

# JUDICIAL SERVICE COMMISSION



**ADDRESS BY**

**THE HONOURABLE MR JUSTICE L. MALABA,**

**CHIEF JUSTICE OF ZIMBABWE,**

**ON THE OCCASION OF THE OFFICIAL OPENING OF THE  
2021 LEGAL YEAR ON 11 JANUARY 2021**

~

**THEME: ENSURING EFFICIENCY AND EFFECTIVENESS  
OF THE JUDICIARY**

---

## INTRODUCTION

Regrettably, we start the legal year against the backdrop of the ravages of a virulent pestilence, the scientific description of which is COVID-19. The pernicious plague has affected the lives of millions of people across the world. The pandemic has not only impacted on social lives. It has seriously affected court operations. The lockdown and other restrictive measures issued by Government from February to December 2020 intended to prevent and contain the spread of the disease resulted in either the partial operation of courts or the discontinuation of some of the court services.

The disease has now escalated to a level not experienced before as the nation enters the year 2021. The numbers of new infections and deaths continue to rise. On 5 January 2021 the country recorded 1 365 new COVID-19 cases and 34 deaths in one day. This was the highest number of infections in a day since the first case was reported in the country in March 2020. The Judicial Service Commission (“the JSC”) has not been spared by this virulent disease. Currently there is a total of 31 confirmed cases amongst the members of the organisation. Two members are in critical condition. One died on 5 January 2021.

The Government introduced Level 4 National Lockdown through the **Public Health (Covid-19 Prevention, Containment and Treatment) (National Lockdown) (No. 2) (Amendment) Order, 2021 (No. 9)**, published in Statutory Instrument 10 of 2021. The National Lockdown

measures will achieve the intended purpose if citizens act in strict compliance with their commands. Acting without strict adherence to the preventive and protective requirements imposed by the **Nation Lockdown** Regulations would not only be criminal conduct but also dangerously reckless with one's life. These times require self-discipline and behaviour consistent with policies and measures put in place by the authorities for the common good.

The **Practice Direction Number 1 of 2021** regulates the operations of the courts during the National Lockdown period. The message from the Directive is that the courts, as an essential service, are open for a limited number of services. A circular has been issued to members of staff, guiding them on the manner in which they are expected to provide the services to the public in respect of the limited areas concerned. The traditional ceremony conducted to mark the official opening of the legal year has had to be cancelled in recognition of the fact that a celebratory ceremony of this nature would not be consistent with the purpose and object of the National Lockdown. The 2021 legal year commences today, 11 January 2021, as pronounced in the courts calendar published in the Government Gazette of 18 September 2020, through General Notices 2444, 2445, 2446 and 2447 of 2020. The legal position remains unchanged.

The effects of the National Lockdown measures do not, however, disable the Judiciary as an organ of State from accounting to the people on how the affairs of the administration of justice were conducted in

the year 2020. The Judiciary is conscious of its obligation to share with the nation thoughts on how the courts will function during the current legal year. In accordance with the principles of transparency and accountability which the JSC upholds, it has been found necessary that the speech to mark the opening of the 2021 Legal Year be prepared and made available to the public.

On **22 May 2020** the JSC, the Judiciary, stakeholders in the administration of justice and all Zimbabweans witnessed the formal separation of the Constitutional Court from the Supreme Court. The Constitution had provided that for seven years from the date of its publication on 22 May 2013, the Judges of the Supreme Court would act as Judges of the Constitutional Court. The seven-year period ended at midnight on 21 May 2020. With effect from 22 May 2020, the Constitutional Court was constituted by its own Judges.

On **10 June 2020** the JSC celebrated the tenth anniversary of its existence. The JSC became an independent institution in charge of the affairs of the administration of justice on 10 June 2010, through the enactment of the **Judicial Service Act** [*Chapter 7:18*]. The functions of the JSC were broadly defined and entrenched by **section 190** of the Constitution. The JSC enjoys an expanded mandate, which includes supervision of the administration of all courts and the fixing of conditions of service of all members of the Judicial Service employed in the courts. The JSC found it appropriate to celebrate the decade of existence by designating 10 June 2020 as the JSC Open Day. On the

Open Day members of the public were free to approach courts and offices nearest to them for purposes of learning about the operations of the justice delivery system. The JSC reached out to the public by distributing free legal literature, such as copies of the Constitution and electronic diskettes with judgments and statutes. At each provincial centre, the highlight of the day was an event to celebrate and recognise members of staff who provided extraordinarily long service to the administration of justice.

On **2 December 2020** the JSC launched the third five-year Strategic Plan for the period 2021-2025. This followed the expiration of the 2016-2020 Strategic Plan, the life span of which ended on 31 December 2020. The launch was a national occasion presided over by His Excellency the President of the Republic of Zimbabwe, Dr E D Mnangagwa. I will make reference to the Strategic Plan later in my remarks.

## **ENSURING AN EFFICIENT AND EFFECTIVE JUDICIARY**

It is now a tradition that at the beginning of each legal year the Judiciary adopts a theme that guides its operations during the year. The theme is pronounced and made public in the speech by the Chief Justice to mark the commencement of the legal year. The disclosure of the guiding theme is intended to make the public and stakeholders aware of what the Judiciary intends to focus on in the course of the year. At the same time, the disclosure of the theme provides stakeholders and the public with a yardstick by which to hold the Judiciary to account in respect of

performance during the course of the year. The theme for 2021 is derived from one of the goals that are set out in the JSC's new Strategic Plan. It is "**Ensuring an Efficient and Effective Judiciary**". The theme builds on the 2020 Legal Year theme which was "**Judicial Transparency and Accountability**".

Members of the public approach the courts to have their disputes resolved in terms of the law. The courts are mandated by the law to pronounce winners and losers in disputes brought before them. Public confidence in the Judiciary is cultivated and maintained when those appearing in courts see that those charged with judicial functions are conscious of the obligation to deliver justice or provide services efficiently and effectively. A judicial system that is inefficient is not effective.

An efficient Judiciary is the hallmark of an effective system of justice. The concept of justice is used to mean the manifestation of acting in accordance with the procedural requirements of the Constitution or a constitutionally valid law and granting an effective remedy to protect public interest or enforce rights violated or likely to be violated by conduct constituting the cause of action.

**Section 164(2) of the Constitution** provides that the independence, impartiality and effectiveness of the courts are central to the rule of law and democratic governance. The Constitution further imposes a positive duty on the State, through legislative and other measures, to

assist the courts to achieve effectiveness and to ensure that they comply with the principles set out in **section 165**. One of the principles by which the Judiciary is required to be guided in the exercise of judicial authority is that justice must not be delayed. To that end, members of the Judiciary must perform their judicial duties efficiently and with reasonable promptness.

