

**INTERIM REPORT OF THE COMMITTEE ON THE RATIONALISATION
OF AREAS UNDER THE JURISDICTION OF THE DIVISIONS OF THE
HIGH COURT OF SOUTH AFRICA AND JUDICIAL ESTABLISHMENTS**

TABLE OF CONTENTS

INTRODUCTION TO THE RATIONALISATION PROCESS	3
ESTABLISHMENT OF THE RATIONALISATION COMMITTEE.....	4
Establishment and appointment of chair and committee members.....	4
The Committee’s terms of reference	5
THE WORK OF THE COMMITTEE.....	8
Consultation with stakeholders	9
HISTORICAL BACKGROUND OF THE COURT SYSTEM	14
LEGISLATIVE OVERVIEW OF THE COURT SYSTEM.....	19
WHAT IS RATIONALISATION?.....	26
Democracy and the rule of law	26
Access to justice	28
HIGH COURT JURISDICTION	31
General jurisdiction	31
Inherent jurisdiction	31
Concurrent and exclusive jurisdiction.....	32
Appellate jurisdiction	33
RATIONALISATION OF MAGISTERIAL DISTRICTS.....	34
OVERVIEW OF THE DIVISIONS OF THE HIGH COURT.....	39
EASTERN CAPE DIVISION OF THE HIGH COURT	43
FREE STATE DIVISION OF THE HIGH COURT	71
GAUTENG DIVISION OF THE HIGH COURT.....	83
KWAZULU-NATAL DIVISION OF THE HIGH COURT	99
LIMPOPO DIVISION OF THE HIGH COURT.....	111
MPUMALANGA DIVISION OF THE HIGH COURT	125
NORTHERN CAPE DIVISION OF THE HIGH COURT	136
NORTH WEST DIVISION OF THE HIGH COURT.....	146
WESTERN CAPE DIVISION OF THE HIGH COURT	157
ADDITIONAL OBSERVATIONS AND PRELIMINARY RECOMMENDATIONS.....	169
Rule that the plaintiff must follow the defendant.....	170
The High Court’s concurrent jurisdiction with the Magistrates’ Courts.....	172
EXECUTIVE SUMMARY	176
APPENDICES CHAPTER	189

INTRODUCTION TO THE RATIONALISATION PROCESS

[1] The court system that existed in South Africa prior to the democratic transition was left largely intact. The main and local seats of the former provincial divisions of the Supreme Court and the Supreme Courts in the former homelands were retained and incorporated into the new judicial system.

[2] The Constitution, however, envisioned in item 16(6)(a) of schedule 6 that as soon as practical the structure, composition, functioning and jurisdiction of all courts would be rationalised with a view to “establishing a judicial system suited to the requirements of the Constitution”.¹ The requirements of the Constitution that our judicial system must meet include giving full effect to the right of access to justice as well as the rights and foundational values of dignity and equality.

[3] While some efforts have been made towards rationalising the court system, the process is far from complete. The legacy of colonialism and apartheid continues to plague South Africa with spatial injustices and to impede access to courts for communities that reside in the areas that formed part of the defunct homelands and self-governing territories, as well as remote rural villages. These communities are frequently forced to travel long distances, at a huge cost, to access courts.

¹ The Constitution of the Republic of South Africa Act 108 of 1996 (“**the Constitution**”).

[4] The Committee on the Rationalisation of Areas under the Jurisdiction of the Divisions of the High Court and Judicial Establishments (“**the Committee**”) was established with a view to resolving this unjust situation and complying with the constitutional injunction to rationalise the jurisdictions of all courts to establish a judicial system suited to the requirements of the Constitution.

ESTABLISHMENT OF THE RATIONALISATION COMMITTEE

Establishment and appointment of chair and committee members

[5] On 10 June 2021, the Minister of Justice and Correctional Services (“**the Minister**”) established the Committee.²

[6] The Minister requested Justice Dikgang Moseneke to act as Chairperson of the Committee and appointed the following additional members:

- a. Judge Jeannette Traverso, former Deputy Judge President of the Western Cape Division of the High Court;
- b. Ms Renuka Subban, retired Chief Magistrate of Verulam Magistrates’ Court, KwaZulu-Natal; and
- c. Mr Silas Ramaite SC, retired Deputy National Director of Public Prosecutions.

