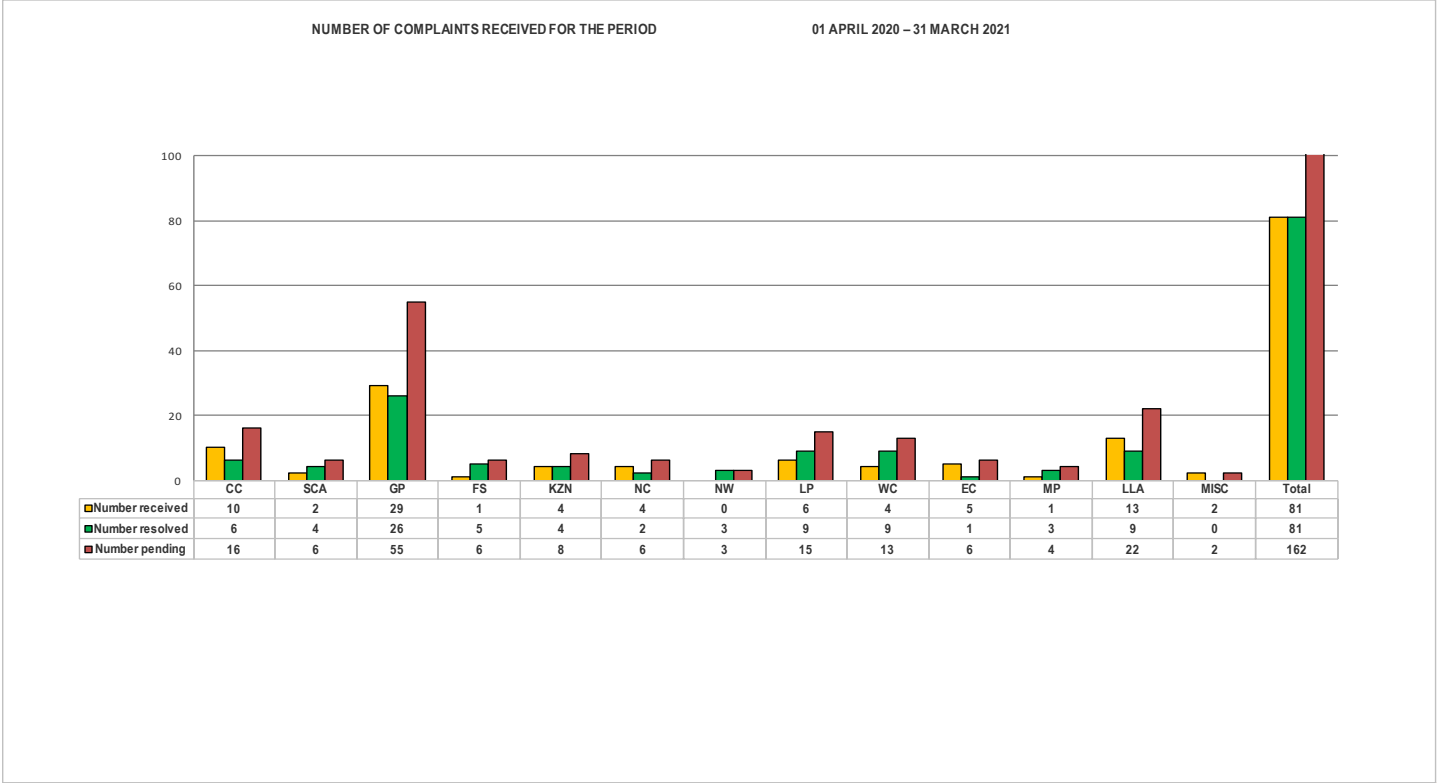



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The Table below indicates the number of complaints received and considered by the Committee during the period 01 April 2020 to 31 March 2021

COURT	NUMBER OF COMPLAINTS RECEIVED	NUMBER OF COMPLAINTS RESOLVED	NUMBER OF COMPLAINTS PENDING
Constitutional Court	6	10	6
Supreme Court of Appeal	6	2	4
Gauteng Division of the High Court (Pretoria and Johannesburg)	55	29	26
KwaZulu-Natal Division of the High Court (Pietermaritzburg and Durban)	8	4	4
Free State Division of the High Court	6	1	5
Western Cape Division of the High Court	13	4	9
North West Division of the High Court	3	0	3
Northern Cape Division of the High Court	6	4	2
Limpopo Division of the High Court (Polokwane and Thohoyandou)	15	6	9
Labour Court & Labour Appeal Court (Johannesburg, Port Elizabeth, Durban & Cape Town)	22	13	9
Eastern Cape Local Divisions (Bhisho, Grahamstown, Mthatha & Port Elizabeth)	6	5	1
Total:	162	81	81

