

JUDICIAL SERVICE COMMISSION

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SESSION 2

**DIGITAL TRANSFORMATION OF JUDICIARIES IN AFRICA AND
EXPERIENCES IN THE FACE OF THE COVID-19 PANDEMIC**

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BY

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INTRODUCTION

Chief Justices, Fellow Judges, and colleagues; Digital transformation of judiciaries is absolutely necessary if we are to seriously enhance efficiency and the rule of law in the judiciary. In the face of the *COVID-19* pandemic, transformation through the implementation of an electronic case management system has become more necessary than ever. This presentation will share the Zimbabwean experience towards digital transformation and innovations made during the height of the *Covid-19* pandemic and of course highlight the important lessons learnt.

THE INTERGRATED CASE MANAGEMENT SYSTEM IN ZIMBABWE:

ZimIECMS

In 2019, the Zimbabwean judiciary became resolute that the time had come to embark on a journey meant to revolutionarise the dispensation of and access to justice in the country through an Integrated Electronic Case Management System (IECMS) now dubbed the "**ZimIECMS**".

The Integrated Electronic Case Management System (I.E.C.M.S) can be defined as a web-based case management system that allows for the life cycle of a case, and everything that is involved in that case to be electronically conducted and tracked from its inception to conclusion.

It also ensures that all the courts in our jurisdiction, from the Constitutional Court to Magistrates' Court are integrated. This includes an administrative office that offers support services to the courts and the court system like the office of the Sheriff of the High Court.

The implementation of the I.E.C.M.S was planned and executed in phases in Zimbabwe.

Phase 1 covered the Constitutional Court, Supreme Court, and the Commercial Division of the High Court.

Phase 2 involved the incorporation of all other courts, that is, the High Court, Labour Court, Administrative Court, and Magistrates' Court as well as the office of the Sheriff of the High Court.

I.E.C.M.S was a necessary intervention in the justice delivery system of Zimbabwe for the following reasons:

1.It makes the filing of cases and case documents that much easier.

This is a way to improve and enhance the ability of litigants to access justice, which has a positive impact on the overall mandate and goal of the Judiciary and the Judicial Service Commission. This feature enables litigants to file cases and applications online, while in the comfort of their offices or homes.

2.It makes justice accessible.

The system is designed to be accessible from multiple different devices which include; an individual's phone, tablet, and computer. This means the system is accessible from anywhere. This in turn leads to a more central access to any case and the documents filed as long as there is a reliable internet connection.

3. Some of the features that allow for the enhancement of convenience are;

3.1. E-Summoning which allows for the service and reception of process as well as other case documents online.

3.2. E-Payment which facilitates the payment of all court fees online using mobile money or a Visa Card.

3.3. E-Signature and Stamp ensures that the documents filed electronically are officialised. All case documents can be signed and stamped electronically.

3.4. The E-Calendar feature is a facility for the scheduling and tracking of tasks, as well as all court events using this online facility.

3.5. Online Notifications in real time through SMS, Email and System notifications. Information is at the fingertips of every user or stakeholder.

3.6. Online Judgement and Order Writing which will lead to the efficient and expedient resolution of cases. The system will also be instrumental in ensuring increased transparency.

3.7. Virtual Courts are concerned with creating the physical court setup in the virtual space. The Virtual Courts platform will hold hearings remotely. These were commissioned on 7 February 2022, and this was done in line with the Chief Justice's vision and theme of the year: "Use of technology to enhance efficiency and the rule of law in the judiciary".

The functional testing of the system commenced in August 2021.

A few law firms were selected to participate in the user acceptance phase of the testing of the system. These selected law firms were trained at their premises and invited to file cases through the I.E.C.M.S. This was done in December 2021.

In order for a user of the I.E.C.M.S platform in whatever capacity to be able to utilise the platform one has to be in possession of a smart electronic device with internet connectivity. This brought to light the need for those who dispense justice to be able to access this platform at any given time. The

procurement and distribution of these tools of the trade to Judicial Service Officers are currently underway. Currently, most Judges have received laptops, iPads and Smartphones for the execution of their duties, and all Judges have received MiFi devices to ensure that they are connected to the internet all the time.