² Item 16(6)(b) of the final Constitution authorises the Minister to manage the rationalisation of the court system.

- [7] In June 2022, the Committee appointed researchers to assist with its work:
- a. Ms Faathima Mahomed, an admitted advocate of the High Court of South Africa.
 - b. Mr Thabang Mabina, an admitted attorney of the High Court of South Africa.
 - c. Ms Catherine Kruyer, an admitted advocate of the High Court of South Africa.

The Committee's terms of reference

[8] In terms of its terms of reference,³ the Committee is established with the object of rationalising the areas under the jurisdiction of the divisions of the High Court and the judicial establishments of all courts as an imperative to enhance access to justice.

[9] The terms of reference require the Committee to inquire into, report on and make recommendations on areas under the jurisdiction of divisions of the High Court with a view to rationalising areas under the jurisdiction of the divisions and to ensure equitable distribution of judicial posts across all the divisions and local seats of any such division. In doing so, the terms of reference require the Committee to take into account many varied factors including magisterial districts, distances travelled and costs incurred by litigants to access the courts, the existing court structures, numerical strengths of each division, caseload trends in the divisions, population served by varied divisions and the affordability of any proposed outcome.

³ GN 44688 published in GG 672 dated 10 June 2021 (“**terms of reference**”).

[10] Of significance is that the terms of reference require that all this be done with a view to enhance access to justice. Plainly, the purpose of this Committee is to inquire into, report on and make recommendations on the rationalisation of areas under the jurisdiction of the divisions of the High Court to make justice more accessible.

[11] The Committee is required to call for and receive submissions from key stakeholders, including the heads of courts, the National Prosecuting Authority (“NPA”), Legal Aid South Africa (“**Legal Aid SA**”) as well as the Legal Practice Council and any interested member of the legal profession.⁴ The Committee is further required to call for and receive submissions from any member of the public who has an interest in the outcome of the rationalisation exercise.

[12] The Committee will conduct its work in two phases.

- a. In the first phase, the Committee will report on and make recommendations on the areas over which the main and local seats of every division of the High Court must exercise jurisdiction (“**phase 1**”).⁵
- b. In the second phase, the Committee will assess the judicial establishment of each division of the High Court with a view to ensuring equitable distribution of judicial posts across all the divisions (“**phase 2**”).⁶

⁴ Paragraph 3 of the terms of reference.

⁵ Paragraph 2.1.1 of the terms of the reference.

⁶ Paragraph 2.1.2 of the terms of reference.

[13] The Committee has begun its work on phase 1 of its assignment. It has received extensive submissions from the Department of Justice (“**the Department**”) and has consulted with a number of key stakeholders concerning the areas of jurisdiction of the various divisions of the High Court. The Committee has benefited greatly from these submissions and consultations.

[14] This interim report on phase 1 contains the Committee’s preliminary recommendations on the areas over which the main and local seats of every division of the High Court must exercise jurisdiction. The purpose of the interim report is to enable legal professional bodies, members of the legal profession, members of the public, and other interested parties to make written submissions on the Committee’s preliminary recommendations.

[15] The submissions received on the interim report will be taken into account in preparing the final report on phase 1. The final report will be submitted to the Minister in December 2022.

[16] The Superior Courts Act authorises the Minister to implement the recommendations in the final report, if he so chooses. The Minister may, after consultation with the Judicial Services Commission (“**JSC**”), determine the area under

the jurisdiction of a division of the High Court and establish one or more local seats for a division of the High Court.⁷

[17] The final report will also make additional recommendations to the Minister advising on legislative amendments that in the Committee's view may be necessary to enhance access to courts.

[18] The Committee has been entrusted with an assignment of immense constitutional importance. We trust that the submissions received in response to the interim report will assist the Committee in compiling the final report.

