

## **Preamble**

Section 323 (1) of the Constitution requires every Commission to submit to Parliament, through the responsible Minister, an annual report describing fully its operations and activities. The law further requires that such a report be submitted not later than the end of March in the year following the year to which it relates.

In conformity with the above law, this is the 2017 Annual Report of the Judicial Service Commission.

## **Executive Summary**

2017 was an extraordinary year.

The developments on the political front in the last half of the year saw the Ministry of Justice, Legal and Parliamentary Affairs, being the Ministry under which the Judicial Service Commission reports to Parliament, change hands three times. Notwithstanding these changes, the Judicial Service Commission continued to carry out its functions throughout the year as mandated to it by the Constitution and in accordance with its strategic plan.

The beginning of the year saw the scheduled retirement of the former Chief Justice on 1 March 2017, upon his attaining the mandatory retirement age. Two months after retiring, the former Chief Justice passed on in South Africa. His efforts as a jurist and nationalist were recognised by the State which accorded him national hero status.

On 6 April 2017, the current Chief Justice was sworn into office.

This report constitutes his inaugural report as Chief Justice of Zimbabwe.

During the period under review, the Commission conducted public interviews for the position of Prosecutor General and submitted a list of three names in accordance with the provisions of the Constitution. Mr Ray Hemmington Goba was appointed Prosecutor General of Zimbabwe in November 2017.

Eight judges of the High Court were appointed and sworn into office on 14 December 2017.

## The Establishment and Membership of the Judicial Service Commission

The Judicial Service Commission is set up in accordance with section 189 of the Constitution of Zimbabwe, with the following main functions:

- to tender advice to the government on matters relating to the judiciary and the administration of justice.
- to promote and facilitate the independence and accountability of the judiciary, and
- to promote and facilitate the efficient and transparent administration of justice in Zimbabwe.

The Constitution also provides that an Act of Parliament may confer on the Commission functions in connection with the employment of persons employed in the courts. The Judicial Service Act [Chapter 7.18] provides for those functions in detail.

The inauguration of the Honourable Mr Justice Luke Malaba as Chief Justice left the position of Deputy Chief Justice vacant. As at 31 December 2017, this position had not been filled leaving the membership of the Commission as follows:

- The Honourable Mr Justice Luke Malaba, Chief Justice;
- The Honourable Mr Justice George Mutandwa Chiweshe, Judge President, High Court;
- Advocate Prince Machaya, Attorney-General;
- The Honourable Mr Justice Happias Zhou, Judge of the High Court;
- Doctor Mariyawanda Nzuwah, Chairperson, Civil Service Commission;
- Mr Mishrod Guvamombe, Chief Magistrate;
- Mrs Priscilla Sekai Madzonga, legal practitioner;
- Mr Josephat Tshuma, legal practitioner;
- Mr Lloyd Mhishi, legal practitioner and
- Mrs Priscilla Panichai Mutembwa, public auditor.

There were three vacancies on the Commission at the close of the period under review. These are: the Deputy Chief Justice, a professor or senior lecturer of law and a person with experience in human resources management.

The Judicial Service Commission draws the attention of the appointing authority and of Parliament to these vacancies, with an appeal for the vacancies to be filled at the earliest opportunity so that the Commission can operate at full capacity.

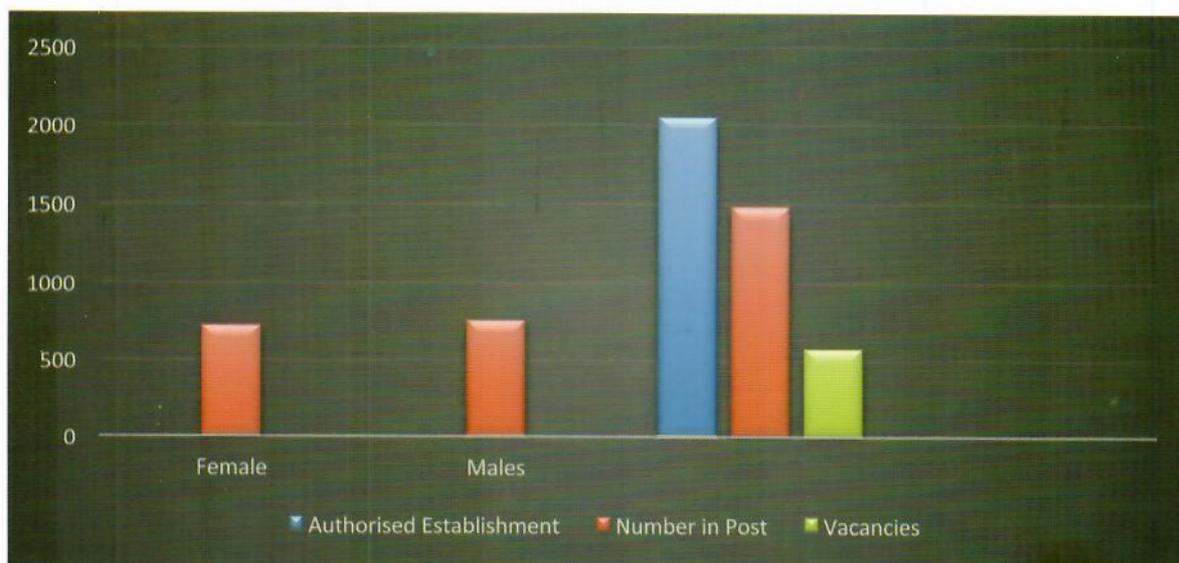
## Human Resources

The Judicial Service Commission is primarily a service commission, employing all personnel in the Judicial Service in addition to administering all courts.