GRAPH ILLUSTRATING NUMBER OF COMPLAINTS RECEIVED, RESOLVED AND OUTSTANDING



5.4 MATTERS REFERRED TO THE JUDICIAL CONDUCT TRIBUNAL

5.4.1 Complaint against Judge T A N Makhubele

On 09 October 2020, the Commission constituted in terms of section 178(5) of the Constitution, at its virtual sitting considered a recommendation by the Committee that the complaint lodged by an entity called #UniteBehind against Judge T A N Makhubele of the Gauteng Division of the High Court alleging that 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) should be investigated and reported by a Judicial Conduct Tribunal (Tribunal). After considering the Committee's recommendation and the submissions by the parties, the Commission decided in accordance with section 19 of the JSC Act to request the Chief Justice to appoint a Tribunal to investigate and report on the complaint against Judge Makhubele. The Commission further resolved in terms of section 19(4) to advise the President that it was desirable to suspend Judge Makhubele from office in terms of section 177(3) of the Constitution with the condition that she be allowed to finalise her part-heard matters and reserved judgments during the period of her suspension. The Chief Justice duly appointed the Tribunal, informed the President as he is required to do so and further advised the President of the desirability to suspend Judge Makhubele. The President accepted the advice and duly suspended Judge Makhubele as per the Commission's advice.

5.4.2 Complaints against Judge M K Parker

On 23 March 2020, ten Judges of the Western Cape Division lodged a complaint with the Committee against Judge M K Parker of the Western Cape Division of the High Court. The ten complainants are Judges D Davis, S Desai, Y S Meer, L J Bozalek, A G Binns-Ward, E T Steyn, P A L Gamble, R C A Henney, O L Rogers and M L Sher. On 31 March 2020, the Cape Bar Council, through an affidavit deposed to by Adv A Breitenbach SC, in his capacity as the Chairperson of the Cape Bar Council, lodged a complaint against Judge Parker.

On 23 May 2020, the Chairperson of the Committee referred the two complaints to the Committee in terms of section 16(1) of the JSC Act in order for the Committee to consider whether it should make a recommendation under section 16(4) of the JSC Act to the Commission that the two complaints be investigated and reported on by a Tribunal. The two complaints were considered by the Committee at its virtual meeting held on 29 May 2020 and recommended to the Commission, in terms of section

16(4)(b) of the JSC Act, that the complaints should be investigated and reported upon by a Tribunal.

After duly considering the set of documents which the Committee sent to the Commission including the complaints, Committee's decision and submissions made by the parties, at a virtual meeting held on 09 October 2020, the Commission constituted in terms of section 178(5) of the Constitution, resolved, in terms of section 19(1) of the JSC Act to request the Chief Justice to appoint a Tribunal in terms of section 21 of the JSC Act to investigate and report on the complaints against Judge Parker. The Commission further resolved in accordance with section 19(4) of the JSC Act to advise the President that it was desirable that Judge Parker be suspended from office in terms of section 177(3) of the Constitution on condition that he finalises his part-heard matters and reserved judgments during the period of his suspension. The Chief Justice accordingly appointed the Tribunal and advised the President of that fact and the desirability to suspend Judge Parker. The President duly accepted the Commission's advice and suspended Judge Parker from office pending the finalization of the complaints.



5.5 MEETINGS ON JUDICIAL CONDUCT TRIBUNALS REPORTS

Section 19 of the Act provides for the Commission to request the Chief Justice to appoint a 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 Commission considered reports of the following Tribunals:

5.5.1 Tribunal on Reserved Judgments

At its virtual meetings held on 09 October 2020 and 15 January 2021, the Commission, in accordance with section 20 of the JSC Act considered the report of the Tribunal established to investigate and report on complaints lodged against Judges Mavundla, Poswa, Preller and Webster. 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 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. Having considered the Tribunal report and the submissions made by the parties, the Commission unanimously agreed to endorse the Tribunal's finding that the respondent Judges be found guilty of misconduct not amounting to gross misconduct. In endorsing the Tribunal's recommendations, the Commission was satisfied that the delays in delivering the identified judgments by each of the Judges were unreasonable and constitute misconduct, short of gross misconduct.