The principles of an efficient and effective Judiciary are made so sacrosanct to an effective system of justice that the Constitution provides that, when exercising their judicial functions, members of the Judiciary must respect and honour their judicial office as a public trust. The reason is that a judicial office is created as a means of protecting and promoting the public interest in an effective system of justice. The duty to perform a judicial function efficiently and effectively imposed on a judicial officer attaches to the office to underscore the fact that a system designed for the purpose of the delivery of justice must be efficiently and effectively administered. The principles of efficiency and effectiveness occupy a central role in the administration of justice. They are overarching principles intended to guide the manner in which the Judiciary must operate.

The effectiveness of an organisation refers to how well the people in it perform their tasks. It relates to the question of how well the organisation functions to fulfil the purpose of its existence. It is a state of being successful in producing expected results. Efficiency, on the

other hand, entails performance at the highest level possible using the available resources. The terms complement each other. It will be paradoxical to talk of an effective Judiciary which is not efficient. Thus, in the context of the Judiciary, these values mean that judicial officers must dispose of cases before them without delay, through well-reasoned judgments. Members of the Judiciary are expected to endeavour at all times to do the right thing by adopting and following the legally prescribed procedures in the administration of justice to reach correct decisions within the shortest possible time and at the least cost to the litigants or the public.

Taking an unduly long time to deliver judgments is a violation of the constitutional imperatives of efficiency and effectiveness. Equally, failure to set down matters allocated for hearing does not accord with the concept of an effective Judiciary.

The Judiciary is required to be guided by the fundamental principles and values of independence, impartiality, efficiency and effectiveness when exercising judicial functions because the system of justice established under the Constitution is based on the respect for the rule of law. The Constitution does not, therefore, require that for the purposes of the system of justice there be an independent and impartial Judiciary only. It requires that the Judiciary be also efficient and effective in acting in accordance with the rule of law to achieve the purposes and objectives of the system of justice.

Requiring a judicial officer to deliver his or her decision promptly cannot be interpreted as interference with the independence of the judicial officer concerned. He or she is being asked to do what constitutes the content of the objective for which judicial independence is guaranteed by the Constitution. Failure to act efficiently and effectively is failure to act in a manner that exhibits an understanding of the rule of law governing one's conduct. Judicial independence does not shield the bearer thereof from being held accountable to the standard of efficient and effective performance of the duties prescribed by the law for the benefit of the intended receivers of the service.

The theme for this year resonates well with the Central Government's National Development Strategy 1 ("NDS1") commissioned by His Excellency the President in November last year. The broad strategy is the first of two five-year Government strategies meant to guide operations of all arms and departments of Government towards achieving Vision 2030. With regards the justice sector, the strategy envisages enhanced capacity for an independent and competent Judiciary, able to deal with any injustices and violations of the law. In other words, the National Development Strategy is based on the acceptance of the principle that a competent Judiciary is an efficient and effective means for the achievement of the national goals.

Under the NDS1, the Government seeks to achieve improved justice delivery as a national outcome. In this regard, an efficient and effective

Judiciary is a critical player, whose role in the attainment of the national objective is indispensable. Among the strategies to be implemented by Government to promote greater access to justice are:

- Decentralisation of courts;
- Establishment of an integrated electronic case management system;
- Reviewing and rationalising legal costs;
- Improving physical access to the courts by people with disabilities;
- Simplification of court procedures; and
- Strengthening and capacitating the justice delivery institutions.

The efficiency of the Judiciary as a decision-making unit of an effective system of justice is measurable by the consideration of factors relating to competency; integrity; aversion to any form of corruption or abuse of office; ability to hear and complete cases speedily; ability to deliver quality judgments expeditiously; and optimal conditions of service.

One of the means of ensuring the efficiency and effectiveness of a justice delivery system is the availability and strict enforcement of complaint mechanisms provided for the members of the public who have grievances arising from the actions of those involved in the delivery of judicial services. The Constitution, the Judicial Service Act and the Codes of Judicial Conduct contain procedural and substantive provisions for processing complaints made by legal practitioners,

litigants and other members of the public against members of the Judicial Service.

The office of the Chief Justice and the JSC form part of the institutions with powers of processing the complaints, depending on their nature and degree of seriousness. The office of the Chief Justice receives many complaints from legal practitioners and litigants relating to alleged undue delays in completion of the hearing of cases, delays in the delivery of judgments, corrupt alterations of records of proceedings, acts amounting to attempts to defeat the course of justice, and acts of incompetence.

As the complaints are made directly to the Chief Justice, in terms of the law, the procedure adopted in processing them is one provided for by the law.

If the complaint relates to judicial conduct and is an expression of dissatisfaction with the decision of a judicial officer, the complainant is invariably advised of the existence of legal remedies such as appeal and review for the redress of the cause of the disgruntlement. In that way, due respect for judicial independence is observed on the basis that the legal remedies provided are a means of ensuring efficiency and effectiveness in the performance of judicial functions.

Where the complaint does not relate to the decision of a judicial officer in the exercise of judicial power but relates to the conduct of a judicial

officer, it is forwarded to the Head of the Court in which the officer works. Where the complaint relates to the conduct of a non-judicial member of staff, it is forwarded to the Secretary of the JSC. In each case, the officer concerned would be asked to comment on the allegations raised in the complaint. The condition often attached to the letter of referral of the complaint to the Head of the Court or the Secretary, as the case may be, would relate to the time limit within which the officer concerned should submit his or her response to the complaint.

In many instances, the officers accused of dereliction of duty provide candid, comprehensive and satisfactory explanations. For example, a judicial officer alleged to have delayed in delivering a judgment will admit failure to act promptly and apologise for his or her conduct whilst undertaking to deliver the judgment on a fixed date. In some cases, the explanation by the officer may reveal the truth of what happened. The complainant may not have been aware of the full facts. In such cases, the response by the officer against whom the complaint was made would be forwarded to the complainant, who is asked to comment within a reasonable time. In many cases, the complainant accepts the explanation given by the officer concerned and the matter ends there.

If the response by the officer concerned does not resolve the issues raised by the complaint, any one of three possible procedures may be

followed in respect of complaints against judicial officers, particularly Judges.

The conduct which the judicial officer is alleged to have committed may not be of a serious nature. There may be doubt as to whether it is covered by the Code of Ethics. In the latter case, the matter is referred to the Ethics Advisory Committee. The Ethics Advisory Committee conducts its investigations, deliberates on the findings, and advises the Chief Justice whether conduct committed by the judge is prohibited by the Code of Ethics. The purpose of the Ethics Advisory Committee is to advise the Chief Justice in cases of doubt on the question whether a particular act is prohibited by the Code of Ethics. It is not a disciplinary body, as no disciplinary action would be taken when this procedure is invoked.

