

JUDICIAL SERVICE COMMISSION

“A Zimbabwe in which world class justice prevails!”



ADDRESS BY

**THE HONOURABLE MR JUSTICE LUKE MALABA,
CHIEF JUSTICE OF ZIMBABWE**

**ON THE OCCASION OF THE OFFICIAL OPENING
OF THE 2024 LEGAL YEAR**

ON

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**THEME: THE ROLE OF THE JUDICIARY IN
ENTRENCHING CONSTITUTIONALISM**

SALUTATIONS,

The Prosecutor General Mrs Justice Matanda-Moyo, the Attorney-General, Mrs Virginia Mabhiza, and Advocate Matinenga, as per tradition, we gather here today to mark the beginning of a new legal year. It is with pleasure that I welcome you all to this annual ceremony, in the full knowledge that every one of us is bound by our commitment towards the effective, efficient and transparent administration of justice in Zimbabwe. Today's event once more presents the Judiciary with another opportunity to discuss and lay markers along the path that it, with the support of stakeholders, intends to follow as the 2024 legal year commences. It also provides a rare chance for the Judiciary to publicly explain to the people its activities during the 2023 legal year. Interconnection with the public serves to fulfil the constitutional mandate requiring the Judiciary to account to the people of Zimbabwe. The ceremony equally affords the Judiciary the occasion to discuss with stakeholders issues affecting the administration of justice and the operations of the courts outside the confines of the courtroom. This background is given to ensure that there is clarity regarding the message transmitted by the Judicial Service

Commission (“the JSC”) and the Judiciary in relation to the trajectory of strategic priorities undertaken. For that reason, and in conformity with the quest to decentralise access to justice, similar proceedings are taking place at different seats of the High Court in Bulawayo, Masvingo, Mutare and Chinhoyi.

During the year under review, and in compliance with the requirements of the Constitution, Zimbabwe held harmonised elections to elect the President, representatives of the people in Parliament and in local authorities. The Judiciary takes this opportunity to join the nation in commending Zimbabweans for exercising their constitutional right to deliver peaceful, free, fair and credible elections. On behalf of the Judicial Service Commission and the Judiciary, I take this opportunity to congratulate His Excellency Dr E D Mnangagwa for his re-election as the President of Zimbabwe. I also congratulate the two Honourable Vice Presidents for their appointment to the key constitutional offices.

Key appointments were made in 2023 to public offices central to the administration of justice. Allow me to congratulate the Honourable Ziyambi Ziyambi, for his reappointment as the Minister of Justice,

Legal and Parliamentary Affairs; the Honourable Obert Mazungunye, for his appointment as the Deputy Minister of Justice, Legal and Parliamentary Affairs; the Honourable Mrs Justice Matanda-Moyo for her appointment as the Prosecutor General of Zimbabwe; the Honourable Mrs Virginia Mabhiza for her appointment as the Attorney-General of Zimbabwe; and Mrs Vimbai Nyemba, for her appointment as the Permanent Secretary of the Ministry of Justice, Legal and Parliamentary Affairs. The appointments will enhance the administration of justice.

It has become customary that at the beginning of the legal year the Judiciary adopts a theme to guide its operations. The selection of the theme for the legal year is a process that is not only guided by the Judiciary's vision of attaining world-class justice for all but it is also influenced by the JSC's Strategic Plan and contemporary issues affecting the country.

In 2023 the JSC adopted a theme that was dedicated to *promoting competence and quality of service to enhance public confidence in the Judiciary*. This thematic choice guided the operations of the JSC in

its efforts to capacitate Judges, magistrates and other members of the Judicial Service with the necessary tools and skills in the execution of their constitutional mandate.

In 2024 the JSC has identified a theme that resonates with a significant event in the history of the constitutional development of the nation. Zimbabwe's current Constitution became law on 22 May 2013. A decade has passed since the promulgation of the transformative Constitution. It must have come of age. Zimbabwe is a constitutional democracy. The implication is that governance is premised on laws, rules, conduct and policies which are all subservient to the Constitution. The Judiciary plays a critical role in that regard. It safeguards the principles and the values of the Constitution, including ensuring that the State and all its agencies act in strict compliance with and in conformity to the Constitution. The JSC found it befitting and proper that the Judiciary takes the lead in celebrating the ten years of existence of the Constitution. It is in the celebratory context that the theme chosen for the 2024 Legal Year is:

“THE ROLE OF THE JUDICIARY IN ENTRENCHING CONSTITUTIONALISM”.

The first observation to make about constitutionalism is that it is a broad and expansive concept. It is generally distinguished by respect for the principles of limited government, the rule of law, the separation of powers, democracy, and the protection of individual rights and freedoms. These foundational values and principles are necessary to preserve a just and democratic society that is based on openness where people's rights are protected and the Government is answerable to the people.

The Constitution is the bedrock of constitutionalism. It imposes objectives and standards by which the operations and conduct of the Executive, the Legislature, the Judiciary and the other agencies of the State are measured. The Judiciary shoulders the duty, at individual and institutional level, to act in the manner that is prescribed by the values and principles embodying the standard of the conduct prescribed by the Constitution. Its conduct must resonate with the vision and aspirations of the people grounded in the framework of the Constitution.

