



JUDICIAL
SERVICE COMMISSION

annual report




2004





*To the Speaker of the National Assembly and the Chairperson
of the National Council of Provinces:*



I have the honour to present, in terms of Section 6 of the Judicial Service Commission Act 9 of 1994, the following report on the activities of the Judicial Service Commission for the year ended 30 July 2004.

A Chaskalson
Chief Justice
Chairperson: Judicial Service Commission

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Report on activities of the Judicial Service Commission for the year ended 30 June 2004

Transformation of the Judiciary

Section 174(1) of the Constitution provides that “the need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed”. The Commission pays particular attention to this requirement when it considers applications for judicial appointment. It also takes into account the requirement that candidates who are appointed to be committed to the values of the Constitution and have the necessary skills to be appointed for office as a member of the higher judiciary.

In the past ten years the composition of the Bench has changed substantially. Prior to 1994 there were two black male judges, two white female judges and the rest were all white male judges. As at June 2004 there were 76 black judges, 126 white judges and 26 women judges of whom 13 are white and the rest black. It is anticipated that as vacancies occur, the profile of the judiciary will continue to change to reflect the racial and gender composition of our country. This is seen by the Commission as being an imperative.

New members of the Commission

Due to the proclamation of the election the meeting which was scheduled to take place in April 2004 was postponed until July. Minister Maduna resigned from Parliament and the Commission and Minister BS Mabandla was nominated to be his successor.

Adv TM Masutha and Mr CV Burgess were appointed as representatives of the National Assembly in the place of Adv ZL Madasa and Ms NN Mapisa-Nqakula. Section 178(3) of the Constitution states:

“Members of the Commission designated by the National Council of Provinces serve until they are replaced together or until any vacancy occurs in their number”

Ms J Kgoali, Mr TS Setona, Mr ML Mokoena and Dr F van Heerden were appointed *en bloc* to the Commission as representatives of the National Council of Provinces in the place of Mr M Surty, Ms B Thomson, Ms CPC Majodina and Mr MJ Bhengu.

Meetings of the Commission

During the year under review the full Commission met twice, on the following dates:

7 – 11 October 2003

6 – 9 July 2004.

Both meetings were held at the Conference Centre of the Vineyard Hotel in Cape Town. In accordance with the requirements of the Constitution, Commission members who are members of Parliament did not participate in decisions dealing with matters other than those relating to the appointment of judges.

Meetings of the Heads of Courts

The Commission has continued to arrange for the Heads of Court to meet at times when the Commission holds its meetings. These meetings are followed by meetings between the Heads of Court and the Minister of Justice. Reports on these discussions are made to Commission. These meetings are of importance and enable the Minister and heads of the judiciary to discuss matters of mutual concern.

Appointment of Research Assistant

After the resignation of Ms N Rajab, Mr Bongani Khoza was appointed as research assistant to the Commission.

Access to Information Manual

A manual in terms of section 14 of the Promotion of Access to Information Act 2 of 2000 has been prepared and lodged with the Human Rights Commission. The manual is to be translated into all eleven official languages.

Judicial Education and Training

In terms of the Access to Information Act and the Promotion of Administrative Justice Act the Chief Justice must, in consultation with the Judicial Service Commission and the Magistrates Commission, develop the content of training courses with a view to building a dedicated and experienced pool of trained and specialized presiding officers. Two bench books have been prepared, one for the Promotion of Access to Information Act and the other for the Promotion of the Administration Justice Act. Training programmes have been put in place and judges and magistrates throughout the country have been trained.

The Commission is of the opinion that a structured judicial education and training programme is essential to ensure that newly appointed officers are prepared for the responsibilities they will assume and that all judicial officers keep abreast of developments in the law. This will involve the provision of funding for a suitable institution at which such education and training can be provided.

Acting Judicial Appointments

The Commission noted the concern of the judiciary that the large number of acting appointments is disproportionate to the number of permanent judges. It is becoming increasingly difficult for Heads of Courts to manage their courts without sufficient permanent judges.