Where the conduct a judge is alleged to have committed is not of a serious nature but is prohibited by the Code of Ethics, the Chief Justice has authority to set up a disciplinary committee to investigate the allegations made against the judicial officer concerned. The disciplinary action taken would depend on the recommendations of the disciplinary committee. Ordinarily the disciplinary action would not involve the removal of a judge from office.

Where the conduct the judge is alleged to have committed is of a serious nature, the procedures under the Code of Ethics are not available. The Chief Justice has to place the complaint and the related documents

before the JSC in terms of **section 187** of the Constitution. These are very exceptional cases involving possible gross misconduct, gross incompetence or mental or physical incapacity. Whilst the procedure under **section 187** of the Constitution has as its purpose the determination of the question of removal of a judge from office, the steps required to be taken in the advancement of the process are clearly designed to protect the judge against complaints based on evidence of alleged conduct falling short of gross misconduct, gross incompetence or mental or physical incapacity.

The purpose of setting out the complaints procedures in detail is to demonstrate the fact that when the Chief Justice, the JSC and the Secretary of the JSC act on complaints against members of the Judicial Service made by members of the public, they do so in terms of the law. They exercise the powers conferred on them by the law to ensure efficiency and effectiveness of the justice delivery system. Acting in accordance with the applicable rule of law cannot be said to be interference with judicial independence.

The Chief Justice, as the Head of the Judiciary, bears the overall supervisory duty of ensuring that the Judiciary, as an independent organ of the State, performs its functions efficiently and effectively. All members of the Judicial Service fall under the supervisory authority of the Chief Justice insofar as the questions of the efficiency and the effectiveness of the performance of the functions of their offices are

concerned. The Chief Justice is the Chairperson of the JSC, which is under the duty in terms of **section 190(2) of the Constitution** to promote and facilitate the independence and accountability of the Judiciary and the efficient, effective and transparent administration of justice.

There is no principle of law on the basis of which a member of the Judicial Service is protected from the exercise of the supervisory authority by the Chief Justice through the Head of Court or department in which the member works on matters relating to the efficiency and effectiveness of performance of the duties of his or her office. The constitutional principle of judicial independence guarantees institutional and decisional independence to the Judiciary and individual judicial officers. The principle protects any judicial officer against interference from any quarter in respect of matters relating to the exercise of the judicial function.

In 2020 two judges had cases of misconduct referred by the JSC to the President to set up tribunals to investigate the question of their removal from office. Five (5) magistrates went through disciplinary hearings, resulting in their discharge from service on allegations ranging from corruption to inefficiency and incompetency.

A cocktail of measures has been devised to enhance the monitoring of the performance and output of each judicial officer. Among such measures is the requirement that all Heads of Courts account to the

Chief Justice in terms of the performance of their courts and staff. That includes the performance of judicial officers. The Heads of Courts apprise the Chief Justice of the performance of their respective courts at briefings, which are scheduled on a monthly basis. These meetings are augmented by monthly statistical reports detailing the performance of each court. The reports record the workload and the performance of each judicial officer in relation to the number of cases received and finalised, judgments reserved and backlog of pending cases. This is done to monitor the efficiency of each court and each judicial officer and to ensure that corrective action is swiftly taken where necessary.

These legal requirements are in tandem with global trends and international best practices. The **Bangalore Principles of Judicial Conduct** require that a judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

## **LAUNCH OF THE JSC STRATEGIC PLAN 2021-2025**

Institutions that do not have plans of how to execute their functions and to achieve their goals are unlikely to be efficient and effective. The JSC, with the support of the UNDP, crafted its third Strategic Plan for the period 2021-2025. In line with the centrality and importance of the Strategic Plan to the programmes of the JSC, the document was launched on 2 December 2020, at a ceremony presided over by His Excellency the President of the Republic of Zimbabwe.

The Strategic Plan, which the JSC has made available to all stakeholders and the public, sets out the priorities and objectives. It enumerates the strategies and activities to be undertaken to achieve the institutional goals during the period in question. The major strategic focus areas singled out in the document are justice delivery, service delivery, performance management and evaluation, resource mobilisation and capacity building. They are all designed to achieve efficient and effective court services. A strong performance culture is to be inculcated at all levels through an aggressive monitoring and evaluation strategy, to promote an effective and efficient Judiciary.

The values of an efficient and effective Judiciary, as espoused in the Strategic Plan, dovetail with the mission of the JSC, which speaks to the promotion and maintenance of a transparent, accountable, and independent Judiciary for an efficient and effective justice delivery system that inspires public trust and confidence in the rule of law.

## **PERFORMANCE MANAGEMENT**

In an endeavour to optimise operations in every department and ensure that the JSC is positioned to fulfil its constitutional mandate in an efficient and effective manner, the JSC introduced a set of comprehensive policies and standard operating procedures. In that regard, the JSC developed a Performance Management System for its non-judicial staff and magistrates. The system involves the formulation

of Key Result Areas for every member. A performance contract is entered into and signed at the beginning of each year. The performance of each member is monitored throughout the year by means of a carefully designed monitoring and evaluation matrix that ensures compliance and early detection of cases of malperformance. The Performance Management System is designed along the lines of the Results Based Management (“RBM”) System, which all public sector agencies are expected to embrace.

To motivate employees towards higher performance and excellence, rewards, which come in different forms, are extended to exceptional performers at the end of each performance cycle; while poor performance is equally sanctioned by identifying the poor performers and subjecting them to training, redeployment to other areas where they may be better suited to perform or, in extreme cases, taking disciplinary action. Performance is managed at an individual member’s level as a strategy because the performance of individual members has a positive or negative impact on the performance of the organisation as a whole.

The JSC’s Performance Management System is a home-grown initiative designed specifically for members of the Judicial Service, taking into account the special needs of the institution and the peculiarities of the Zimbabwean jurisdiction. The system was designed after studying what several other countries within and outside the region have done.

## **MAINTAINING EFFICIENCY DURING THE COVID-19 PANDEMIC**

The year 2020 was unique. It will be remembered for the hardships wrought by the COVID-19 pandemic. The pestilence disrupted the conventional ways of court operations. The restrictive health protocols put in place following the outbreak made physical gatherings for court hearings impossible. Movement of witnesses, litigants and members of staff was restricted. Many organisations, including law firms, shut down and requested employees to work from home.

The courts were not spared. Most courtrooms were closed except for those performing essential functions related to the protection of human rights, such as mandatory initial appearance in court after arrest. The closure extended from March to May 2020 in line with the demands of the law and for the safety of all stakeholders. This unprecedented phenomenon put to a stern test the courts' capacity to adapt to new situations. The court system remained alive and learnt new ways of adjudicating over disputes in the full realisation that disputes will arise even during pandemics. Even during such difficult times, the Judiciary has an obligation to ensure that the wheels of justice do not grind to a halt. It is in such challenging times that the fundamental rights and freedoms of citizens may easily be violated. It was for that reason that the courts had to remain vigilant and readily available to provide protection.