As has been stated on previous occasions, it is the Constitution which establishes the Judiciary as the third arm of the State. The State itself is a constitutional State, being a creature of the Constitution. The Constitution is a living document, whose significance extends beyond mere ideals captured in the text. Its preamble demonstrates that beyond doubt. It commences with the words “*We the people of Zimbabwe*” and ends with an affirmation that the people of Zimbabwe commit themselves to the Constitution “*as the fundamental law of our beloved land*”. The commitment expressed is in effect a way of living that is governed by the norms pronounced in the Constitution. Constitutionalism thus becomes a living objective and culture by which the people will always measure their conduct as a group. The duty to interpret the law that is imposed on the Judiciary and the public offices of justice developed for this purpose are a reflection of the commanding nature of the Constitution. This is because the Constitution not only creates the duty and the offices but also prescribes the manner and timing of exercising the powers that it gives. It also prescribes the remedies for failure to act constitutionally. That understanding is consistent with the founding values and principles contained in

section 3 of the Constitution. The provision denotes that Zimbabwe is founded on respect for the supremacy of the law, the rule of law, fundamental human rights, and the nation's diverse cultural values. Of note is the acceptance that the values and principles in section 3 are relevant to every institution in the sovereign State. No individual or entity is above the clear demands of the Constitution. It sets the tone and standards of the required conduct and performance whilst fostering a culture of compliance. That comprehension of the founding values and principles dovetails with the preceding section 2(2) of the Constitution, which stipulates that:

“(2) The obligations imposed by this Constitution are binding on every person, natural or juristic, including the State and all executive, legislative and judicial institutions and agencies of government at every level, and must be fulfilled by them.”

(Emphasis is added)

The feature of constitutions providing for fundamental aspects of creating a legal order gives constitutions their relevance in the present and the future. Constitutions are accordingly regarded as always speaking to the shared aspirations and expectations of the people at any given time.

One might wonder why the Judiciary has set out to achieve this ambitious objective. The answer is to be found in the constitutional text. The role of the Judiciary as an arbiter of justice, in the exercise of the authority derived from the people in terms of section 162 of the Constitution, is to foster compliance with the Constitution. The core reason for the Judiciary's establishment is to be the final port of call regarding the interpretation of both ordinary statutes and the supreme law of the land.

An effective Judiciary is one that is cognisant of the importance of constitutionalism. It must be able to perceive threats to the expected constitutional standards of behaviour imposed on everyone. By interpreting and applying the law without discrimination and in a transparent manner, the courts ensure that the fundamental role of the Constitution as the driver of a just, harmonious and peaceful society is fulfilled.

To effectively uphold the rule of law, processes and decisions of the Judiciary in dispensing justice must adhere to the principles of fairness, equality, impartiality and legality. It must be noted that the relationship

between the Judiciary and the Constitution in this regard is a dynamic and evolving process, because courts are both a creation of the supreme law and its custodian. On the one hand, the courts have procedural and substantive laws that guide their operations in the exercise of the judicial authority; yet, on the other hand, the courts are ultimately responsible for preserving the sanctity of the supreme law. Thus, the courts by committing to and operating in compliance with the values and the standards of the Constitution are actively entrenching constitutionalism.

In terms of section 46 of the Constitution, the courts are compelled to promote the values and the principles that underlie a democratic society based on openness, justice, human dignity, equality and freedom when dealing with matters that involve potential violation of fundamental human rights and freedoms. The values and the principles set out in section 3 of the Constitution are specifically identified as being central to the realisation of a democratic society that embodies **openness, justice, human dignity, equality and freedom**. This finding of both law and fact articulates the objective that the Judiciary as an institution

is endeavouring to deliver by dedicating focus to the entrenchment of constitutionalism.

Constitutionalism is, by design, intended for the protection of human dignity, which is in turn set out in section 3(1)(e) of the Constitution as a foundational value. Constitutionalism is a manifestation of the degree and level of protection of human dignity that people commit to. It is also a demonstration of the level of consciousness by a people of the need for the protection of human dignity. The Constitution was made with the interests of the people in mind. The reason for this is that respect for human dignity extends to ensuring compliance with the provisions of a constitution. The people are enabled to participate in matters involving the Constitution through their chosen representatives. The public is at the epicentre of the existence of the Constitution and its established procedural and substantive mechanisms for fostering compliance with its fundamental values and principles. Those who live in a state of harmony with society must feel protected by the Judiciary's adherence to the concept of constitutionalism. Even those who are engaged in acts of lawlessness must feel that the courts, when administering the justice they deserve,

are acting in a manner that reflects a consciousness of the overarching supreme command of the Constitution. Accordingly, the Judiciary is committed to ensuring that the vision couched in the Constitution of a democratic society based on **openness, justice, human dignity, equality and freedom** becomes a reality to every person who interacts with the justice delivery system.