THE WORK OF THE COMMITTEE

[19] The Committee has consulted with key stakeholders at different stages of phase 1. The first stage of consultation took place prior to the launch of this interim report, and was held with key functionaries in the administration of justice. The second stage of consultations will take place after the release of the interim report, and will call upon interested parties to consider the interim report and provide their views.

⁷ Section 6(3)(a) and (c) of the Superior Courts Act 103 of 2013 (“**Superior Courts Act**”)

Consultation with stakeholders

[20] In the early stage of phase 1, the Committee identified the following key role players for purposes of consultation and exchanging views and comments: the Chief Justice of the Republic; the Judges President of the nine divisions of the High Court; the Department, the NPA; Legal Aid SA and the Magistrates Commission (“**the Commission**”).⁸

[21] During these consultations, the Committee⁹ introduced the members of the Committee, detailed its mandate and explained the method and process it would follow to complete phase 1 of its work. Apart from the consultation with the Chief Justice and the Department, the Committee invited the role players to draw on their work in the divisions of the High Court and to make comments and submissions about existing challenges that impede access to justice. They were invited to share their views on their preferred areas of jurisdiction of the respective divisions of the High Court.

[22] The salient features of some of the consultations are set out below.

⁸ During the course of consultations held with Judges President of the High Court, Acting Judge President, the Acting Judge President Ledwaba of the Gauteng Division of the High Court, recommended that the Rationalisation Committee also consult with the Magistrates Commission. Acting Judge President Ledwaba made this recommendation in his capacity as Chairperson of the Magistrates Commission.

⁹ The dates on which the various consultations took place is detailed in the road-map attached as annexure “1” in the appendices chapter of this interim report.

Consultation with the Department

[23] The Committee consulted with representatives from the Department in November 2021. This was the first consultation as the Department was in the process of finalising the rationalisation of magisterial districts across the country.

[24] In addition to providing a background to the rationalisation of magisterial districts, the Department made extensive submissions about its proposed rationalisation of the areas of jurisdiction of the High Court. The Department's presentation included its recommendations about the preferred areas of jurisdiction of the nine divisions of the High Court. A written version of this presentation was made available to the Committee.¹⁰

[25] The Committee shared the Department's presentation with all the role players who were consulted before the release of this interim report. Role players were invited to consider the Department's recommendations and provide a response. The Committee advised that the Department's recommendations were non-binding and that the Committee would, in due course, consider all submissions in its deliberations.

Meeting with the Chief Justice

¹⁰ The Department's submissions are detailed below. A copy of the Department's submissions will be made available upon request.

[26] The Chief Justice of the Republic, Justice Zondo, welcomed the appointment of the Committee and noted his support for its work. The Chief Justice also provided an undertaking that his Office will provide additional support that may be needed by the Committee. The Committee explained that it envisaged consulting with Judges President of each division of the High Court to gauge their views about the *status quo* and the proposed rationalisation of the areas of jurisdiction of the seats of the various divisions. The Committee requested the Chief Justice, who agreed, to engage with all heads of courts and request their support and co-operation in the upcoming consultations.

Consultations with the Judges President of the divisions

[27] The Committee invited the Judge President of each division of the High Court to consult about the proposed rationalisation of the areas of jurisdiction. As a preparatory step for the consultations with the Judges President, the Registrars of the divisions were requested to provide information about the number of judges currently in the division, the current areas of jurisdiction of the seats of court, the number and location of circuit courts, information about civil and criminal caseload and details of backlogs. The Registrars shared information within good time to facilitate the Committee's preparation to consult with the Judges President.

[28] During the consultations, the Committee shared presentations with the Judges President, which included information about the rationalisation of magisterial districts, the historical position relating to the area of jurisdiction of the relevant division under

discussion, the *status quo* and existing anomalies. The Department's recommendations were also discussed. The Judges President were invited to comment on the information. Most Judges President reserved their right to reflect further and to provide the Committee with written submissions.

Consultation with the NPA

[29] The Committee held two consultations with the NPA. The first meeting took place with the senior leadership consisting of National Director of Public Prosecutions, Adv S. Batohi, and the Deputy National Director of Public Prosecutions, Adv R. de Kock. The NPA leadership gave their commitment to supporting the work of the Committee and welcomed the opportunity as the prosecutions service worked daily in the courts across the country. The NPA provided its undertaking to share statistics and other recorded information to assist the Committee with its deliberations.