It was in response to those challenges that the office of the Chief Justice issued a series of Practice Directions aimed at ensuring that services remained available, albeit at a reduced scale taking into account the threat posed by the pandemic.

History has taught mankind that out of every catastrophe comes positives which usually develop man's way of life. The invidious situation created by the COVID-19 pandemic presented an opportunity to reflect on alternative methods which could be employed to dissipate the disruptions it caused.

It became apparent to the JSC that, in the midst of the raging pandemic, Information Communication Technologies ("ICT"), had evolved from being an option to an absolute necessity. Courts could not afford to lag behind in harnessing the potential of ICT in ensuring that access to justice was not disrupted.

To this end, plans to introduce virtual court sittings are at an advanced stage. The process involves presentation of submissions by litigants and parties to disputes without them being required to be physically present at court. This digitisation of the courts and their processes has already been adopted and is in use in other jurisdictions in the region and beyond. We must as an institution see beyond the COVID-19 pandemic. The recent upsurge in cases and the emergence of a stronger and more infectious variant of the virus calls for everyone to remain

vigilant and comply with health guidelines issued from time to time by health authorities to slow down the spread of the disease.

The JSC has entered into memoranda of understanding with cooperating partners such as the UNDP, ICJ and UNICEF to assist with the establishment of virtual courts throughout the country. One courtroom at Harare Magistrates' Court has already been fitted with virtual court equipment which connects the court to Harare Remand Prison. A pilot run of the equipment was successfully done towards the end of 2020.

## **AUTOMATION OF COURT PROCESSES**

The benefits that accrue to any organisation from the deployment of technology in its processes and activities cannot be over-emphasised. A few years back, the JSC introduced an electronic case tracking and monitoring system at the High Court as a pilot project. This has since been cascaded to all courts in the country. Automation of court processes reduces human intervention in the processes. That in turn eliminates opportunity for corruption. Corruption was a source of many complaints, especially in the High Court where reports of court files disappearing in the registry were widespread. The scanning of each document filed with the courts to produce duplicate electronic files has successfully eliminated the incentive for deliberate removal of court files by corrupt elements in the registries. The system has greatly improved efficiency of court registries, as files are now easily

accessible to litigants and stakeholders. Everyone can now benefit from the services offered by information kiosks, which have eliminated long queues that had become synonymous with most court registries.

Litigants are able to make enquiries on the progress of their cases with registries from the comfort of their homes or offices through the information kiosk e-mailing system. The JSC's website has equally been enhanced to make it more interactive and informative. This is in addition to the recruitment of a full time website administrator to manage it. A fully-fledged Information and Communication Technology department was created. The department will be strengthened in the full appreciation that this is an area which holds the future of court operations. Debate is raging all over the world on the possibility of Artificial Intelligence taking over the adjudication of cases in the courts. This appears ultra-difficult, if not impossible. The reality, however, remains that technology will sooner rather than later account for more than 90% of court operations.

In the address for the 2020 Legal Year, I emphasised the requirement for courts and court systems to be transparent. I promised the nation that the JSC will continue to make court operations, trials and court decisions accessible to the public through the media. I am happy to report that the JSC continues to make strides in improving its communication and interaction with stakeholders and members of the public. A vibrant unit on Communication and Corporate Affairs, whose sole mandate is to handle the JSC's public relations and information

dissemination, was established under the Policy and Legal Department. The move fully embraces the reality that social media has become an integral part of human life. The JSC acknowledges the obligation to keep stakeholders and the public informed of any development in the Judiciary. A deliberate decision was therefore taken to use social media platforms to reach them. The JSC now manages its own Twitter handle, Facebook page and Instagram account.

Building on these successes, the JSC is now geared towards introducing a more advanced integrated electronic case management system (“IECMS”). The progress made in establishing this system is dealt with later in the speech.

## **INFRASTRUCTURE DEVELOPMENT AND PROJECTS**

In the year under review, the JSC continued with its aggressive infrastructure refurbishment and construction programme under the access to justice thrust. Despite the budgetary challenges experienced, Treasury is commended for the support provided to the JSC, which ensured that there was significant progress in the execution of plans to complete the capital projects.

The JSC’s flagship projects in 2020 included the construction of Chinhoyi Magistrates’ Court, the refurbishment and customisation of Bristol House into the Commercial Court, construction of a new courthouse at Mt Darwin Magistrates’ Court, and construction of a

Provincial Court at Lupane. These projects are being undertaken together with many others at different stations around the country.

The construction work at the Chinhoyi Magistrates' Court project is now complete. The contractor is working on finishings like painting, plumbing, electrical works and the procurement of furniture. The building is expected to be ready for occupation by end of March 2021. The massive court structure is intended to operate as a composite one-stop complex, housing the Magistrates' Court, offices of the Sheriff, the Master of the High Court, and the High Court, which will start off as a circuit court. I wish to register my appreciation for the professionalism and hard work of the contractor and all other stakeholders, such as the Department of Public Works.

The customisation of Bristol House for use by the Commercial Division of the High Court in Harare is nearing completion and will be ready by the first half of 2021. This must pave way for the setting up of an integrated electronic case management system ("IECMS") for the court earmarked to be the first paperless court in the country under the e-justice initiative. Operationalisation of the Commercial Court will be the last piece of the jigsaw, following the establishment of similar courts at all provincial centres in the Magistrates' Courts as part of the Judiciary's responsibility to support the Government's Ease of Doing Business initiative. The Commercial Court Rules of the High Court have already been gazetted, as part of preparations for the commencement of that court's operations.

Construction of Lupane Provincial Magistrates' Court has also moved forward, with about 85% of construction material having already been purchased and delivered to the site. Work is progressing well and the project is expected to be completed by the beginning of the second quarter of 2021.

A new courthouse at Mt Darwin Magistrates' Court has now been completed and will be officially opened within the coming few months, while projects at Epworth, Chiredzi, Murehwa and Mutare Civil Court are currently on-going. Refurbishment of offices and courtrooms was done and completed at Tredgold Magistrates' Court in Bulawayo and at Harare Criminal Court. During the period under review, the JSC acquired a building called "Cape to Cairo" in Bulawayo to accommodate the office of the Master of the High Court. The acquisition has gone a long way in alleviating accommodation challenges that had bedevilled the office for a long time.