Judges and magistrates must be agents of constitutionalism through observance of the principles that guide the Judiciary in terms of sections 164 and 165 of the Constitution. Judicial officers are the gatekeepers of the Constitution. It is therefore imperative that their conduct remains lawful and beyond reproach at all times. It is the only way that the public will retain confidence in the Judiciary. Where there exists the unfortunate scenario of judicial officers whose conduct is reproachable and is in violation of the provisions of the Constitution or the Judicial Code of Ethics in the case of Judges and the Judicial Service Regulations and the Magistrates Code of Ethics in the case of magistrates, it will be inevitable that the relevant disciplinary measures will be invoked. There is the grim potential to undermine constitutionalism by condoning or legitimising unlawful conduct by

judicial officers which erodes the outlined fundamental values and principles of the Constitution. It is regrettable and unfortunate that over the years, including the year under review, the Judiciary lost Judges and magistrates pursuant to the invocation of mandatory disciplinary measures necessitated by the doctrine of constitutionalism. The public's expectation is that the provisions of the Constitution must be strictly applied. In that regard the JSC will not shy away from enforcing and entrenching the constitutional obligation.

The Constitution equally recognises the interconnection between the administrative and the judicial functions within the Judiciary. As such, the non-judicial members of the Judicial Service have a corresponding responsibility to promote constitutionalism. The Judiciary relies on members of the Judicial Service to provide the required administrative support in a manner that is consistent with the functions of the JSC set out under section 190 of the Constitution. The support services provided to the courts must enable the courts to perform their constitutionally provided mandates efficiently and effectively. This support services function, apart from providing the required human and material resources to the courts, must as of necessity attend to the

Judges’ and the magistrates’ conditions of service. Whilst the sterling work done by the JSC through the Secretariat in supporting the courts and by extension the financial support provided by Treasury is acknowledged, improvement of conditions of service of the Judiciary as a matter of priority remains consistent with the ideal of promoting constitutionalism.

As the nation celebrates a decade of the existence of the Constitution, the JSC is happy to announce that Zimbabwe will host two important constitutional conferences during the course of the year.

The first one is the **AFRICA ELECTORAL JUSTICE NETWORK THIRD ANNUAL MEETING.**

At the end of January 2024, the JSC will be hosting the 3rd Annual Meeting of the Africa Electoral Justice Network (“AEJN”). The AEJN is a regional forum that brings together Judges and individuals who adjudicate electoral disputes in courts, tribunals, and judicial election management bodies from across the African continent. The discussions, engagements, brainstorming and dialogue at this event will be centred on the promotion, nurturing, strengthening and

consolidation of democracy through effective judicial practices in electoral matters. One of the key objectives of the AEJN is to facilitate the engagement, participation, and exchange of judicial information relating to electoral dispute resolution, knowledge, experience, and resources on emerging challenges to the integrity of elections. In essence, the Symposium will provide an opportunity to further entrench constitutionalism, as judicial practice in this jurisdiction in electoral matters is based on observance of the constitutional values of the rule of law and due process. The exchange of ideas and experiences in electoral adjudication will serve to strengthen electoral justice, good governance, participatory democracy, transparency, and accountability, all of which are the ideals of a democratic society.

The second Conference is the **7th CONFERENCE OF CONSTITUTIONAL JURISDICTIONS OF AFRICA**. This is the biggest gathering of constitutional courts in Africa, which Zimbabwe will host from 30 October to 03 November 2024 in Victoria Falls. The 7th Conference of the CCJA will run under the theme “**Human Dignity as a Foundational Value and Principle: A Source of Constitutional Interpretation, Fundamental Human Rights Protection and**

Enforcement”. Discussions at the Conference will focus on constitutionalism and human dignity. It will extend an opportunity to all stakeholders in the administration of justice in Zimbabwe to particularly consider human dignity as a foundational value and principle and a cornerstone of constitutionalism. It is at that Conference that Zimbabwe will assume the chairmanship of the Conference, which is currently under the stewardship of Morocco.

In the opinion of the JSC, there could not have been a better way to celebrate a decade of the existence of the current Constitution and to entrench the doctrine of constitutionalism by the Judiciary in Zimbabwe than to be accorded the honour of hosting two high level constitutional events. The JSC exhorts all members of the Judicial Service and the entire Judiciary to put their shoulders to the wheel and adequately prepare for the Conferences in order to not only ensure that they are resounding successes but that the events are equally a source of pride for the people of Zimbabwe. It further calls upon Treasury, other Government agencies, the security sector and all like-minded stakeholders to join hands with the Judiciary and support the hosting of these two events.