The Commission was divided on the sanction to be imposed on the three respondent Judges. After deliberating on the sanction, the Commission by a majority of its members, decided that the three Judges should be directed to issue an unconditional apology to the Judge President and the litigants involved in all the cases in relation to which the judgments were delayed. Additionally, the majority decided that the Commission should issue a reprimand to all the three Judges to convey the Commission's expression of disapproval for the breach of judicial functions by the respondent Judges. The minority, on the other hand felt that in addition to the two remedial steps of apology and reprimand, the salaries of the respondent Judges should be docked and they should be directed to pay over an equivalent of three (3) months' salary to a worthy cause for the training of Judges.

5.5.2 Tribunal on Judge President Hlophe

Following a myriad of delays caused, amongst others, by various litigation, the Tribunal established to consider the complaint lodged by the Justices of the

Constitutional Court against Judge President Hlophe commenced with hearings on 07-11 December 2020 in Kempton Park, Gauteng. After concluding the hearings on 11 December 2020, the Commission requested the parties to file written closing submissions to be considered by the Tribunal. The parties duly did so and the Tribunal adjourned to consider the evidence and all the submissions presented by the parties. The Tribunal's decision will be delivered in the 2021/22 financial year.



6 REPORT ON THE REGISTER OF REGISTRABLE INTERESTS

Section 13(3) of the JSC Act requires every Judge to disclose to the Registrar of Judges' Registrable Interest 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, there were no Judges appointed due to the postponement of the Commission's sittings occasioned by the COVID-19 pandemic.

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 2021, there was a grand total of 234 Judges in active service and of this number 231 had disclosed their interests. A total of three (3) Judges did not disclose their interests. The three Judges disclosed their registrable interests on 01 April 2021 before they were subjected to the provisions of Regulation 3(6) which empowers the Registrar to invite Judges who failed to disclose to comply within a period of 30 days.





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7 REPORT ON OTHER MATTERS

7.1 LITIGATION AGAINST THE COMMISSION

During the 2020/2021 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 three 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 the HSF still intended to proceed with its application. The response received from the HSF's legal representatives was that they intend to proceed with the matter. The date of hearing of the merits of the HSF's main application will be determined in due course. The HSF has not taken any steps to proceed with this matter.

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 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. The matter is dormant as Mr Snail has not taken the matter any further despite the requests from the Office of the State Attorney to do so.

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 Commission filed a supplementary record.

The Commission wrote to the applicant to paginate the documents and file his heads of argument so that the matter could be ripe for hearing. The applicant has never taken any step to file his heads of argument and the matter is dormant.

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

Mr Montshiwa, launched an urgent application in the Gauteng Local 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 Commission 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.

On 29 June 2020, Mr Montshiwa filed his Heads of Argument which is an irregular step as he was supposed to file a supplementary Founding Affidavit as per the Rules of Court. Counsel for the Commission filed a notice in respect of the irregular step as well as for security of costs.

The application for the consolidation of Mr Montshiwa's matters was heard by the Gauteng Local Division of the High Court on 07 September 2020. The Court as per Matsemela AJ granted an order in favour of the Commission that the two matters should be consolidated in terms of Rule 11 of the Uniform Rules of Court. This, the court, granted on the basis that Mr Montshiwa's arguments opposing the consolidation of the two matters were unmeritorious, unfounded and incomprehensible. Mr Montshiwa was ordered to pay the costs of the application.



7.1.5 Freedom Under Law versus Judicial Service Commission and Another

Freedom Under Law has launched an application in the Gauteng Local Division of the High Court to review and set aside the Commission's decision taken on 10 October 2019 in which it, amongst others, rejected the recommendation of the Judicial Conduct Tribunal which found Judge N J Motata guilty of misconduct and imposed a fine of around R1.1 million. Freedom Under Law further asked the Court to substitute the Commission's decision with a finding that Judge Motata is guilty of gross misconduct or suffering from some form of incapacity as stipulated in section 177(1)(a) of the Constitution. The Commission is opposing this application. A copy of the record as required by Rule 53 of the Uniform Court Rules has been filed with the court. Counsel has been appointed and the Commission has filed its answering affidavit. The Commission is waiting for Freedom Under Law to take the next step by filing its replying affidavit.