Special mention is reserved for the refurbishment works carried out at Hwange Magistrates' Court. The station had become an eyesore and a source of embarrassment for the organisation due to its state of disrepair, caused by neglect, termite infestation and invasion by baboons. Reports of ceilings caving in and platoons of baboons wreaking havoc and disturbing court operations were frequently received. The JSC commenced massive works to repair, rehabilitate and refurbish the entire courthouse. The building has been turned into

one of the JSC's flagship courthouses. The completion of the renovations and customisation culminated in a state-of-the-art modern building which is a marvel to look at.

The construction of new courthouses at the above-mentioned stations, and others planned at district centres that are currently without resident courts, is in line with the Government's programme of devolution of administration and services which requires that systems of governance be community based and people centred. The concept aims to achieve the notion of a fair system of governance for all communities.

## **PLANS FOR THE FUTURE**

### **Introduction Of An Integrated Electronic Case Management System**

At the official opening of the Legal Year in 2020, the JSC briefed the nation on the progress made towards the introduction of an integrated electronic case management system ("IECMS") in the Judiciary. The long and complicated procurement process of an international tender has now been finalised. The process would have been completed last year but for an unfortunate development, where the winner of the tender reneged and pulled out of the contract at the last minute of the process. The JSC had to go through a fresh tender process, which inevitably delayed the implementation of the system. The new service provider, Synergy International of Armenia, and the JSC have agreed on all major aspects of the project and the contract has been signed.

The IECMS seeks to take full advantage of the benefits of flexibility and automation of court processes which foster efficiency, transparency and improved access to justice. Court procedures will be expedited while minimising direct human contact at certain stages of the process, thus eliminating opportunities for corrupt tendencies.

The first phase of implementing the system will involve the Constitutional Court, the Supreme Court and the Commercial Division of the High Court. The refurbishment of Bristol House, which will accommodate the Commercial Division of the High Court, is almost complete. Bristol House is expected to be officially opened in April 2021. The setting up of the IECMS will immediately follow, as the court is earmarked to be the first paperless court in the country.

### **Establishment Of A Judicial Training Institute**

As part of the implementation of the Strategic Plan, the JSC has approved the establishment in the current year of the Judicial Training Institute of Zimbabwe (“JTIZ”). The college will be established in collaboration with the University of Zimbabwe. The establishment of the JTIZ comes as part of the JSC’s efforts to ensure that judicial officers comply with the requirements of **section 165(7) of the Constitution**, which enjoin them to ensure that they take reasonable steps to maintain and enhance their professional knowledge, skills and personal qualities, and in particular to keep themselves abreast of

developments in domestic and international law. The need to regularly develop the skills of members of staff has become an international best practice. World-class justice can only be achieved with a highly trained, motivated and professional Judicial Service. The professional development is also intended to further strengthen the independence of the Judiciary by ensuring that its staff, both judicial and non-judicial, have the necessary skills required to effectively, efficiently and competently discharge their duties through structured, curriculum-based and continuing training offered through the JTIZ. The Training Institute, therefore, is the *sine qua non* of a successful and highly competent Judiciary.

The objectives of the Training Institute are to organise workshops, seminars and conferences for the purpose of sharing knowledge and experiences to develop and strengthen the human and institutional capacity of the JSC.

The collaboration with the University of Zimbabwe is not coincidental. It came as a strategic move designed to tap into the University's proven experience and excellence in academic research and development. The teaching staff will be drawn mainly from the university lectureship and other suitably experienced resource persons from the JSC and the legal profession, supported by a team of researchers to enhance the capacity of the Training Institute to come up with solutions to evolving challenges. It is expected that the Training Institute will be fully functional within the first quarter of the year.

## **THE ROLE OF OTHER PLAYERS**

Apart from the Judiciary, an efficient and effective system of justice requires the involvement of other critical stakeholders, whose activities must be aimed at ensuring the achievement of its objectives. By its nature, the administration of justice necessarily requires team effort. The Judiciary cannot without the cooperation and input of other players in the justice delivery sector create an efficient justice delivery system.

The National Prosecuting Authority plays a critical role in the criminal justice system. Any measures that the Judiciary may put in place to deal with criminal cases will be a futile exercise if the prosecution does not fulfil its obligation to bring cases before the courts and carry out efficient and professional prosecutions. Concern is raised when numerous cases remain pending in the criminal courts for years without being tried. When members of the public complain and demand justice, they do not distinguish between judicial officers and the prosecution. The ultimate responsibility to ensure that cases are set down for trial rests with the prosecutors. It is the right of every citizen to have his or her case tried and finalised within a reasonable time. It is anomalous for the prosecution to have a person arrested and placed on remand but thereafter forget about the case and make no effort to have the matter tried. As a result, the accused persons are removed from remand contrary to the interests of justice.

Concern is also raised when legal practitioners who represent accused persons do all they can to prevent commencement of trials. The guilt or innocence of persons accused of crimes can only be decided through trial.

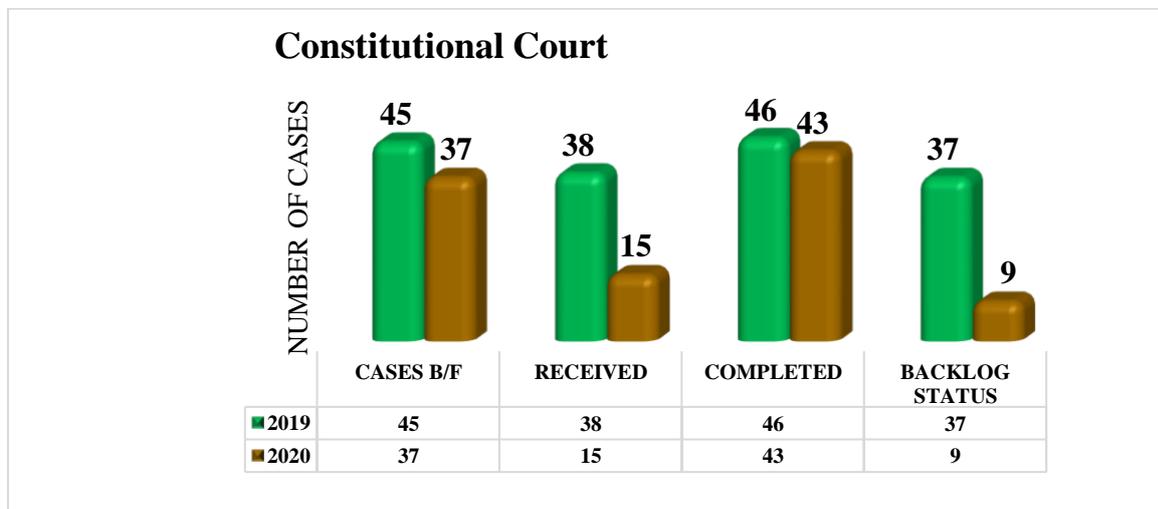
Investigating agencies must realise the centrality of their roles in the criminal justice system. The law enjoins them to arrest a person only when there is a reasonable suspicion that an offence has been or is about to be committed. The arrest of an individual is a serious violation of that person's right to liberty and must only be resorted to where there is enough justification. Some trials fail to commence in the courts because of the inept investigations that would have been made at the initial stages by the investigating agencies and not corrected by the National Prosecuting Authority before the case is brought to court. The efficiency of an investigating officer is not measured by having a person placed on remand but by the successful prosecution of the accused at his or her trial.