The Judiciary acknowledges that the entrenchment of constitutionalism cannot be the responsibility of one arm of Government. The Judiciary will not protect, promote and enforce the ideals of constitutionalism in abstract, in isolation or to the exclusion of other law-based players and critical State pillars such as the Executive and the Legislature. Flowing from the acceptance that a holistic approach is the *sine qua non* for the achievement of constitutionalism, it is important to emphasise the fact that constitutionalism is dependent on the cooperation and deliberate promotion and enforcement of the fundamental values and principles of the Constitution by all the arms of the State. Compliance with the Constitution by all institutions and all individuals and stakeholders in the justice delivery sector can only be a positive aid to the entrenchment of constitutionalism by the Judiciary. The country cannot afford a situation where the arms of Government work in conflict with each other. Admittedly, the arms of State can and must be independent from each other in order to provide checks and balances, but fostering disunity amongst them is the antithesis of constitutionalism. The three arms of the State come together for the common good of the people. The parameters of their interaction are delineated by the provisions of

the Constitution in Chapter 5, which provides for the Executive, Chapter 6 which establishes the Legislature, and Chapter 8 which creates the Judiciary.

A close reading of the Constitution shows that these institutions enjoy a symbiotic relationship. Their roles are complementary and intertwined despite operating from different spheres of governance. The mentality of absolute autonomy of each of the organs of the State is incongruous with the design of constitutionalism. Any State would be impossible to govern if the three arms of the State operated in antipathy. The principle of deference encourages the Judiciary to strike a balance between the scope of its judicial powers on the one hand and the executive and the legislative authority on the other in the mediation of disputes. The need to do so arises from the observance of the doctrine of separation of powers as a mark of good governance. It is fundamental to democracy, as it exhorts the Judiciary to apply the Constitution in such a manner that the boundaries of the powers allocated in equal measure to each of the three arms of the State are not carelessly breached.

Another key component of constitutionalism is the need to observe and respect the rule of law by all manner of people, including agencies of the State. The rule of law means, among other things, the requirement to respect decisions made by the courts. Where a party does not agree with the outcome of litigation, he/she/it must do so with respect and in accordance with the legal processes and remedies provided by the law. During the course of the elections period, disparaging and damaging remarks were made against the Judiciary in general and some Judges of the Supreme Court and the High Court. The unwarranted aspersions stemmed from decisions which the courts had made. Even more concerning was the fact that the disparaging remarks were made by some members of the legal profession who are expected to have known better. The JSC engaged the Law Society. The engagement resulted in the matters being resolved amicably.

There have been instances where litigants who lost cases went on a tirade, casting aspersions on the integrity of the courts and the Judges. They raised unfounded allegations of corruption, threatened, and attempted to intimidate judicial officers who would have made

decisions against them. At the last count, seven Judges had fallen victim to the vile misinformation and attempted intimidation.

The media is an important stakeholder in the dissemination of critical information on the justice delivery system to the public. They have reported on matters of public interest arising from the operations of the courts, including the conduct of judicial officers who are the custodians of the Constitution. The media is encouraged to continue to report fairly on matters of public interest arising from and affecting the justice delivery system.

Constitutionalism discourages vexatious and unrelenting litigation by litigants whose conduct is directed at undermining public confidence in the independence and integrity of not only the Judiciary but the entire administration of the justice system. The respect for the rule of law and for the independence of the courts demanded by constitutionalism requires that litigants should comply with court orders and legitimately use the remedies put in place by the law to challenge the unfavourable decisions of the courts. Appeal processes and complaints mechanisms are not intended to be abused by litigants for selfish ends. The

designation of appeal courts by the Constitution arose out of a recognition of the fallibility of, and the possibility of error on the part of, judicial officers and the need to put in place effective remedies for correcting such errors. Section 164(3) of the Constitution provides that “an order or decision of a court binds the State and all persons and governmental institutions and agencies to which it applies, and must be obeyed by them”.

Judges should not shy away from making decisions on account of baseless complaints and allegations raised against them by vexatious litigants. Justice is not lopsided. It cannot be the norm that justice can only be said to have been done when the disposition is inclined to a particular outcome favoured by a litigant in question. It will be an affront to the doctrine of constitutionalism and the essence of the rule of law if Judges were to allow themselves to be intimidated by errant litigants who lose cases in court. In pursuing the entrenchment of constitutionalism, the Judiciary thus notes that vexatious litigation, unrestrained denigration, threats and spurious complaints against judicial officers have no place in a country controlled by a

constitutional order. The Judiciary will continue to dispense justice in terms of the law, impartially, without fear, favour or prejudice.

The comments made herein are not in any way meant to protect courts and Judges from fair scrutiny, comments and criticisms of their judgments and decisions, because such criticism is a central element of a constitutional democracy. Constructive criticism of Judges designed to improve the efficiency of the courts is in fact encouraged as long as it is done with decency and respect. The philosophy underpinning judicial constitutionalism is that judicial officers are servants of the Constitution, as the upholding of the values and the principles of the Constitution is a manifestation of the realisation of the demands that the supreme law of the land places on the people. Constitutionalism is realised through mechanisms set by the Constitution itself and is as such an inherent aspect of the compliance with the Constitution. Judicial officers are also reminded to ensure that they make decisions expeditiously in accordance with the applicable law and the facts found proved.

**THE JUDICIAL SERVICE COMMISSION'S ACTIVITIES
DURING 2023**

Allow me at this point to share with you the various activities which the JSC undertook in 2023.