Secretary of the Commission

Mrs Inez Greenstein who has been the secretary of the Commission since its inception is retiring at the end of April 2005.

Complaints

During the year under review twelve complaints were received. None of these warranted impeachment in terms of Section 177(1)(a) of the Constitution. In all cases it was resolved that there were not grounds for the Commission to take any further action.

Finance

Subsistence expenditure, including lunch and teas at meetings of the Commission	77581.50
Government Garage transport	660 00
Hire of Government Garage transport	29 198.75
Airfares & courier Services	203 887.69
Private transport	8 334.04
Telephones, fax machine and cell phone	31 362.52
Stationery	30 083.93
Cassettes, mechanical recordings	2 236.00
Rent of photocopiers	23 274.61
Rent of other equipment	79 209.25
Maintenance of equipment	1 368.00
Commission reimbursement	182 850.28

670 046.57

Appointments of Judges and members of the Electoral Court

Constitutional Court

Justices Ackerman and Goldstone retired during the year under review. In terms of section 174(4) (b) of the Constitution, the Commission is required to provide the President with three names more than the vacancies to be filled. The Commission therefore had to provide five names from which to make the appointments. The President is required to consult the Chief Justice and the leaders of parties represented in the National Assembly before making the appointments. The five names provided to the President were Mr Justice BR du Plessis, Mr Justice CN Jafta, Ms Justice YS Meer, Mr Justice TL Skweyiya and Mr Justice JV van der Westhuizen. Mr Justice TL Skweyiya and Mr Justice JV van der Westhuizen were appointed by the President to fill the two vacancies .

Supreme Court of Appeal

Ms Justice BJ van Heerden

Cape Provincial Division

Ms R Allie

Mr DV Dlodlo

Northern Cape Provincial Division

Adv CJ Olivier

Mr LP Tlaetsi

Natal Provincial Division

Adv KGB Swain SC

Adv SK Ndlovu

Ms K Pillay

Transvaal Provincial Division

Mr MF Legodi

Mr BH Mbha

Ms HK Saldulker

Mr MP Tsoka

Bisho High Court

Mr CT Sangoni

Mmabatho High Court

Adv RD Hendricks

Mr Justice AA Landman

Members of the Electoral Court

Ms S Abro

Ms S Moodley

The Competition Appeal Court

The Commission advised the President to “reappoint” the Honourable Mr Justice DM Davis (and designate him as Judge President of that Court) and Justices Selikowitz, Hussain and Jali as members of the Competition Appeal Court for a fixed term with effect from a date to be determined by the President. These appointments were duly made.

Members of the Commission

Section 178(1)(a) of the Constitution Chief Justice

Mr Justice A Chaskalson

Section 178 (1)(b) President of the Supreme Court of Appeal

Mr Justice CT Howie

Section 178 (1)(c) Judge President

Mr Justice BM Ngoepe

Section 178(1)(d) Minister for Justice and Constitutional Development

Ms BS Mabandla

Section 178 (1)(e) Two Practising Advocates

Adv M Seligson SC

Adv MTK Moerane SC

Section 178 (1)(f) Two Practising Attorneys

Mr S Nkanunu

Mr J von Klemperer

Section 178(1)(g) Professor of Law

Prof J Neethling

Section 178((1)(h) Six persons designated by the National Assembly

Mr J de Lange

Ms LB Hendricks

Mr JH van der Merwe

Adv TM Masutha

Ms S Camerer

Mr CV Burgess

Section 178(1)(i) Four permanent delegates to the National Council of Provinces

Ms J Kgoali

Mr ML Moekoena

Mr TS Setona

Dr F van Heerden

Section 178(1)(j) Four persons designated by the President

Adv G Bizos SC

Adv KD Moroka

Mr JH Ernstzen

The fourth position was not filled during the year.

Secretary

Ms IH Greenstein



Judicial Service

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