The indigent litigants have not been neglected in ensuring access to the I.E.C.M.S platform, hence in all the ten (10) provinces in Zimbabwe and at over 50 court stations countrywide e-filing centres with dedicated personnel have been set up to assist members of the public to file and track their cases using court facilities.

TRAINING OF DIFFERENT STAKEHOLDERS AND USERS OF THE IECMS PLATFORM.

The system was officially announced and introduced to the stakeholders on 10 January 2022. The system has various stakeholders which include but are not limited to:

- Judicial Officers;

- Members of the Zimbabwe Republic Police (ZRP);
- Members of the Zimbabwe Prisons and Correctional Service (ZPCS) and the inmates that they are responsible for;
- The law Society of Zimbabwe and members of the legal field in whatever capacity;
- The Attorney General and those in the Attorney General's office;
- Members of the National Prosecuting Authority (NPA);
- Members of the Zimbabwe Anti-Corruption Commission (ZACC;
- The Ministry of Justice, Legal & Parliamentary Affairs through Legal Aid Directorate; and
- Members of the Public.

In order for the Judiciary and the Judicial Service Commission to be assured that all the above mentioned stakeholders can comfortably navigate the platform, there was a need for training.

As such, a virtual training of 82 lawyers was done in January 2022. This was followed by a Training of

Trainers (ToT) which was arranged, planned and executed. This training spanned from February to March 2022 and was scheduled as follows:

- Group 1: External stakeholders
- Group 2: Registrars, Deputy Registrars, Assistant Registrars, Judges' Clerk, Judges Assistants, Head of Sheriff
- Group 3: Judges and Professional Research Assistants
- Group 4: Heads of Departments
- Group 5: E-filing Officers
- Group 6: IT staff

In addition, to form the bedrock of the use of the platform, basic ICT skills training has been conducted in courts for all judges and registrars.

I.E.C.M.S LEGAL FRAMEWORK AND CURRENT STATE OF AFFAIRS

Proposals for amendments to various laws and rules have been submitted for updating to facilitate the smooth use of I.E.C.M.S and these are currently under review.

- The steps that are going to lead to the successful launching and running of the I.E.C.M.S platform are: Preparation to go live (Phase 1)
- Awareness campaigns
- Change Management
- Launch on 1 May 2022
- Information gathering for phase 2.

Thus far, the equipment has been installed at both the courts and prisons. The presiding officer (Judge or Magistrate), prosecutors, and lawyers are currently operating from the various courtrooms. The accused persons are currently participating from the detention centres. Suffice to mention is the fact that the technology has the potential for all participants to function virtually from their respective offices and chambers. This will be the case in due course.

Virtual Courts were installed at the following places:

- Harare Magistrates Court
- Harare Remand Prison

- Chikurubi Maximum Prison

Individuals who play a direct role in the functioning of the system, for example, IT officers and other users including those from Prison Services have been trained on the use of the system at Harare Magistrates' Court and Harare High Court. Suffice to note that remand hearings have since commenced in Harare and will be decentralised to other provinces in the country.

There are also additional setups that are meant to cover all the ten provinces within Zimbabwe, with the installation being done both at the courts and the prisons. To combat power cuts and its negative effects we have resorted to facilitating the installation of solar is progressing.

New roles that will make the implementation and running of the system were created and are in the process of being filled. These include:

- IT Security, Cyber Protection and Infrastructure Specialist
- Network Specialists

- Hardware Specialists
- Helpdesk Officers
- E-Filing Officers
- Virtual Centre Officers
- Data Center Engineers
- Backend, frontend & BI developers
- Data Engineer
- Systems Analyst
- Systems Engineer

CONTINUED JUDICIAL EDUCATION THROUGH THE ELECTRONIC LEARNING MANAGEMENT SYSTEM

The need for judicial education is now an internationally recognised phenomenon. This is clearly illustrated in an article titled Judges as learners Reflections on Principle and Practice. It reads:

“Recognition of the need for judicial education is now firmly established in many jurisdictions around the world. There are various reasons for the emergence of judicial education. The major

rationales for judicial education include independence, improved service delivery, social accountability, and institutional capacity-building. Most importantly, there is a doctrinal imperative to strengthen the capacity and independence of the judiciary as a formative institution in its society. Judicial education provides the judiciary with the means to consolidate its independence. This is of paramount concern where the judiciary is constitutionally responsible to dispense justice by interpreting and applying the law of the land to any matters in dispute which are brought before the courts.”¹

The Judicial Service Commission has launched the development of an electronic learning management system (e-LMS) which seeks to alter the way judicial education is done in Zimbabwe. This system will make it easier to deliver training to both Judicial and non-judicial staff.

¹ 2nd International Conference on The Training of the Judiciary, *Judges as Learners Reflections on Principle and Practice*, Centre for Judicial Studies, 4 November 2001 . Available at: <https://biblioteca.cejamerica.org/bitstream/handle/2015/2244/nji-ca-judges-learners.pdf?sequence=1&isAllowed=y>. Accessed on 10 April 2022.

The system is being designed to be an efficient and user-friendly platform which will allow self-paced learning activities, in order to advance each particular individual's career growth and experience; capacitate work efficiency through personal skills development and increased knowledge base, and to accelerate the digitization of judicial systems in line with the JSC 2021-2025 Strategic Plan. This will also drastically increase the quality of justice that is delivered.

EXPERIENCES IN THE FACE OF COVID-19 PANDEMIC

The *COVID-19* outbreak evolved rapidly and before the world understood what was really happening, it assumed the status of a universal crisis. On 30 January 2020, the World Health Organisation Director-General declared that the outbreak constituted a public health emergency of international concern and subsequently, on 11 March 2020, *COVID-19* was declared a pandemic. This infectious disease, to which there is no known vaccine or antidote yet at that material time, threw extraordinary challenges to national and

international governance systems and forced nations to quickly adapt in order to firstly, respond to invariably challenging circumstances and secondly, to navigate the crisis in order to save lives. The indication was that unless measures were put in place to break the chain of transmission, there would be a sharp increase in the number of affected cases and ultimately a high infection and mortality rate amongst our people. Comprehensive measures were needed to limit devastating human and economic loss.

The havoc caused by *Covid-19* on the Judiciary was unprecedented. A balance had to be made between the need to prevent and control the *Covid-19* virus and the delivery of justice as mandated by the Constitution. Judicial authority is derived from the people. In Zimbabwe, The **Constitution of Zimbabwe, 2013** sets this out in very clear in the principles that guide the judiciary in the exercise of their duties:

“Section 165 Principles guiding judiciary

(1) In exercising judicial authority, members of the judiciary must be guided by the following principles—

(a) justice must be done to all, irrespective of status;

(b) justice must not be delayed, and to that end members of the judiciary must perform their judicial duties efficiently and with reasonable promptness;

(c) the role of the courts is paramount in safeguarding human rights and freedoms and the rule of law.”

It is apparent that justice must be accessed by all, expeditiously, and the duties of all those tasked with the administration of justice must be responsible, and alive to the fact that they hold the legal lifeline of the land and the people in their hands.

However, in the face of an unknown, vexing and formidable foe that was and still is the *Covid-19* pandemic most judiciaries were left perplexed. The

judiciary of Zimbabwe, in that regard was no exception.

The questions that arose on a daily basis revolved around how the judiciary can continue to exercise their duties in ensuring that the people have access to justice in the midst of constant lockdowns, and casualties from the pandemic as it ravaged through life as we know it. The only thing that was clear was that there was need for quick thinking and intervention, and as the people trusted with the justice of the land, the mantle was ours to pick up.