Before doing so, I wish to indicate that the Judiciary sadly lost judicial officers and support staff through death in the course of 2023. These included the Honourable Mr Justice Owen Tagu, a Judge of the High Court, Mr Toendepi Zhou, a Provincial Magistrate in charge of Mashonaland Central Province, and Polite Mushangazhike, a magistrate stationed at Chinhoyi, among other members of the Judicial Service. May their souls rest in eternal peace.

THE SKILLS AND KNOWLEDGE DEVELOPMENT OF JUDGES, MAGISTRATES AND MEMBERS OF THE JUDICIAL SERVICE

The theme adopted for the 2023 legal year emphasised competency of judicial officers and support staff for the attainment of quality justice. The observation made at the 2023 legal year opening ceremony was that the Judiciary would deliver quality justice when proper training and professional development for judicial officers and other members of staff was addressed as a matter of priority. Inevitably training became one of the major strategic focus areas during the year under

review. The JSC, through the Judicial Training Institute of Zimbabwe (“JTIZ”), facilitated various training programmes aimed at developing the competence of all judicial officers and support staff to improve the quality of service delivery by the Judicial Service.

The training activities during the period under review commenced with the **Magistrates’ National Conference** held between 29 March and 02 April 2023. The Conference brought together all magistrates in the country for training on various areas of their work. Still on the magistracy, the inaugural Magistrates’ National Conference was followed by another training attended by magistrates on the implementation of the newly promulgated Sentencing Guidelines. The training took place at the Bulawayo Rainbow Hotel in September 2023. **Two hundred and fifteen (215)** magistrates from all the **ten (10)** Provinces in Zimbabwe attended. The objective of the training was to provide magistrates with the necessary knowledge on the changes brought about by the Criminal Procedure (Sentencing Guidelines) Regulations, Statutory Instrument 146 of 2023. The aim was to equip the magistrates with the skills to enable them to apply the novel concept of presumptive penalties and to acquaint them with the specific

instances in which they could depart from such penalties. The Sentencing Guidelines are on their own a landmark moment in Zimbabwe's criminal justice system. For the first time, the pertinent considerations during the sentencing stage of criminal matters were codified for the benefit not only of the sentencing court but also of the convicted persons, the victims of the offences, and the public at large. This was a long overdue measure, given the outcry over the years regarding perceived inconsistencies in the sentences imposed on similarly placed offenders. The provision of presumptive penalties for criminal offences committed in specified circumstances will ensure that there is substantial uniformity in the sentencing of offenders.

In June 2023, the JSC facilitated the **Station Administration Workshop**, at which all JSC heads of department, registrars, deputy registrars of the Superior Courts, regional magistrates, provincial heads, resident magistrates, officers from the Sheriff's Department, accountants, and key administrators congregated for capacitation with the requisite skills in station administration and management. The aim was to improve the officers' competence and the quality of service in

terms of attending to members of the public who visit the courts, stations and offices.

In August 2023, the JSC organised an inaugural **Registrars and Sheriffs' Conference** at which **one hundred and thirty (130)** participants from the Superior Courts Registries and the Sheriff's Office were in attendance. Once again, one of the major objectives of the Conference was to promote effective client care management and fulfilment of the JSC's Strategic Plan focus area of human capital development.

The traditional End of Term Judges' Symposia bring together all Judges in the country, where they take stock of their performance during the preceding term and engage in discussion on their chosen topics to further develop their skills on topical jurisprudential issues.

The **2023 Second Term Judges' Symposium** was held from 31 July to 03 August 2023. It was attended by **fifty-four (54)** Judges. It allowed the participating Judges to exchange experiences, ideas and perspectives on the delivery of quality justice.

The last major training of 2023 was the **Leadership Conference**, which coincidentally was the biggest gathering of members of the Judicial Service for the purposes of training. It was attended by more than two hundred members of the Judicial Service, who included Judges and magistrates. The Conference emphasised the development of a good, hardworking and able leader who understands and appreciates the focus of the JSC's Strategic Plan. The JSC also took advantage of the gathering to hold the mid-term **Strategic Plan Review** to examine the implementation of the 2020-2025 JSC Strategic Plan. The training and the Strategic Plan Review were a huge success.

The training initiatives outlined above are only the major training activities undertaken during the course of the year. There were various other departmental training initiatives organised by the JSC through the JTIZ. They included those which were held virtually through the Electronic Learning Management System (E-LMS) in 2023. A total of **one hundred and thirty** such virtual training sessions were held.

The skills development program for the year under review was therefore a success. The same trajectory is intended to be followed in 2024.