There were harmonious industrial relations with all categories of Judicial Service members throughout the year although conditions of service of members, especially those in the magistracy and the lower non judicial categories of employees remain disturbingly low. While low salary levels are never an acceptable justification for loss of judicial integrity, the Judicial Service Commission is of the firm belief that paying a living wage to magistrates, commensurate with the level of responsibility in their respective communities will go a long way in enhancing judicial integrity.

### Establishment and Vacancy Situation.

As at 31 December 2017, against an establishment of 2058, there were 1445 members of the Judicial Service in post, resulting in 613 vacancies which translate to 24 % of the authorised establishment.



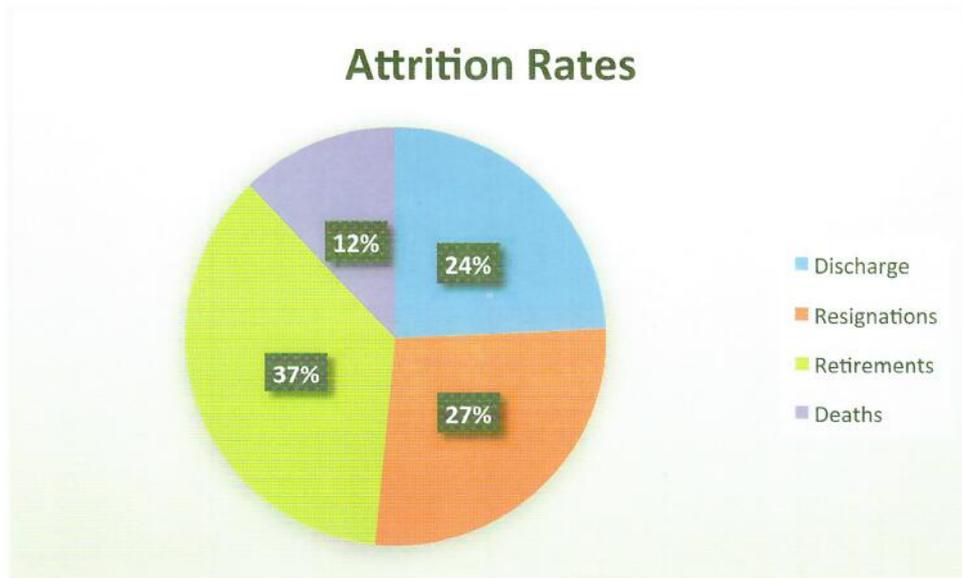
The vacancy percentage is unacceptably high if it is viewed against the following background:

- General increase in litigation in all courts;

- ❑ A deliberate policy on the part of the Judicial Service Commission to enhance access to justice by decentralising the High Court and by opening more lower courts closer to the people;
- ❑ The introduction of specialised divisions of the High Court in response to government policy to ease the settling of disputes.
- ❑ The declaration and opening of all magistrates courts as commercial and small claims courts and
- ❑ The thrust of the Commission on efficient and effective justice delivery.

Against the above background, the freeze on all recruitment by Treasury was felt more in 2017 than before. Posts which were budgeted for were automatically frozen and there was no replacement of staff in 2017 despite the Commission losing a total of 33 members due to resignations, retirements, deaths and discharges. Retirements during the period under review contributed to 37% of the staff attrition, followed by resignations and discharges.

The pie chart below shows the attrition rates during the year under review.



**Vacancies in the Magistracy.**

Of the 613 vacant posts, 59 are magisterial posts. These cannot be filled due to the automatic freeze although they are critical posts for effective justice delivery. The filling of the vacancies will also address an anomalous situation that has developed in the judiciary where the higher bench is expanding at a rate faster and un-proportionate to the lower bench which serves a far larger proportion of the population than the High Court. Added to this is the

challenge of magistrates' lack of jurisdictional competency resulting from the freeze on advancement of magistrates from one grade to another. The Commission will continue to engage Treasury on the advancement of magistrates, the filling of magisterial and other critical posts within the service if the twin goals of enhancing access to justice and easing the settling of disputes efficiently are to be realised in the years following the period under review.

### **Retirements.**

Notable retirements during the year included the retirement of the Honourable Mr Justice Lawrence Ndhlovu Kamocha from the High Court on 15 November 2017 upon attaining the mandatory retirement age. The retired judge had served in the public service for a record 47 years before his retirement.

### **Appointments**

The Honourable Mr Justice Luke Malaba was sworn in as substantive Chief Justice on 6 April 2017, having acted in that capacity from 1 March 2017.

