

JUDICIAL SERVICE COMMISSION

“A Zimbabwe in which world class justice prevails!”



**WELCOME REMARKS BY
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CHIEF JUSTICE OF ZIMBABWE**

**AFRICA ELECTORAL JUSTICE NETWORK
THIRD ANNUAL MEETING
ON
1-2 FEBRUARY 2024**

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**THEME: THE ROLE OF THE JUDICIARY IN
UPHOLDING THE RULE OF LAW AND
ENSURING FREE, FAIR AND CREDIBLE
ELECTIONS IN AFRICA**

SALUTATIONS,

It is with pleasure that I welcome you all to the third annual meeting of the Africa Electoral Justice Network (AEJN) on behalf of the host nation Zimbabwe. The meeting brings together Judges and other stakeholders for the purpose of emphasising the significant role that the Judiciary plays in safeguarding the integrity of the electoral process in Africa.

The diversity and depth of the judicial experiences validate the necessity of the three-day meeting. The deliberations during the two days will serve to demonstrate the collective commitment to pursuit of the values underpinning electoral justice. We must remain keenly aware of the important role the Judiciary plays in promoting good governance.

The Judiciary plays a pivotal role in the safeguarding of democratic values, particularly in the context of ensuring free, fair and credible elections. This is primarily through the settlement of electoral disputes in accordance with the fundamental values and standards grounded in the law. The law defines good governance and the electoral processes,

ensuring access to the governmental powers, the proper exercise of which undergird it.

The role of the Judiciary in securing the rule of law covers the entire electoral process and not just the outcome. Courts are often called upon to determine compliance with the legal standards governing the pre-election period, the voting process, as well as the outcome. Accordingly, it is clear that the Judiciary occupies a position of prominence regarding the integrity of elections in any democratic State.

In the specific context of Africa, the Judiciary has committed itself, in terms of the African Charter on Democracy, Elections and Governance (the Charter), to uphold the principles of good governance, popular participation, the rule of law, and human rights when it comes to the issue of electoral adjudication. Every State party is obliged in terms of Article 4(1) of the Charter to commit itself to promoting democracy, the principle of the rule of law, and human rights. The common standard demanded by the Charter makes regional collaboration by the Judiciaries in this regard a necessity.

Although it is accepted that national electoral matters are in the domain of every sovereign State, the shared history and similar backgrounds mark electoral governance as a fertile area for regional collaboration. The comparative experiences as adjudicators of electoral disputes can certainly go a long way in facilitating reform where necessary for the Judiciary to effectively uphold the rule of law. The AEJN meeting is therefore an important event for the purpose of fostering cooperation and collaboration in enhancing judicial efficiency in Africa in the adjudication of electoral matters.

As stated, the diversity of the participants at this judicial forum underscores the necessity of collaboration. Honourable Chief Justices from various jurisdictions such as Eswatini and Zambia have graced this occasion. This is in addition to the Constitutional Court and the Supreme Court Judges from various African States, including Zimbabwe. Influential members of regional fora and civil society also form part of the delegates in attendance. Heads of electoral bodies from various African jurisdictions are also present.

The Judiciary does not operate in isolation in the electoral sphere except when it comes to the exercise of its judicial authority. Hence there must be comity with other key institutions and stakeholders in the electoral process, whose conduct more often than not is also regulated by the law. It is for this reason that the participation of non-judicial actors at this forum is welcomed. Their participation enriches the discussions and assists in addressing areas in which the Judiciary may enhance the rule of law when dealing with the subject matter of electoral adjudication.

The meeting also provides a platform for reinforcing the universally recognised foundational principle that the Judiciary must remain apolitical in the electoral process. It must only yield to the demands and standards imposed by the law when called upon to exercise its judicial authority. It is in this context that decisions by courts that elections were free and fair would attract public confidence in the Judiciary as an independent and impartial actor in the electoral justice system.