THE LAUNCH OF THE SECOND AND THE THIRD PHASES OF THE INTEGRATED ELECTRONIC CASE MANAGEMENT SYSTEM

On 06 May 2022, His Excellency the President, Dr E D Mnangagwa, officially commissioned the first paperless court in Zimbabwe when he presided over the opening of the Commercial Division of the High Court. The occasion also marked the introduction of e-courts in the Constitutional Court and the Supreme Court. From that date the filing of court documents and processes became electronic. In addition, the hearing of matters, in instances where the parties agreed to it, could also be done virtually. Through the Ministry of Justice, Legal and Parliamentary Affairs the relevant pieces of legislation for the authorisation of the virtual hearing of matters and associated processes were effected. Effectively, the above-stated courts became paperless under the Integrated Electronic Case Management System (IECMS). The process marked the successful implementation of phase one of the

courts' digitisation programme, which was and remains wholly in line with the trajectory adopted by the Second Republic on e-governance and the ease of doing business. As a result of the introduction of the IECMS and the general digitisation of the courts, the turnover period of court cases has been significantly shortened.

01 February 2023 marked the commencement of the second phase of the programme when the Labour Court and the Administrative Court both went digital. Once more, the implementation of the IECMS during that phase was seamless, as there were few or no challenges at all. With that development, it meant that the only courts that remained operating on the manual system were the General Division of the High Court and the Magistrates Courts, which are coincidentally the largest in terms of volume of work and inevitably the busiest.

The third phase of the implementation matrix arrived with the introduction of the IECMS in the General Division of the High Court and the Office of the Sheriff on 01 September 2023. It came with more challenges than had been experienced during phases one and two in the

other courts. The problems encountered impacted on the smooth flow of cases and at some point frustrated litigants and legal practitioners.

It must be mentioned that the challenges experienced in the General Division of the High Court were not legal in nature because the laws which saw the successful implementation of the digitisation programme in the previous two years in phases one and two were the same laws used during the implementation of phase three. The challenges were also not system-based, because the same system that was being used in all the other courts which were working perfectly well was the same system adopted in the General Division of the High Court.

The diagnostic assessment which the JSC's technical department carried out revealed that the challenges encountered emanated from the large volumes of cases and the high number of litigants in that Division of the High Court. Those numbers congested the system. When the system went live, many legal practitioners wanted to be linked to the system at the same time. Members of staff in the Registry and ICT Departments were clearly not ready for the simultaneous massive

response. The internet connectivity, particularly at Harare and Bulawayo High Courts, was overwhelmed. The e-filing offices established at those courts became overcrowded because legal practitioners, who also appeared to have been caught off-guard, chose to visit the offices and exploit the availability of the required gadgets and the internet facilities at the courts. At the same time, the virtual hearing platform was being equally oversubscribed. Admittedly, more legal practitioners practise in the General Division of the High Court and the Magistrates Courts than any other courts. They faced challenges manoeuvring through the system because of lack of knowledge of how the system worked. This led to the perception and assumption that it was the system that had problems. The situation was compounded by the fact that the JSC's own members of staff in the registries had not completely grasped the essentials of the system. As a result, they failed to adequately and properly attend to litigants and system users' requests.

The JSC admits that there was, and understandably so, a lot of disgruntlement. The JSC unreservedly apologises for the

administrative shortcomings revealed by the launch of the IECMS in the General Division of the High Court.

Urgent intervention measures became necessary. A raft of measures designed to effectively respond to the challenges was introduced. To begin with, an alternative internet service provider was engaged with the view that when one internet provider faced challenges the other would come on board. It worked. Internet Hubs were established at both Harare and Bulawayo High Courts. The hubs have capacities to accommodate a large number of legal practitioners at the same time. Urgent training was arranged for all members of staff in registries in addition to theoretical and practical capacitation for all lawyers. In addition to these measures, the Secretary of the JSC visited every Province to check the functionality of the system and to engage with the legal practitioners in those Provinces with a view to understanding the challenges they were facing in order to effectively address the problems. A twenty-four hour help desk and a toll-free centre were established to ensure real-time and uninterrupted attendance to challenges which the system users could be facing. The misconception

of both Judges and lawyers that virtual hearings were the only option was corrected. It was emphasised that, in terms of the law, parties could elect to have direct hearings. The law makes it clear that, where it is in the interests of justice to do so, the Judge or presiding officer may direct the parties to hold a direct hearing.

Following the introduction of the measures stated above, there has been a system stability in the General Division of the High Court since November 2023. The myriad of challenges experienced in September and October disappeared. The filing of matters, documents and pleadings has significantly improved. The virtual conduct of hearings on the IECMS platform proceeded with little or no disruptions, especially after the initiative to create a scheduling office which is responsible for the allocation of hearing slots on the virtual platform. The capacity of the system to accommodate virtual hearings has increased from ten to thirty cases at any given time. Efforts to increase the capacity to accommodate about fifty cases at the same time are underway.

The solution to any of the challenges is not to go back to the manual system, as others seem to think. The benefits of the IECMS far outweigh the perceived and real challenges. The new system has dealt decisively with inefficiency, corruption, constant missing records and pleadings, back-stamping of documents filed late by parties, clandestine setting down of matters, and many other evils pointed out by stakeholders. The system of justice delivery cannot afford to go back to those dark spots. The digital system has brought efficiency and transparency. It is in sync with international best practices and is the way to go. Other jurisdictions have embraced the same concept. That development vindicates the resolve of the Government to persist with the digitisation of the justice delivery system. Stakeholders should look at the bigger picture unfolding in the future due to unavoidable technological developments taking place globally.