Mr Ray Hemmington Goba was, in November 2017, sworn in as Prosecutor General following the public interviews that the Commission held for the post on 21 August 2017.

In December 2017, the President appointed eight High Court judges who were sworn into office by the Chief Justice on 14 December 2017. The appointments brought to thirty-eight the complement of judges in that court. The new judges are:

(i) Honourable Justice Phildah Muzofa, (ii) Honourable Justice Thompson James Mabhikwa, (iii) Honourable Justice Isaac Muzenda, (iv) Honourable Justice Neville Munyaniso Wamambo, (v) Honourable Justice Sylvia Chirawu, (vi) Honourable Justice Benjamin Chikowero, (vii) Honourable Justice Pisirai Kwenda and (viii) Honourable Justice Jacob Manzunzu.

The Commission interviewed and appointed High Court assessors for the following courts:

<b>Court</b>	<b>Number of Assesors</b>
Harare	6
Bulawayo	4
Mutare (circuit court)	3
Masvingo	3
Gewru ( circuit court)	3
Hwange (circuit court)	4

### Staff Training and Professional Development.

The Commission, in collaboration with the International Commission of Jurists held two symposia for all judges at the end of the first and second terms of the year under review. In addition to dealing with specific operational issues that were raised by each of the court for debate and discussion, the Chief Justice took the opportunity to use the first symposium, which was held in the same week that he was sworn in as substantive Chief Justice, to lay his vision for the judiciary to all judges, the thrust of which is on individual and institutional performance. At the end of the third term, all senior judges attended the joint Bar –Bench colloquium hosted jointly by the Commission and the Law Society of Zimbabwe.



*Bar-Bench Colloquium November 2017 (Victoria Falls)*

During the course of the year, the Labour Court and the High Court held *ad hoc* professional development sessions on selected topics.

With the coming to an end of the DANIDA aided training, in 2016, training in the magistracy in 2017 was mainly limited to training of personnel at various levels on how to operate the recording machines that have been installed at all court stations.

Magistrates throughout the country were exposed to the computer operations and packages linked to the digital court recording system for supervision purposes.

Due to the freeze on recruitment, the Commission was unable to recruit court recorders for all the newly installed equipment. It was then resolved that all personnel especially at small stations, multi-skill and learn to operate the recording machines.



*Staff members undergoing training on court recording*

The table below shows the number of personnel trained in all the provinces.

2017			
Date	Staff Category	Venue	Number of Participants
7-9 July	Magistrates, Court Recorders, Clerks, Court Interpreters, Executive Assistants, Office Orderlies	Marondera, Rusape Mutare, Chipinge, Gweru	55
4-8 August	Magistrates, Court Recorders, Clerks, Court Interpreters, Executive Assistants, Office Orderlies, Groundsman	Chivhu, Masvingo, Mwenezi, Zaka	44
4-7 September	Magistrates, Court Recorders, Clerks, Court Interpreters, Executive Assistants, Office Orderlies	Kadoma, Chinhoyi, Karoi, Kariba	31
10-16 October	Magistrate, Clerks of Court, Court Recorders, Office Orderlies, Executive Assistants	Hwange, Victoria Falls, Binga, Nkayi, Western Commonage, Byo TradeGold	29
16-17 October	Magistrate, Clerks of Court, Court Recorder, Office Orderlies, General Hand	Bindura, Concession	11
18-19 October	Clerks, Researchers, Data Capturers	Supreme Court of Zimbabwe	15
19-25 October	Magistrate, Clerks of Court, Office Orderlies, Executive Assistants, Court Interpreters, Accounting Assistants	Plumtree, Filabus, Gwanda Beitbridge	22

All research assistants and two deputy registrars attended a training session on judgment, memoranda and speech writing in Cape Town, South Africa, from 2 to 5 May 2017 with the assistance of The International Commission of Jurists.

Provincial Accountants were trained on the adoption of government's new charter of accounts in September 2017 whilst all provincial administrators were trained on improving efficiency in operations in Harare on 6 October 2017.

### **Designation of the Commission as a Training Institution by ICAZ**

During the course of the year, the Judicial Service Commission was designated as a training institution by the Institute of Chartered Accountants in Zimbabwe (ICAZ), thereby becoming the second public institution after the office of the Auditor-General to be recognised as such. Not only will the Commission train and certify its own accountants who wish to become chartered accountants but now it has the authority to train and certify chartered accountants for the country. This marked a proud moment for the Commission as its thrust towards professionalism was recognised by ICAZ.

### **General Administration**

Following the completion of the construction of 30 courthouses across the nation at the beginning of 2017, the main thrust of the Commission during the period under review was to improve on all operating systems. This included improvements in assets management which saw the Commission updating all asset registers after validating the existence of the assets. This exercise followed the completion of the DANIDA aided projects at the close of which an audit was conducted by an independent audit firm to confirm that all assets purchased under the project were accounted for.