In the pursuit of this objective, a number of factors were involved. There was a need for the identification of problems, and subsequently, the corresponding solution. Information became a tool of the trade. It assisted in analysing the legislation that was being passed, and formulating responses that could be benchmarked on how other judiciaries were responding or creating a precedent that others could follow. One thing was clear; a strong response to the virulent pandemic was needed. Some of these

responses were instituted at the organizational level, and these included constant testing for *Covid-19*, but more to the point, the "work from home" phenomenon which involved the use of technology and technological gadgets to ensure that even when the country seemed at a standstill, all that could be done in the background was being done. Physical responses were characterised by the provision of personal protective equipment (PPE) to the individuals tirelessly working in the midst of the pandemic. This was made even more necessary when courts were declared to be an essential service by Statutory Instrument 11 of 2021, which amended the definition of "essential service" and allowed for the resumption of criminal trials. Procedural responses included the suspension of deadlines and *dies induciae*. Lastly, technological responses were demonstrated to be of utmost importance. The need for a shift from the norm was clear, and it was set in motion.

COVID 19 CHALLENGES AND INCIPIENT ISSUES

In order to provide the full picture, it is prudent to highlight the issues that have affected the Judiciary as a result of the *Covid-19* pandemic.

The first and most devastating is the death toll and its effect on the total human capital of the Judiciary. A number of members of the Judicial Service, and the supporting staff fell victim to the deadly disease. This was a shattering blow to the ocean of knowledge that is stored in the individuals who make up the Judiciary.

The workforce has had to, on a number of occasions, work in a diminished capacity. In order to ensure that the spread of *Covid-19* is curbed, the staff members took part in mandatory *Covid-19* testing. In the event that a member tested positive, they had to self-isolate for the period mandated by the World Health Organisation (which at some point was 14 days). This step was necessary for the preservation of life, but it did take a toll on the execution of the workload.

Another clear difficulty was establishing or coming up with ways to assure that the legal needs of the people of Zimbabwe continued to be met. When total lockdowns were put in place, the movement of people was severely restricted. The courts themselves were closed. This brought to light a clear gap in the justice delivery system of the land, which needed to be filled.

Getting accustomed to or acclimatising to the various vicissitudes in the operations of the justice system presented a challenge. This was an issue not just for the staff who had to adjust to different working conditions, but also for the masses coming to seek justice.

With all the difficulties that were brought about by the *Covid-19* pandemic, getting information and being able to mobilize solutions that did not exclude other people was a difficult task. When the number of infections rose, and the Government responded in the appropriate way to curb the rise, difficult measures had to be taken. A prime example is sitting for

hearings on only urgent matters, bail applications and remands. The parties in matters that were not urgent were just as entitled to justice as their counterparts, but making the best out of a bad situation meant that a lot of cases were at a standstill.

The Judiciary has had to consider an impossible balancing act. The problem being how to maximise the use of technology in facilitating access to justice, while making sure that no one is marginalised as a result. There being a significant number of the population who would have difficulties in accessing technological gadgets, or if they have access to them, would have difficulties adjusting to the use of said gadgets. Implementing technological reforms in the justice delivery system requires striking a delicate balance that ensures that these people are not ostracized from the justice system that they entrusted their rights in.

Lastly, *Covid-19* put an immense amount of pressure on the Judiciary and all those involved in the judicial

system to devise new procedures and practices in a very short time. This exposed some fragilities of the system but it was also an opportunity for the Zimbabwean Judiciary to reach new frontiers in its methods of delivering justice.

THE CLOSURE OF THE COURTS

While the country and the world at large were in the thick of the *Covid-19* pandemic, normal operations could not proceed. As such, a number of instances saw the courts being closed. Some of the measures that were implemented when the courts were closed are:

- The filing of new cases, all process and pleadings was suspended during the lockdown.
- All pending civil cases were deemed to have been postponed in all the courts, that is, the Constitutional Court, Supreme Court, High Court, Labour Court, Administrative Court, and Magistrates' Court to different dates after the lockdown.

- All pending criminal cases on remand were automatically rolled over for a period of at least 21 days.

The different courts were also closed for short periods of time on various occasions to allow for the fumigation of the premises and testing of staff.

This was brought about as a direct response to a spike in the number of positive cases of *Covid-19* that were recorded at these courts.