7.1.6 Maseko v Molemela JA and Others

Mr Andile Maseko has launched an application in the Gauteng Local Division of the High Court seeking an order to "replace the decisions of the Committee as per Molemela JA and the Appeal Committee constituted by Khampepe ADCJ, Zondi JA and Dambuza JA. He is aggrieved by the Committee's decision to dismiss his

complaint and subsequent appeal that he lodged against the late Judge Steenkamp. The Committee is opposing this application. Counsel has been appointed to represent the Committee in this regard. In an unusual step, Mr Maseko set the matter down in the unopposed roll on 11 March 2021 despite the Committee having filed an answering affidavit. On that day, Mr Maseko failed to appear before court and the matter was struck off the roll.

7.2 BUDGET OF THE COMMISSION

The Commission was allocated a total budget of R8 124 million in the 2020/21 financial year. The total budget allocation for the Commission consists of R3 457 million for compensation of employees, R4 667 million for goods and services with a zero budget for transfers and subsidies and purchase of capital assets.

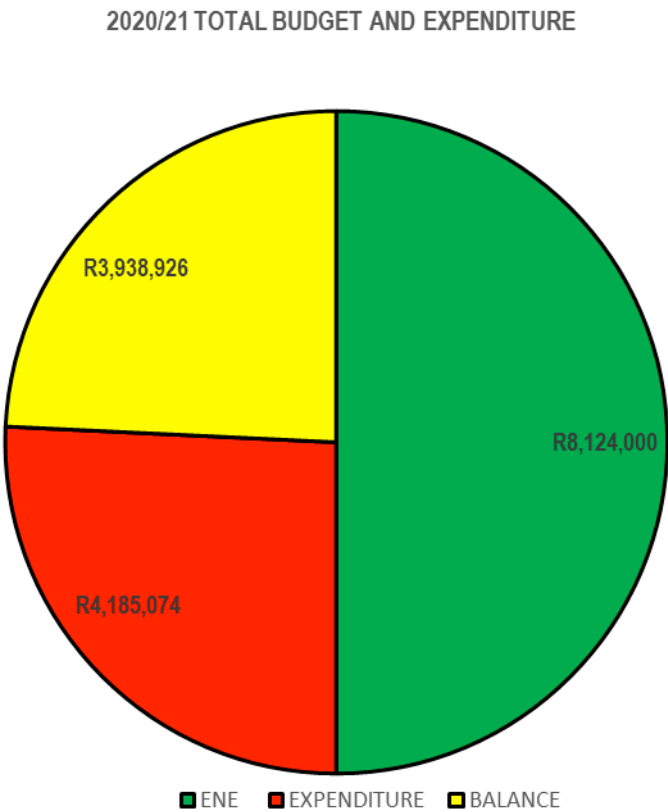
The total expenditure at the end of the financial year is R3 938 926 million which is 48% of the total allocated budget during Estimates of National Expenditure (ENE). The savings in the budget were occasioned mainly by the fact that the April and October 2020 sittings were postponed due to the COVID-19 pandemic. Additionally, some of the Commission's meetings as well as those of the Committee were held through the virtual platforms which contributed to the savings.



The 2020/21 Commission's Budget and Expenditure report is illustrated in the table below:

ECONOMIC CLASSIFICATION	ENE	ACTUAL EXPENDITURE	BALANCE	TOTAL SPENT %
Compensation of Employees	R3 457 000	R2 761 502	R695 498	80
Goods and Services	R4 667 000	R1 177 424	R3 489 576	25
Transfers and subsidies	-	-	-	-
Purchase of Capital Assets	-	-	-	-
Total	R8 124 000	R3 938 926	R4 185 074	48

The 2020/21 Commission’s Budget and Expenditure report is illustrated in the chart below:



8 CONCLUSION

This report bears testimony to the progress made by the Commission in the discharge of 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. The Commission has to a greater extent carried out its obligation of protecting the dignity, integrity and independence of the Judiciary despite all the challenges that we had to endure over the past years. There is little doubt that the Commission has done its best and did well.



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