The Judiciary must not succumb to the emotions carrying the day or popular opinion in a bid to appease partisan interests. To achieve this

ideal, fidelity to the express provisions of the law, whether grounded in the constitution or a statute, as the case may be, is required. Moreover, electoral disputes adjudication requires the highest levels of impartiality, integrity, and transparency because free and fair elections are the cornerstones of a system of representative government. For the Judiciary to retain the faith of citizens in the democratic process, it must ensure that the standards imposed by the law are upheld. This explains why, as the theme shows, the rule of law has been regarded time and again as the indispensable guarantor of democracy.

It is also prudent to note that, by upholding the rule of law, the Judiciary itself becomes the standard bearer for legal compliance. In doing so, a precedent is established for other stakeholders involved in the electoral process to respect the process and outcome of elections.

A Judiciary that sways to political whim or public opinion at the expense of compliance with the law and the facts of an electoral dispute runs the risk of inadvertently promoting the resort to self-help for individuals, political parties and stakeholders involved in the electoral process. Such an outcome is the antithesis of the democracy envisaged

by the law when it devised elections as the primary means through which a government for the people is elected. Lawlessness has no place in the shared vision of a democratic electoral process on the African continent; and the Judiciary, through its decision-making process, must take the lead in reinforcing this ideal.

In addition, an important observation that arises from the theme of the meeting is the distinction that exists between the concept of democracy and elections themselves. The qualification that elections ought to be peaceful, free and fair highlights the importance of electoral process as a means of accessing the right to govern in a democratic society.

The theme supports the notion that elections, while a vital part of democracy, do not constitute democracy in and of themselves. It has been said rather aptly that “democracy cannot be measured merely by looking at citizens’ ability to exercise their civil and political rights and vote at elections”.

A society must always uphold the rule of law, have access to correct political, economic and social information, and have a free and fair electoral process to be considered democratic. The Judiciary is also part

of this society that is expected to uphold the rule of law and this obligation applies irrespective of whether the governing law is grounded in a constitution or a statute. Overall, this means that it is not the mere act of conducting elections that must be considered as the indicator for classifying them as a democratic process.

Certain standards need to be met, such as upholding the rule of law, wherein the Judiciary plays an influential role in enforcing and monitoring compliance with standards of electoral governance. In other words, democracy cannot exist where there is non-compliance with the electoral governance framework put in place to give effect to the will of the people.

The 1994 Inter-Parliamentary Council Declaration on the Criteria for Free and Fair Elections (the Declaration) accurately summed up the concept of free and fair elections. The Declaration, which builds upon established international legal frameworks such as the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights, emphasises that the people's will is expressed through legitimate, free and fair elections that are held

regularly on the basis of universal, equal and secret suffrage. According to the Declaration, adherence to the rule of law is one of the primary indicators of a free and fair election. This is in line with the ideal that a democratic election process results in a government that is for the people and by the people, who would have consciously and deliberately chosen the type and structure of governance to manage their affairs. The Judiciary, by carrying out its duty as obligated by the law, promotes electoral integrity.

It, therefore, becomes the role of the Judiciary, as one of the institutions envisaged by law, to monitor compliance with the fundamental values of the law in regard to the electoral process. It is only through the fulfilment of this legal obligation that elections can be characterised as peaceful, free and fair.

However, Judges must also be conscious that their barometer for gauging whether the electoral process measures up to democratic ideals must always be grounded in law. This is because the role of the courts is to guarantee good governance in terms of the chosen election process and standards. As will be highlighted during the meeting, there are

many competing interests, media scrutiny and societal pressures that often make the fulfilment of the obligation placed upon the Judiciary regarding the electoral process an unenviable and thankless task.

The present meeting was preceded by a closed session of the AEJN yesterday. The deliberations set the tone for the high-level discussions and interactions anticipated in the upcoming sessions.

In the first session, the focus will be devoted to the concepts of constitutionalism and good governance as the foundational elements of electoral justice. The opening session focuses on the key subject of electoral integrity. Constitutionalism and the rule of law are closely intertwined concepts in this respect.