The Judicial Service Commission received a clean bill from the external auditor. All the assets purchased with assistance from DANIDA were accounted for and were appropriately tagged. The professionalism and integrity of all staff members in the Administration

Department is commended for giving the Judicial Service Commission a good name in this regard.

The Department also introduced a comprehensive e- motor vehicle management system for the growing fleet of the Commission's vehicles. This system has four modules that electronically monitor and report on such aspects of motor vehicle management as fuel allocation and consumption, tyre replacement, service and maintenance due dates and accidents and disposals modes. As a result of the introduction of the electronic fuel allocation and management system, the Commission has made significant savings.

Similarly, the Commission has constantly and consistently set up boards of inquiry into all motor vehicle accidents. Where members have been found guilty of contributing to the accident, they have been penalised with the concurrence of Treasury and this practice has resulted in the reduction of reported accidents involving Commission vehicles.

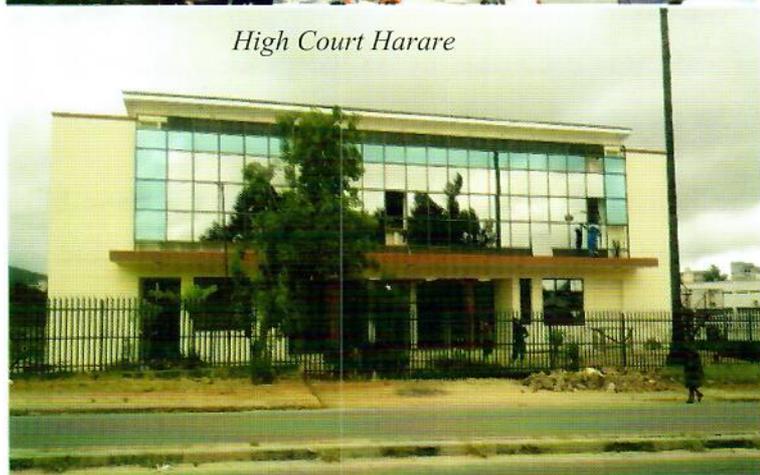
In addition to improving on operating systems, the Commission has also added to its immovable assets register by purchasing a residence for the Chief Justice in Harare, and a residence for the senior judge to be posted to Mutare. With these purchases, the Commission now has real estate registered in its name to the value of US\$ 3, 8 million.

The Commission continued with renovating the old courthouses with Harare High Court receiving a coat of paint both inside and outside whilst customisation of the Mutare High Court was almost complete by the end of the year under review.

Efforts to move the office of the Master from the High Court in Bulawayo to



*High Court Harare*



make room for the expansion of the High Court were at an advanced state at the end of the year under review with suitable offices having been identified.

As detailed elsewhere in this report, the Acting Secretary has been touring all provinces, assessing the Commission's infrastructure as to its state of repair or disrepair and to the functionality of court and office equipment. This programme, which commenced during the period under review and will only be completed in 2018, has seen the Commission responding almost immediately to address and redress some glaring situations such as broken down office and court furniture and leaking roofs. The programme which has seen the Secretary touring four provinces by the end of the reporting period has seen the complete refurbishment and redecorating of the Mutare Magistrates Courts and the distribution of new furniture to all courts in Manicaland. Subject to availability of resources, the Commission will refurbish and provide new courtroom and office furniture to all the courts visited and where need has been established.

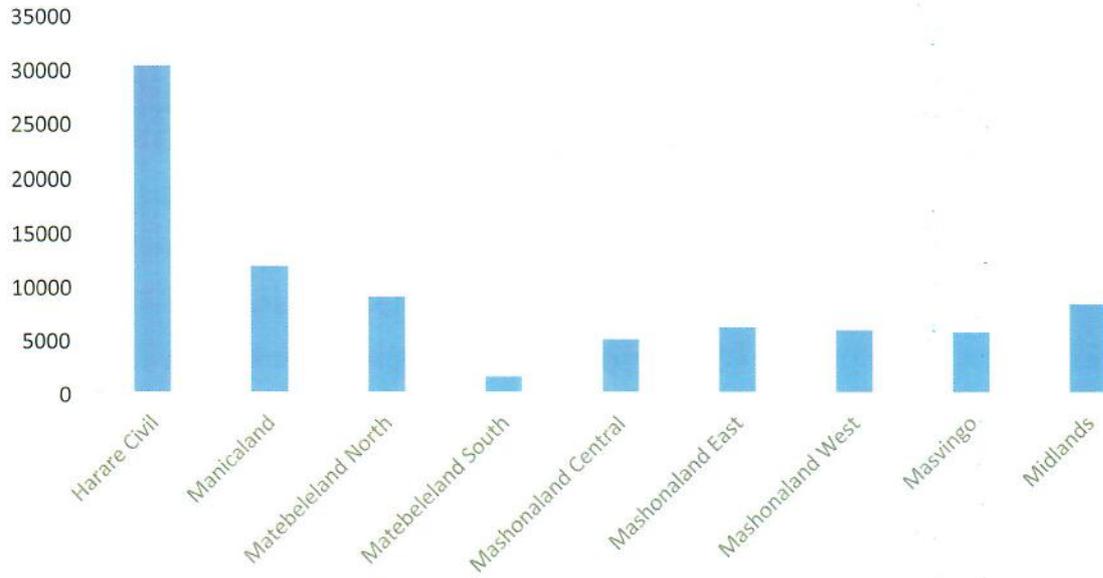
### **Harare Civil Court.**

This court deserves special mention.