I, however, wish to conclude this segment by expressing my profound appreciation to all the stakeholders who have cooperated with the JSC and have shown enthusiasm in the digitisation program of the courts.

The JSC particularly wishes to acknowledge the support received from Treasury in honouring the contractual obligations to the service provider, the Executive through the Office of the President and Cabinet who embraced the digitisation of the justice delivery system as part of the broader Government digitisation program, and the Legislature for smoothly passing the relevant laws that legalised the processes in all the courts. The JSC singles out the legal profession as the biggest consumer of the services delivered under the program. The legal practitioners, under the stewardship of the Law Society of Zimbabwe, have been unwavering in their support of the IECMS. Their positive energy and candid criticism and engagements with the JSC have been nothing but excellent. It has been the positive attitude of the legal profession that has spurred the JSC on to the stage where there are now **23 623** users of the system. That, by any standard, is not a small achievement. Lastly, it would not make sense if the Judges were not commended for the zeal with which they all embraced and assumed ownership of the system. The feedback received is that Judges have acknowledged that the digitisation of courts has removed a significant burden from their workload and that there cannot be any turning back.

This is heartening for, without the support and positivity from Judges, the difficulties would likely have been insurmountable. In the same vein, it would be remiss of the JSC not to acknowledge the hard work put in by the Secretariat and all members of support staff under the able leadership of the Secretary. They are the drivers of the programme and have been so dedicated that at times many of them slept at their work stations to ensure the smooth changeover from the manual to the electronic case management system. The high degree of dedication and commitment to duty is commendable.

LEGISLATIVE DEVELOPMENTS

The Judiciary welcomes the legislative developments that occurred in 2023. One of the standout enactments is the Judicial Laws Amendment Act, 2023 [Act Number 5 of 2023]. Some of its key provisions are the establishment of the office of the Deputy Judge President of the High Court and the legalising of the hearing of civil and criminal matters virtually in all the courts. The JSC also welcomed the designation of several magistrates' courts as resident courts through statutory instruments promulgated by the Minister of Justice, Legal and

Parliamentary Affairs in terms of the Magistrates Court Act. The newly designated courts are at Banket, Mabvuku, Nembudziya, Brunapeg, Emganwini, Mkoba, Kamativi, Shamva, Sakubva, Mushumbi and Dangamvura. That development has paved the way for enhanced access to justice in the affected areas.

INSTITUTIONALISATION OF THE RESEARCH DEPARTMENT WITHIN THE JSC

The last quarter of the year was also significant for the institutionalisation of the Research Department as a standalone department within the JSC. On 03 November 2023 the JSC formally introduced Research Assistants in the High Court, the Labour Court and the Administrative Court. In recognition of the need for research services for the administrative units of the JSC Secretariat and the Magistracy, a Research Hub will also be operational beginning in 2024. The initiative follows the traditional deployment of research personnel in the Constitutional Court and the Supreme Court. It is important that mention is made that the deployment of these researchers is not intended to usurp the responsibility of the Judges. Judgment writing remains the sole responsibility of the Judges. The function of

researchers is to assist the Judges with research and the collation of material necessary for the discharge of the judicial function in an effort to enhance the efficient and effective administration of justice.

COMMISSIONING OF COURT INFRASTRUCTURE AND FACILITIES

Last but not least, the JSC continued to pursue the development of essential court facilities and infrastructure throughout 2023. An account of the construction projects is given as follows.

Epworth Magistrates Court

The construction of the Epworth Magistrates Court was completed and the court was officially opened by His Excellency, the President of Zimbabwe, on 27 March 2023. It comprises a main court structure with two courtrooms, a cell block, separate ablution facilities, a witness shed and two onsite boreholes.

Chikombedzi Magistrates Court

Another magistrates' courthouse was commissioned at Chikombedzi by the Chief Magistrate on 09 October 2023. The courthouse is

intended to cater for the local inhabitants of the area. It has one main court structure with a single courtroom.

Pending Construction Projects

Various other projects for the construction of courthouses remain underway and are at different stages of completion at Mutawatawa, Chiredzi, Gwanda, and Cowdray Park in Bulawayo. At Chegutu and Mbare, the construction of additional courtrooms is underway, with one of the courtrooms earmarked as a regional magistrates' court. These projects will be completed during the course of the current year.

CHALLENGES FACED BY THE JSC DURING THE YEAR UNDER REVIEW

FUNDING CONSTRAINTS

The JSC's activities were not smooth sailing throughout 2023. Staff turnover remained a cause for concern. The economic climate adversely affected the remuneration levels for the majority of the members of the Judicial Service. That inevitably led to a high staff turnover, especially in the lower ranks of the organisation. Against that background, the Government is implored to continue supporting the

JSC's initiatives to ensure that the conditions of service for members of staff involved in the administration of justice continue to improve. Retention of experienced employees is integral to the efficient discharge of the JSC's constitutional mandate. Whilst the JSC is grateful for the support rendered by Treasury during the period under review, the timeous and consistent disbursement of funds will assist in ensuring effective justice delivery for all, and the completion of the outstanding projects.