As a result of these observations, a clarion call is made to all actors in the justice delivery system to play their roles with diligence and professionalism in order to avoid unnecessary criticism from those who appear before the courts charged with offences. There will not be an efficient and effective justice delivery system when some players and key stakeholders in the system are not discharging their functions professionally and diligently.

## COURTS' PERFORMANCE

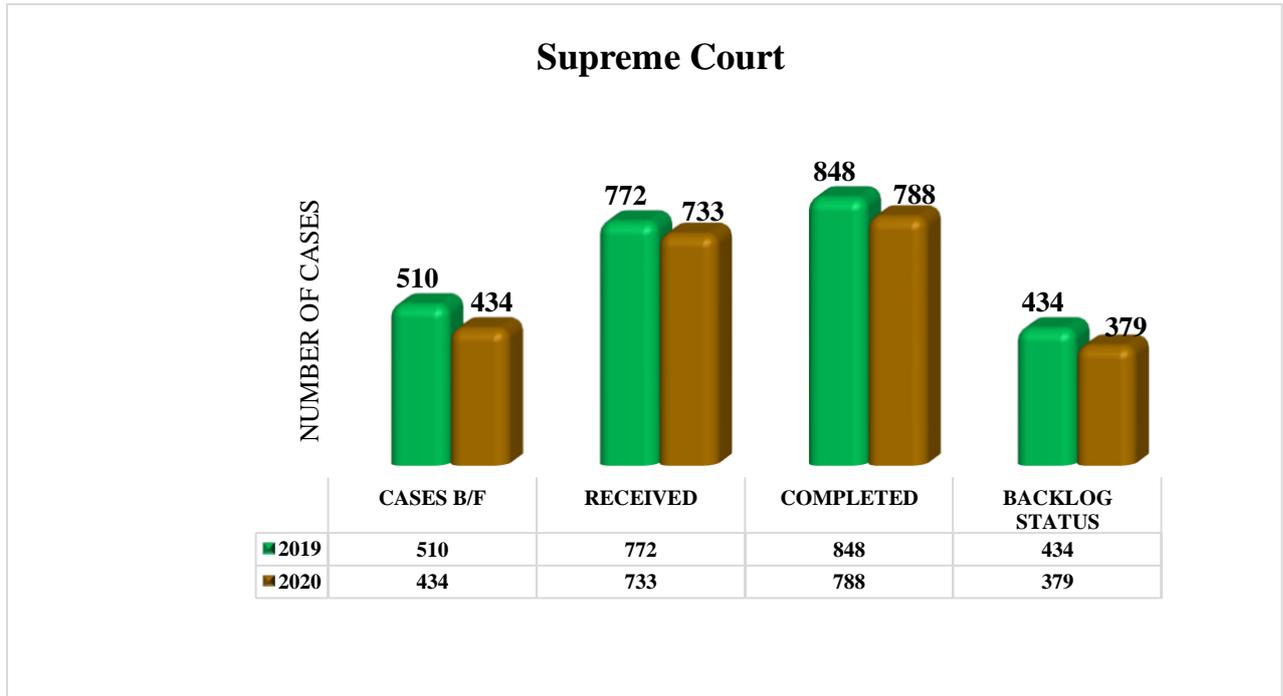
As a result of the various initiatives outlined above, all the courts generally performed well in 2020. There was, however, a general reduction of cases received by the courts during the period under review as compared with the previous year (2019). This scenario is attributed to the lockdown imposed to contain the threat of the COVID-19 pandemic. As a result, courts failed to accept new processes except for urgent matters. The performances of the individual courts for the period under review are now set out.

### CONSTITUTIONAL COURT



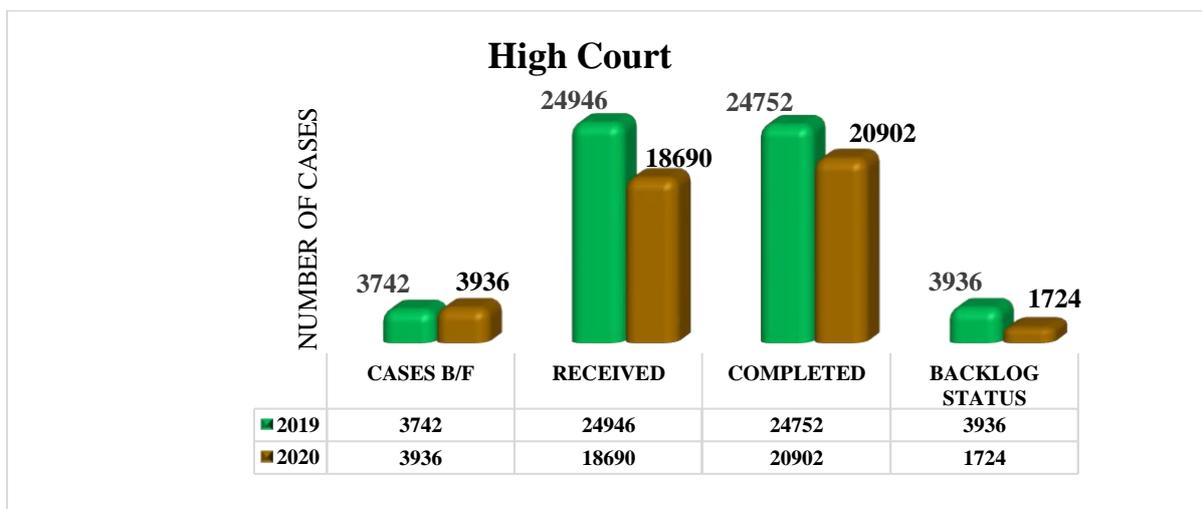
The court case backlog for the legal year 2020 decreased considerably by **76%** (**28 cases**). The workload of the Constitutional Court decreased by **61%** (**23 cases**) as compared to the previous year.