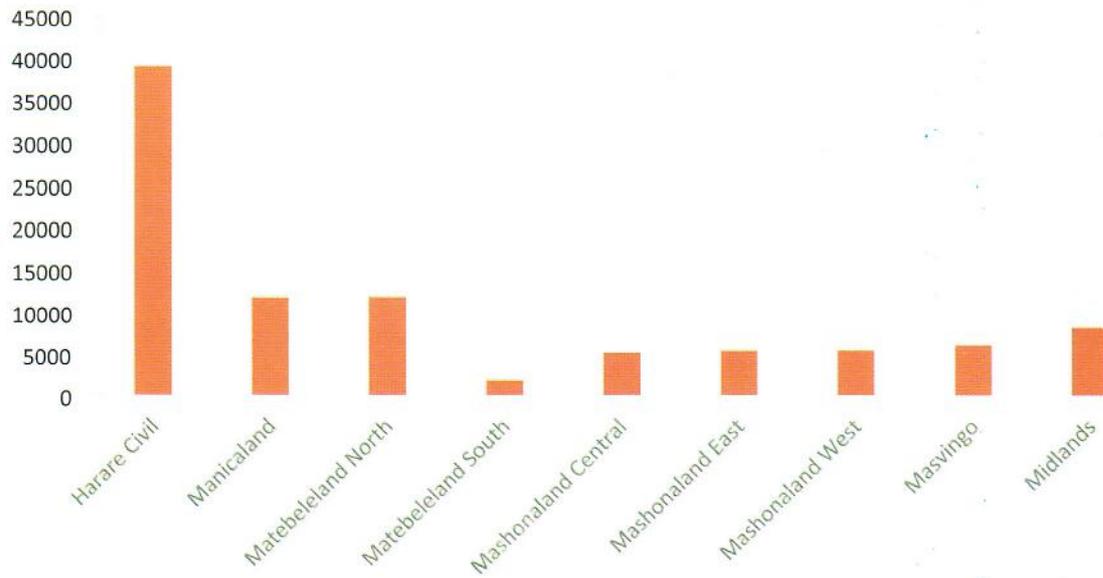
Historically, all trials were held at Harare Magistrates Court at Rotten Row. With the increase in the number of criminal cases filed each year, it was resolved to separate criminal trials from civil trials and to dedicate the infrastructure at Rotten Row to the handling of criminal trials. The civil court was transferred to its current address.

The Harare Civil Court is the busiest court in the land. It receives more cases per year than each of the magisterial provinces. The table below shows the number of cases received by Harare Civil Court compared to each of the provinces for the past three years.

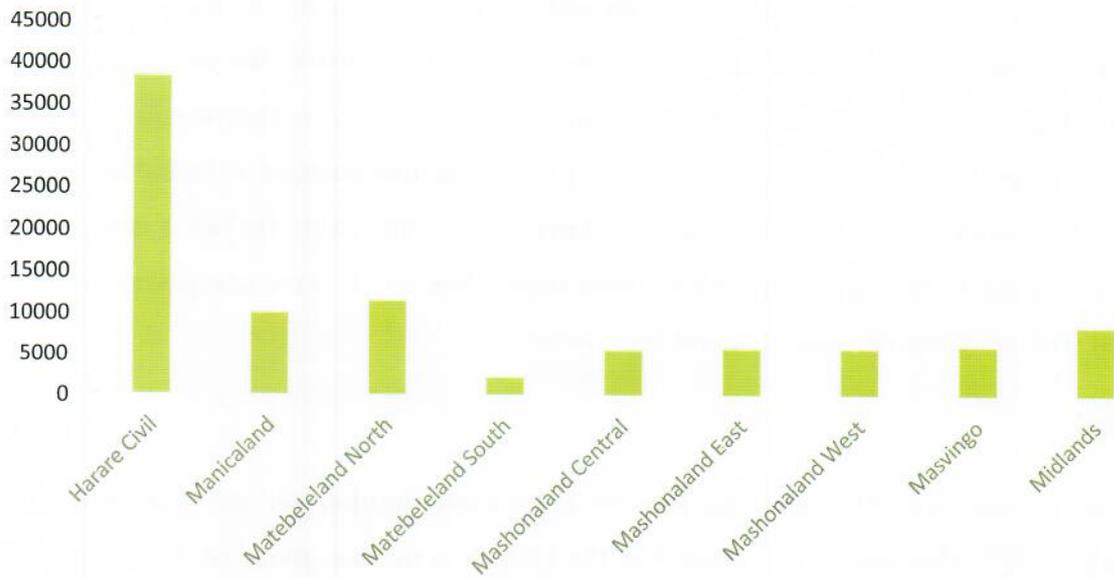
2015-Cases Received/Year



2016-Cases Received/Year



## 2017-Cases Received/Year



The courthouse is however accommodated in a composite government building that has been condemned. Due to that condemnation, there is no budget for its refurbishment or renovation and there is general dilapidation at the complex that has been deepening due to years of neglect. There is no one ministry or government department that is responsible for the general outlook of the complex and one government department is using its section of the complex to run a public bar.