THE STATISTICAL PERFORMANCE OF THE COURTS IN 2023

A detailed account of the performance of the courts during the period under review is now provided.

SUPERIOR COURTS

COURT	CASES B/F 01/01/23	RECEIVED	TOTAL	COMPLETED	CASES C/F
CONSTITUTIONAL COURT	23	50	73	51	22
SUPREME COURT	386	767	1153	886	267
HIGH COURT	1254	26840	28094	27553	541
LABOUR COURT	444	1713	2157	1618	539
ADMINISTRATIVE COURT	20	63	83	71	12
GRAND TOTAL	2127	29433	31560	30179	1381

MAGISTRATES COURT

CRIMINAL COURTS

PROVINCE	CASES B/F 01/01/23	RECEIVED	TOTAL	COMPLETED	CASES C/F
HARARE	2396	26328	28724	26047	2677
BULAWAYO	881	7841	8722	8101	621
MASH. EAST	203	6518	6721	6491	230
MASH. CENTRAL	1101	7372	8473	7950	523
MASH. WEST	977	9806	10783	9718	1065
MAT. NORTH	54	1880	1934	1897	37
MAT. SOUTH	701	6018	6719	6264	455
MIDLANDS	813	8922	9735	9008	727
MASVINGO	248	6369	6617	6394	223
MANICALAND	672	9938	10610	10118	492
REGIONAL COURT	4172	8724	12896	10928	1968
TOTAL	12218	99716	111934	102916	9018

CIVIL COURTS

PROVINCE	CASES B/F 01/01/23	RECEIVED	TOTAL	COMPLETED	CASES C/F
HARARE	254	36472	36726	36575	151
BULAWAYO	168	8349	8517	8371	146
MASH. EAST	93	6329	6422	6397	25
MASH. CENTRAL	269	5827	6096	5971	125
MASH. WEST	93	4477	4570	4447	123
MAT. NORTH	4	2231	2235	2227	8
MAT. SOUTH	95	2586	2681	2630	51
MIDLANDS	121	12694	12815	12739	76
MASVINGO	177	6526	6703	6655	48
MANICALAND	150	16863	17013	16915	98
TOTAL	1424	102354	103778	102927	851

The performance of the courts during the period under review has been good. In the superior courts, the year started with a total of **2127** cases carried over from 2022 but the year closed with **1381** cases. A total of **29433** cases were received and **30560** were completed and disposed of. All the courts reduced their backlog, some such as the Supreme Court and the High Court doing so with huge margins. The only court that saw its backlog rising at the end of the year was the Labour Court. Engagements with the Senior Judge of the Labour Court with a view to have the performance of that court improved will be undertaken.

The magistrates' courts also performed well. The criminal courts opened the year with a total of **1218** cases, received **111934** cases, and completed **102916** cases, leaving a balance of **9018** cases as at 31 December 2023. In the civil courts, the number of cases carried over from 2022 was **1424**, **102354** cases were received during the year, of which **103778** cases were completed, leaving a balance of **851** cases at the close of the year. All judicial officers and court staff are congratulated for the pleasing work done.

CONCLUSION

In summing up the address, every citizen is urged to join the celebration of the tenth anniversary of the current Constitution. Everyone has a role to play in the entrenchment of constitutionalism by obeying the express commands of the Constitution. The pursuit of constitutionalism is a call on all people to seek to always conform to the constitutional order. Only then can the nation continue to enjoy the unity, peace, economic development and achieve the social justice it deserves. The Judiciary relies on the cooperation of all stakeholders to effectively fulfil its role as the guardian of the Constitution. The attainment of a democratic

society that is based on openness, fairness, equality, freedom and justice depends largely on the willingness of both State and private actors to appreciate the goodness and bindingness of these foundational values and principles demanding action according to them. There must be awareness of the mutual benefit of abiding by constitutionalism.

Lastly, the JSC takes this opportunity to acknowledge the support it received from key stakeholders. These are the Ministry of Justice, Legal and Parliamentary Affairs, the Ministry of Finance and Economic Development, and the Ministry of Local Government and Public Works, the Law Society of Zimbabwe, the National Prosecuting Authority, the Office of the Attorney-General, the Zimbabwe Prisons and Correctional Service, the Zimbabwe Republic Police, the Zimbabwe Anti Corruption Commission, the UNDP, UNICEF, ZWLA and various other non-governmental organisations that partnered with the JSC in ensuring that there is access to justice for all in the country.

Last, but certainly not least, the JSC acknowledges and thanks all Judges and magistrates for their tireless efforts during the past year. They all immensely contributed to ensuring that cases were disposed

of with minimum delays. The JSC Secretariat is equally commended for the material and logistical support timeously given to the courts, without which the courts would struggle to function.

The congregation may now stand for a word of prayer from **Colonel Tineyi Mambo, the Chief Secretary of the Salvation Army Zimbabwe Territory** as we beseech God to guide us in the year ahead.

After the prayer, the special sitting of the Court will adjourn.