## SUPREME COURT



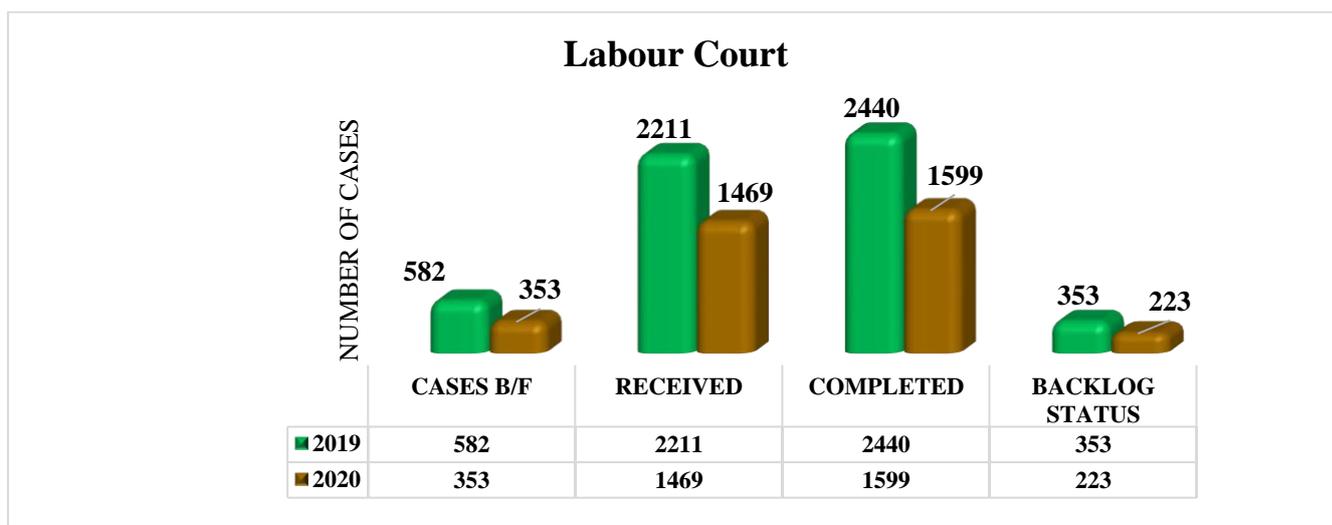
The court had a clearance rate of **107%** in the period under review. It managed to clear more cases than it received. There are **379** cases being carried over to 2021. The overall backlog was reduced by **55** cases.

## HIGH COURT



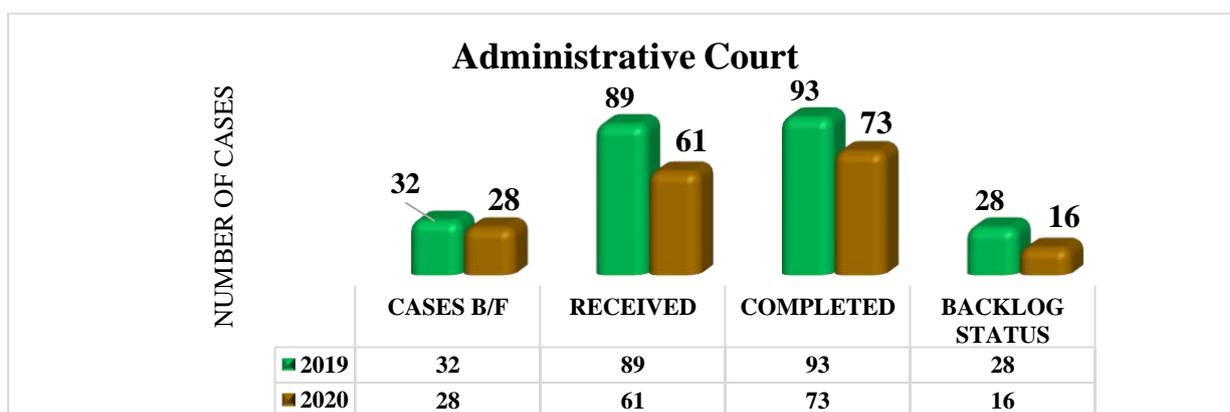
The High Court received **6 259** less cases as compared to the previous year. Although COVID-19 took most of the time from the court, the backlog went down by **2 212** cases. The clearance rate was **92%**.

## LABOUR COURT



The cases received at the Labour Court declined from **2 125** in **2019** to **1 469** in **2020**, a **30.9%** decline. Completed cases also declined by **34%**, as did received cases in **2020** (**1 596** in **2020** from **2 420** in **2019**). In **2020**, the court completed **88%** of the total workload.

## ADMINISTRATIVE COURT

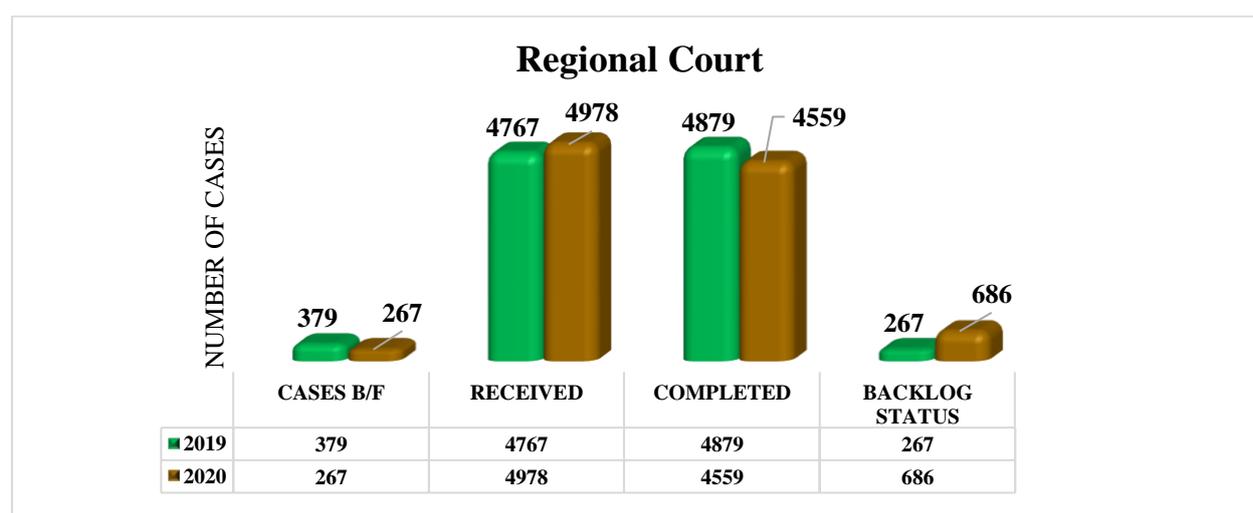


The court performed well with an **82%** clearance rate. It completed more matters than were received. **16** cases are carried over to the 2021 legal year. The backlog went down by **12** cases.