THE ISSUANCE OF PRACTICE DIRECTIONS

Since the onset of *Covid-19*, a number of measures have had to be taken to ensure that the wheels of justice were not halted dead in their tracks. The ways in which this goal was accomplished differed from time, place and situation. One of those ways which was recognized and observed the world over is implementing partial or full lockdowns. This left a lacuna that needed to be addressed in terms of the court system and how it would operate during the said lockdowns.

As a result, and a direct response to that need, a number of Practice Directions were issued to bring order to what most people could only perceive as chaos.

Below is an outline of those practice directions, what they brought into effect, and the reasoning behind them.

Practice Direction 1 of 2021 which operated from 5 January 2021 to 21 January 2021 suspended court operations. This came after Statutory Instrument 10 of 2021 which brought into force a Level IV Lockdown that took effect from 3 January 2021.

Practice Direction 2 of 2021 which was operational from 22 January 2021 introduced limited services court operations e.g. Urgent Hearings and Bail Applications. This ensured that justice was not rendered completely inaccessible even though the country was in Level IV Lockdown.

Practice Direction 3 of 2021 extended the status quo at that particular time from 5 February to 15 February 2021.

Practice Direction 4 of 2021 operated as an extension from 16 February to 1 March 2021.

Practice Direction 5 of 2021 introduced the resumption of all court operations. This was for the period beginning 5 March and ending 21 July 2021. This was in conjunction with Statutory Instrument 62 of 2021 gazetted on 5 March 2021 which loosened restrictions on movement. It read that the following would be regarded as essential services:

“...persons operating or employed in a business or industry in the formal commercial and industrial sector, as well as informal traders and low-risk sportspersons”

Practice Direction 6 of 2021, 22 July to 27 July 2021 court operations were suspended following a partial reversion to Level IV Lockdown.

Practice Direction 7 of 2021 ensured that court operations remained suspended from 29 July to 19 August 2021.

Practice Direction 8 of 2021 court operations remained suspended, extending the period from 29 July to 24 August 2021.

Practice Direction 9 of 2021 which operated from 25 August 2021 certified that court operations resumed.

CHANGES TO THE OPERATION OF COURT HEARINGS

To curb the spread of *Covid-19* when the courts were operational, preventative measures to reduce the spread of *Covid-19* (Coronavirus) in the Courts of Zimbabwe were published. These introduced a number of alterations to the way court was to be conducted. Some of these changes were:

1. "No hearings will be done in chambers.

In instances where hearings are held these should be confined to parties involved in the case and their legal practitioners. Those not involved in the case are discouraged or coming to court.

2. All surfaces of reception areas, registries, court rooms and areas of potential risk should

be regularly sanitized and fumigated as may be necessary.

3. Members of the Judicial Service Commission at courts, legal practitioners and litigants attending court sessions are required to:

a. be sanitized at the court entrance when going in and outside the court.

b. maintain a distance of at least two meters from the next person when attending court or registry offices.

c. disinfect any immediate surface area with the disinfectant and paper towels made available in court.

d. wash their hands frequently with soap and running water or rub your hands with alcohol-based hand sanitizers for at least 20 seconds."

INSIGHTS GAINED FROM THE COVID 19 PANDEMIC AND SUBSEQUENT RESPONSES

The following insights have been gained from grappling with the *Covid-19* Pandemic:

- Technological advancements are vital if the Judiciary has hopes to be propelled into the future of justice delivery.
- It is important to ensure that all individuals have access to justice at all times.
- There is still some ways to go before technological advancements can be made to reach all the people.

SUMMATION

The *Covid-19* pandemic accelerated the plans to digitalise and automate the systems that allow for justice to be dispensed. It also sparked new and innovative ways of improving the quality of justice as whole. This will ensure that there is timeous access to justice by all.

Going forward, we are launching our Phase 1 of "ZimIECMS", with the Constitutional Court, Supreme Court and the first ever Commercial Court in Zimbabwe going paperless on 1 May 2022. We will continue to share our experiences and draw lessons from those that leaped ahead of us!

I thank you!