Security is lax generally and theft of office equipment is rife to such an extent that the Commission's IT department could not install case tracking computers at the station as on a number of occasions, the offices have been broken into and equipment stolen.

There is perennial congestion at the complex with legitimate visitors and those who prey on litigants offering unsolicited and illicit legal advice. Putting in strategies to enhance the integrity of judicial officers and support staff in such an environment is an uphill effort as there are other personnel within the complex over whom the Commission has neither control nor authority.

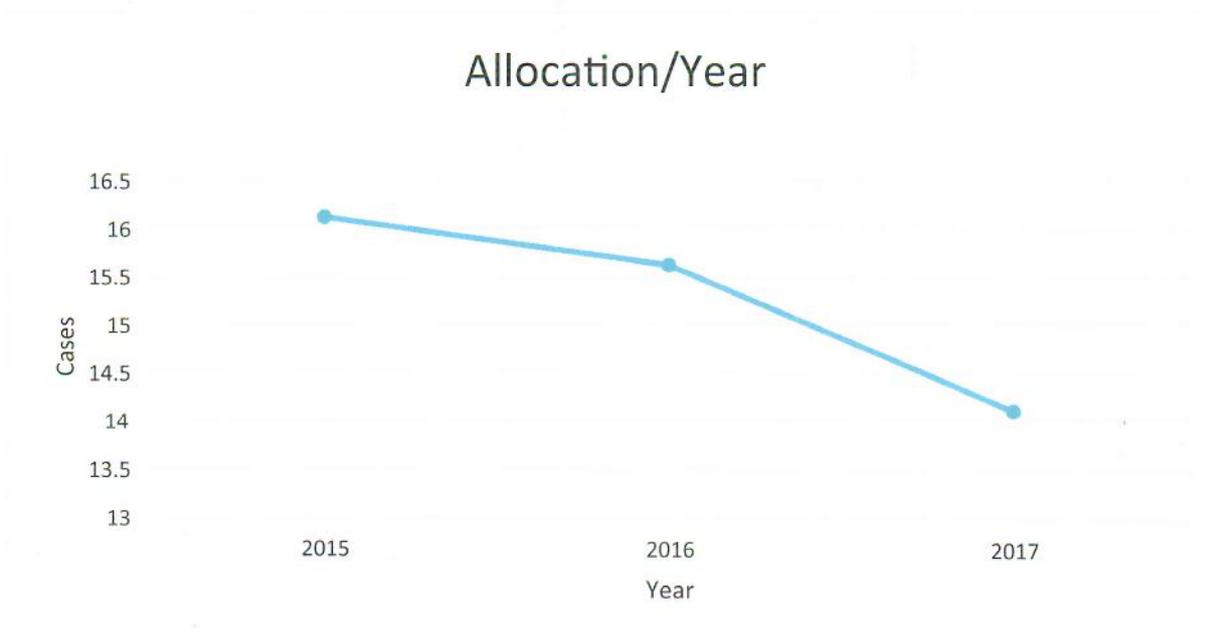
In an effort to decongest part of the complex that is allocated to the judiciary, the Commission has since moved the deceased estates section from the magistrates court to the office of the Master of the High Court and will continue to monitor the situation.

The long term solution to the accommodation woes of the Harare Civil Court is to construct the civil court next to the Criminal Court at Rotten Row.

Due to shortages in the market and the late release of voted funds from Treasury, the Commission moved slightly from its comfortable position of having at least one month’s cover of all essential commodities. Price increases during the course of the year under review led some suppliers to demand payment in advance, a practice that is not permissible under the current regime of Treasury Instructions. Consequently, the Commission is operating on very low levels of stock especially of stationery and provisions. All efforts are being made to stop the Commission from regressing back to those days when courts were compelled to sit and proceed without adequate stationery and provisions.