## THE MAGISTRATES' COURTS

In the Magistrates' Courts, the lockdown measures affected both the number of cases received and those completed in the courts. Even after the lockdown was partially lifted, it remained very difficult for witnesses to attend court for trials. The majority of criminal cases are heard in this court. The court was therefore receiving cases and placing accused persons on remand, but very few cases were being finalised because no trials were taking place. This caused the increases in the backlog of criminal cases at most of the courts.

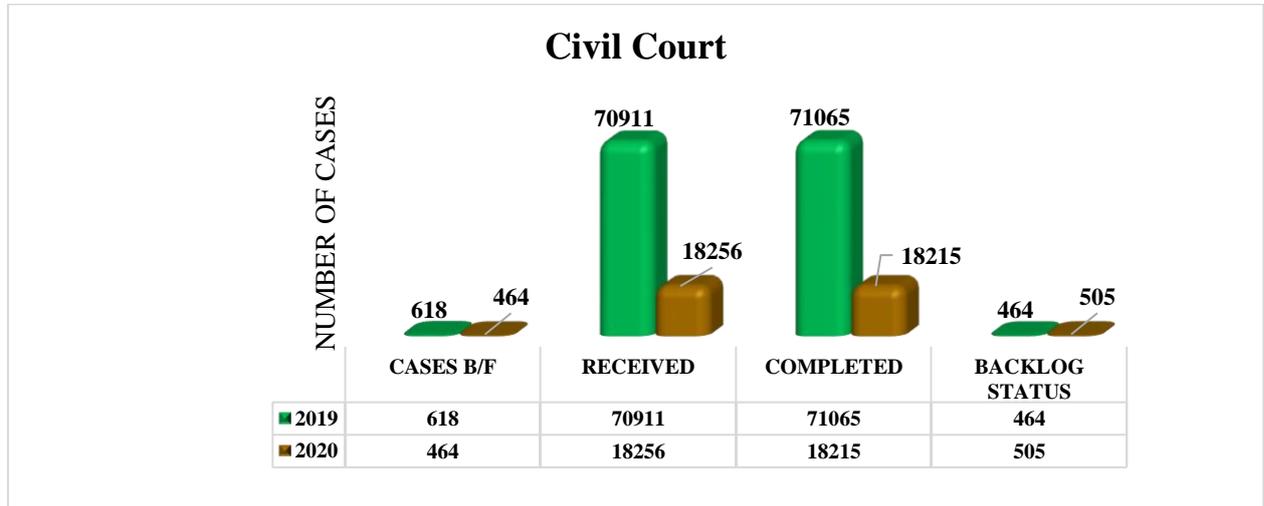
### Regional Court



The Regional Division received more cases in the year under review, totalling **4 978** cases compared to **4 767** cases received in 2019.

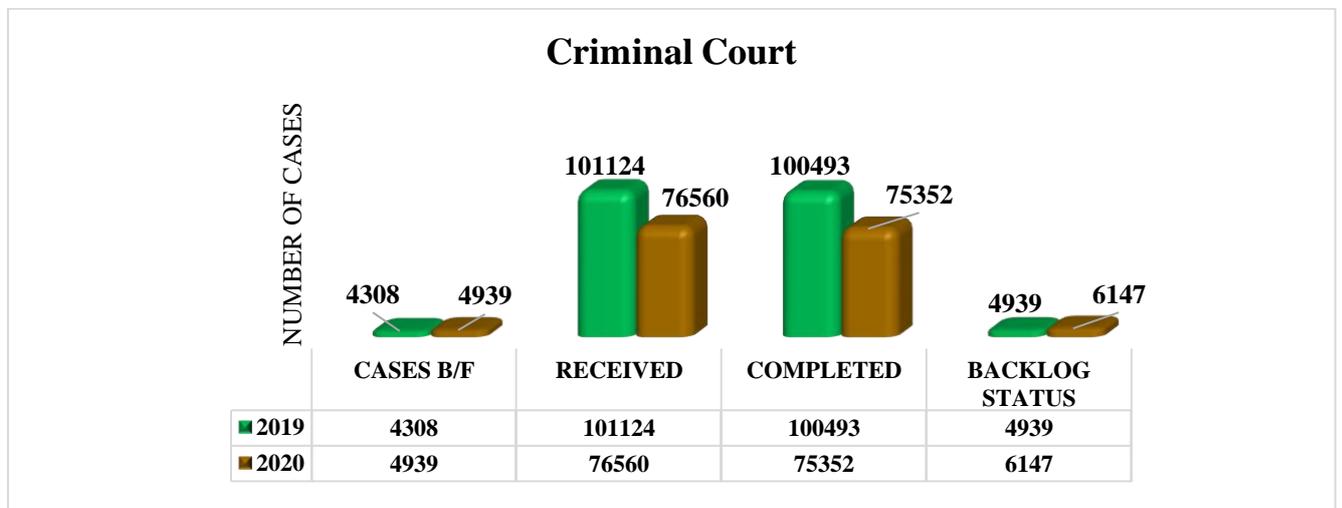
Completed cases went down by **320** in 2020. The backlog itself went up by **419**. The clearance rate was **87%**.

### Civil Court



Processes in the civil court are litigant driven. Due to lockdown induced travel restrictions, the court received **52 655** cases less than in **2019**. It also completed **52 850** cases less than in **2019**. The backlog went up by a marginal **41** cases.

### Criminal Court



The Criminal Court had **4 939** cases as at 1 January 2020. It received **24 564** cases less and completed **25 141** cases less than in 2019. The backlog increased by **1 208**.

## CONCLUSION

Before the speech is concluded, it is necessary to congratulate **eight** new Judicial Service Commissioners, who were sworn in on 13 May 2020. These are **Honourable Justice E C Bhunu**, the **Chief Magistrate**, **Mr M Mutevedzi**, **Mr T Masiye-Moyo**, **Mr M Hogwe** and **Ms N Moyo** representing practising legal practitioners, **Dr K R Katsande** representing the academia, **Mr F V Chingozho** representing the body of Public Accountants and Auditors, and **Ms Trish Jasi** from Human Resources Management. The appointment of the new Commissioners marked the first time the JSC has had a full complement of Commissioners.

The JSC takes this opportunity to acknowledge the support it received from key stakeholders in the justice delivery system, namely the Ministry of Justice, Legal and Parliamentary Affairs, the Ministry of Finance and Economic Planning, the Ministry of Public Works and National Housing, 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 UNDP, and various other non-governmental organisations

who partnered with the JSC in a number of initiatives during the course of 2020. It is hoped that such cooperation will continue in 2021.

The JSC also wishes to commend all judicial officers, the JSC Secretariat, and all members of the support staff for the work they did in 2020. Their bravery and dedication to duty in the face of the difficulties ensured that the courts remained operational and positive results posted.