A constitution serves as the supreme law in most African countries, offering the highest protection to electoral rights. This is in addition to establishing the basic structure of government, defining the powers and limitations of different branches of government, and safeguarding individual rights and liberties. It also provides a framework for the rule of law by setting out the principles and procedures for the enactment, interpretation and enforcement of laws.

To emphasise once again, the principle of the rule of law, which is central to the theme of the meeting, comes into play as asserting the common standard that all individuals, including those in positions of power, are subject to and accountable to the law. It ensures that the exercise of governmental authority is based on legal principles and that the laws are applied consistently and impartially. The rule of law provides a framework for the fulfilment and promotion of electoral justice by the courts. The exposition of these universal values in the first session will be the benchmark for all subsequent discussions as the various elements influencing electoral integrity in Africa are interrogated.

The sessions will involve presentations that focus on important topics such as the protection of fundamental human rights, and effective participation as far as electoral justice is concerned. There will also be sessions devoted to the interactions of the Judiciary with other stakeholders such as the media concerning the issue of transparency in the adjudication process. The majority of the sessions will be devoted to highlighting the common standards and values captured in the

Charter. It is also expected that the plenary sessions will stimulate intellectual debate and interaction, which are beneficial to all participants.

As the host jurisdiction, the opening address would be incomplete without stating the significance of the meeting from a Zimbabwean perspective. This year, Zimbabwe is celebrating the tenth anniversary of the current Constitution, which was promulgated in 2013. The significance of this milestone is captured in the selected legal theme for the year, which is based on celebrating the role of the Judiciary in entrenching constitutionalism.

Accordingly, the meeting, whose subject matter centres on upholding the rule of law in the area of electoral adjudication, complements the emphasis on constitutional compliance by the Judiciary in Zimbabwe. Indeed, the concept of the rule of law itself is grounded in the Constitution as one of the founding values and principles of the State. Coupled with the supremacy clause of the Constitution, the duty to comply with the rule of law resonates deeply with every Zimbabwean.

It is also a badge of honour for the Judicial Service Commission of Zimbabwe (the JSC) to be hosting and facilitating such an important gathering, whose objective is to provide solutions to regional concerns regarding the role of the Judiciary in the settlement of electoral disputes. To this end, every member of the Judicial Service present shares the vision of ensuring the success of the meeting.

The JSC also recognises that the meeting offers a rare opportunity for some of the delegates to enjoy the Zimbabwean experience. It is for this reason that it was decided to include extra-curricular activities, such as a visit to the majestic Victoria Falls and an opportunity to sample the local cuisine and the drums of Boma as part of the itinerary. As Africans, there is a need to embrace and share the different aspects of our cultural heritage as well as appreciate the scenic beauty of our continent. Thus, the JSC hopes that the selected extra-curricular activities will provide a worthwhile experience for all the foreign delegates.

CONCLUSION

It is necessary to congratulate every institution that has played a key role in organising the meeting. An event of this magnitude cannot be attributed to a single organisation. The collaborative spirit that has made this event possible must also be inherent in the interactions as Judges in electoral law.

I thank the AEJN for making this event possible. It is only through its regional commitment to facilitate peer-to-peer knowledge exchange in electoral justice that Judges and other stakeholders are gathered here to discuss common African values captured in the Charter on electoral law. I must also single out the Africa Judges and Justices Forum (AJJF) for their participation as experts on the thematic area of elections and the rule of law.

I would like to also thank the Southern and Eastern Africa Chief Justices Forum (SEACJF) for its representation at this forum. The presence of such an important regional bloc is demonstrable proof of the importance of the meeting. In addition, the participation of the South Africa Judicial Education Institute (SAJEI) is highly appreciated.

Lastly, I would like to acknowledge the Secretary of the JSC and his team for working tirelessly to ensure that all the delegates were well received and ensuring the success of the meeting.

I THANK YOU!