**Finance**

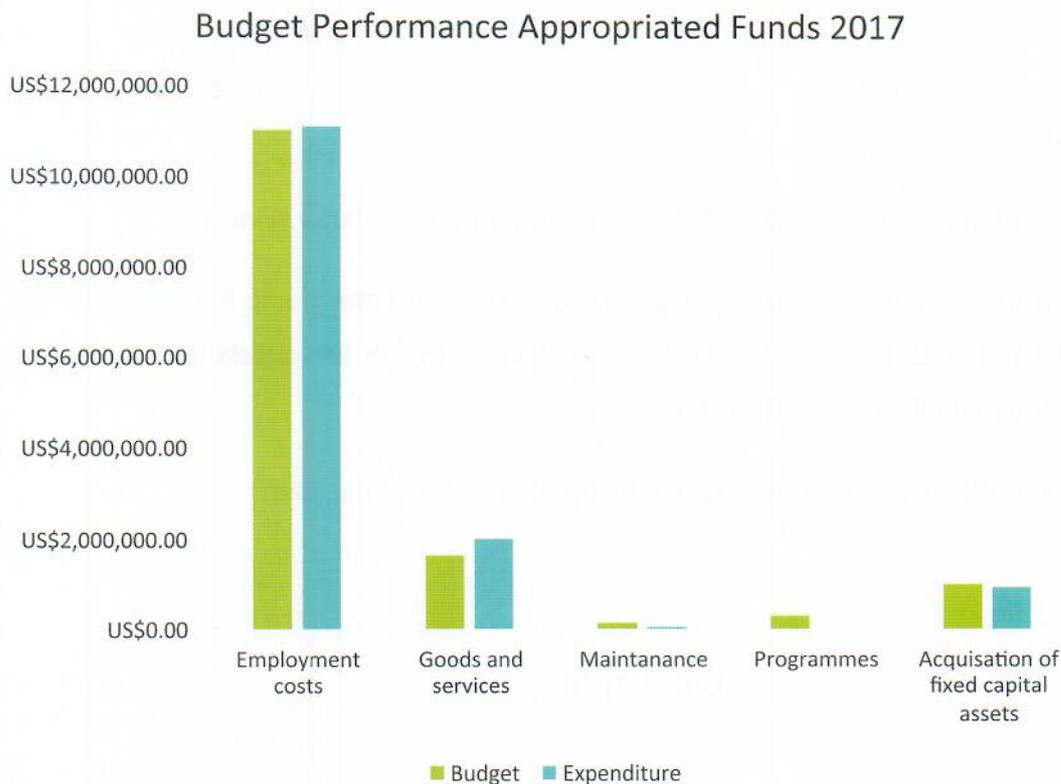
The Commission was allocated the sum of US\$14,099 million for the year ending 31 December 2017. This was much lower than the US\$15. 6 million allocated in 2016 and the US\$16.1 million allocated in 2015. For the third year running the funds allocated to the Commission have been reducing as is evidenced by the graph below.



The decreased allocation had greater adverse impact on the operations of the Commission in 2017 than in the previous years as it came when the US\$17 million aid package from DANIDA had been exhausted in 2016. There was therefore little cushioning as there were no other funds to rely on save those from Treasury. Such matters as training, for which there was no direct budgetary support from Treasury, had to be scaled down to minimal levels.

A table showing the budget allocations and releases for 2017 appears below. As is clear from the table that the bulk of the budget and corresponding allocations were for employment costs. The variance is explained by the fact that the salaries of the eight judges, who had been interviewed in 2016, were not expended during the course of the year as the appointments were only made in December 2017.

Whilst Treasury had allocated US\$134 000 for maintenance, only US\$44 912 was released thereby putting a damper on the intentions of the Commission to renovate and refurbish all the old courthouses during the course of the year.



The Courts and Administration Fund earned a total of US\$12 million during the course of the year. Income from the distributable portion of the revenue bore the burden of supporting all the activities of the Commission that Treasury could not support directly.

**Performance of the Courts and Offices of the Master and Sheriff.**

**Magistrates Court**

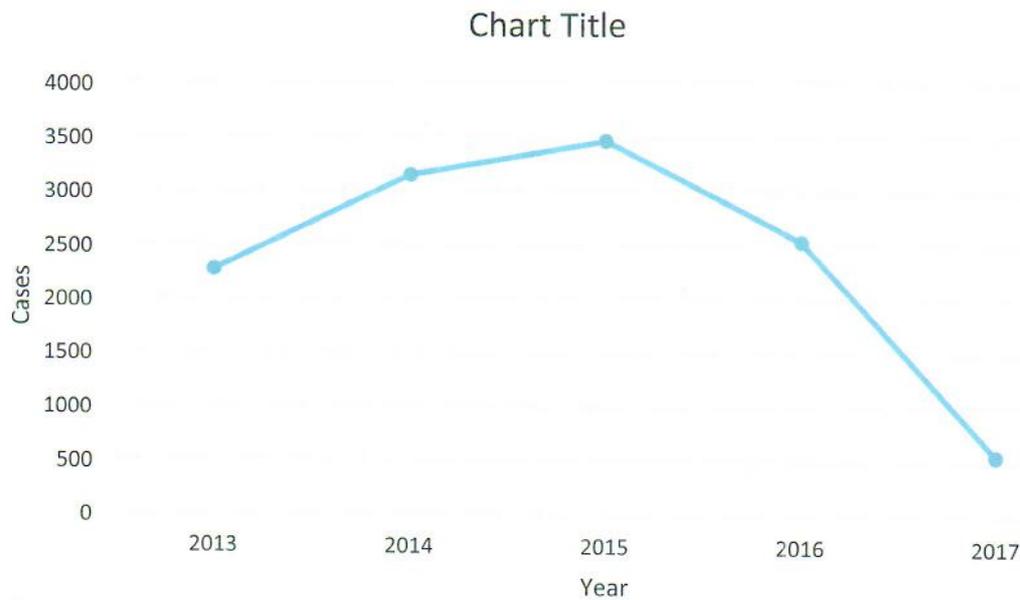
There was a decrease in the number of criminal cases received by the magistrates courts country-wide from 95 000 in 2016 to 83 356 during the year under review. There was also a decrease in the number of civil cases filed from 91103 to 88 129 cases in 2017. Of the total 171 485 cases, the magistrates courts finalised a total of 171 370 leaving the backlog at a mere 3 714 cases. This is remarkable if the figure of the current backlog is compared to the backlog in 2014 which stood at 45 000 cases.

**Labour Court**

The Labour Court completed a total of 2957 cases during the year under review.

Whilst the graphic depiction of the completion rate of the court appears to have taken a dip from the 2014 and 2015 figures, this is not correctly reflective of the efforts of the court to reduce its backlog which now stands at 420 cases.

The graph below shows the declining rate of the backlog status of the court.



## High Court

The output in the High Court continues to go up. During the year under review, the court completed 24 568 cases up from the 23 600 that were completed in 2016. The output of the Court has over the past 5 years had a clear trajectory which, if maintained will introduce greater efficiency in that court thereby completely eradicating the backlog which now stands at 4 303 as compared to 10 190 as at the end of 2016.



## Supreme Court

The Supreme Court experienced an increase in the number of cases received from 712 in 2016 to 1002 during the year under review. The output of the court correspondingly rose from 731 in 2016 to 1088.

## Constitutional Court

The number of cases filed with the Constitutional Court has been steadily dropping over the years. In 2015, a total of 101 cases were filed. These dropped to 76 in 2016 and during the year under review, they further dropped to 70.

The decline in the number of cases may be explained by the fact that the court has handed down a number of judgments since 2013 which explain some provisions of the Constitution and thereby providing guidance to legal practitioners and the public on the meaning of the supreme law and also to the fact that the Rules of the Court have now been promulgated regulating access and procedures to be followed when filing cases with the court.

At the close of the year under review, the Constitutional Court had a backlog of 74 cases as compared to 124 at the end of 2016.

### **The Sheriff's Office.**

During the year under review, the Sheriff opened three more offices in Gwanda, Bindura and Chinhoyi, bringing its presence to nine out of the ten provinces.

During the year under review, a total of 20 262 processes were lodged with the office of the Sheriff for service. A total of 20 238 process were served, leaving only 25 process outstanding countrywide. These were broken down as 16 outstanding processes for Harare, 6 for Bulawayo and one each for Gwanda, Masvingo and Bindura.

The office has effectively eradicated delays in the service of summons and the outstanding service mainly relates to writs of attachments and removals of attached property.

### **The Master's Office.**

The Harare and Bulawayo stations continued to reduce their backlogs during the year under review. Masvingo, however, recorded a further increase in the number of pending cases.

During the third quarter, a total of 37213 deceased estates cases filed with the Harare Magistrates Court were transferred to the Office of the Master as reported elsewhere in this report. This move, in addition to decongesting the Harare Magistrates Court had the salutary effect of harmonising the administration of all estates regardless of the law applicable to the administration of such estates.

Women in Law in Southern Africa (WILSA) introduced a help desk at the Master's office in Harare which they run once a week and this is proving to be of immense benefit to women who visit the office for various services and especially the completion of death notices and other legal forms necessary in the administration of estates.

For the first time in a number of years, a few companies that were under judicial management were turned around and returned to profitability. These include ZIMASCO, Kimberworth, Pioneer Transport and Tynserve Wholesalers.

## **Legal and Technical Developments.**

### **Separation of the Constitutional and Supreme Courts.**

Cognisant of the fact that the seven year period prescribed in the Constitution and the period within which the judges of the Supreme Court also constitute the Constitutional court will come to an end in May 2020, the Commission has commenced the process of de-linking the two courts. There will be need to provide separate facilities for the two courts and this will involve the procurement of suitable accommodation and office and courtroom equipment for both courts. Administrative issues such as the separation of registries and the setting up of different case management systems for each court are also being looked into.

### **Integrated Case Management System**

The Commission has taken a deliberate decision for the judiciary to embrace technology in the management of the cases that are filed with the courts. It is the hope of the commission that the introduction of an integrated case management system will bring greater efficiency in the management of court cases, reduce backlogs and eliminate or reduce the incidences of corruption related to the handling of cases.

### **Conclusion**

During the year under review, the Judicial Service Commission undertook various activities in order to fulfil the mandate imposed on it by the Constitution. It is from the Constitutional mandate that the Commission came up with its Strategic Plan which speaks to the Commission's vision to deliver world class justice. Central to all the activities of the Commission is therefore the drive to afford all the people of Zimbabwe access to justice. During the course of the year 2017, the Commission remained on target to achieving the goals that it has set out for itself.

I am hopeful that 2018 will see the Commission notching greater success in enhancing access to justice and efficient administration of the courts

The Honourable Mr Justice Luke Malaba

Chief Justice of Zimbabwe.





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