[30] The second consultation was held with the Deputy Directors of Public Prosecution of all nine provinces. By the time this consultation was held, the Committee had completed its consultation with the Judges President of the nine divisions of the High Court. The Committee presented an overall summary of the *status quo* of the areas of jurisdiction of the divisions of the High Court, existing anomalies and recommendations by the Department and in cases where the Judge's President had

expressed recommendations, these were also conveyed. The NPA has made written submissions to the Committee.¹¹

Consultation with Legal Aid SA

[31] Legal Aid SA provides legal representation to those most in need. By the time the Committee consulted with Legal Aid SA, the consultations with the respective Judges President had drawn to a close. They were provided with an overview of the *status quo*, existing anomalies, recommendations by the Department and preliminary responses by the Judges President where these responses had been expressed. Legal Aid SA has furnished written responses to the Department's submissions.¹² The content is dealt with when the features of each division of the High Court are evaluated.

Consultation with the Magistrates Commission

[32] The Committee consulted the Commission and whilst they did not make any specific suggestion about the boundaries of the High Court, the Commission urged the Committee to consider the treatment of exclusive and appellate jurisdiction in local seats of each division of the High Court. The Commission also urged the Committee to consider whether there should be any limitation of access to courts by litigants to the High Court related to the amount of the claim or the kind of cause of action or dispute.

¹¹ A copy of the submissions of the NPA will be made available upon request.

¹² A copy of Legal Aid SA's written submissions will be made available upon request.

Conclusion: Consultation with key stakeholders

[33] The Committee records its appreciation to all the role players who made time to engage with the Committee and its work. Their co-operation and submissions have enriched the Committee's deliberations and have added value to the production of this interim report.¹³

HISTORICAL BACKGROUND OF THE COURT SYSTEM

[34] After the Union of South Africa was established in 1910, the policy of dispossessing African people of land was given effect to by various pieces of legislation. This legislative process began with the Native Land Act of 1913,¹⁴ which deprived Africans of the right to own land in 93% of South Africa.¹⁵ Africans were only permitted to own land in 'reserves', the boundaries of which were described in schedules to the Act.

[35] This was followed by the Native Administration Act¹⁶ of 1927 (later renamed the Black Administration Act). The Native Administration Act created a separate political regime ruled by traditional leaders for the areas reserved for Africans and appointed the Governor-General, and later the State President of South Africa, as the

¹³ Most stakeholders reverted with written submissions. Where appropriate, those submissions will be appended to the interim report.

¹⁴ 27 of 1913 ("Natives Land Act").

¹⁵ Section 1 of the Natives Land Act.

¹⁶ 38 of 1927.

“Supreme Chief”. The Act gave the State President virtually absolute powers to govern Africans by proclamation.¹⁷ These proclamations were used to remove African communities from land reserved for the other racial groups. As explained by the Constitutional Court in *DVB Behuising*:

“The Native Administration Act became the most powerful tool in the implementation of forced removals of Africans from the so-called ‘white areas’ into the areas reserved for them. These removals resulted in untold suffering.”¹⁸

[36] The Native Trust Land Act,¹⁹ passed in 1936, increased the land allocated to Africans to 13%. However, the Act established the South African Native Trust (“**the Trust**”) and placed ownership of the land reserved for use by Africans in the Trust. Africans were, as a result, no longer able to own land even in the reserves and were limited to using land administered by traditional leaders.

[37] The effect of these pieces of legislation, as described by Madala J in *DVB Behuising* was to allocate 13% of the land in South Africa to the black majority population, while the remaining 87% was allocated to the other racial groups.²⁰ These pieces of legislation laid the foundation for the apartheid system’s policy of separate development through the establishment of homelands.

¹⁷ *Western Cape Government: in re DVB Behuising v North West Government* [2000] ZACC 2; 2001 (1) SA 500 (CC); 2000 (4) BCLR 347 (CC) (“*DVB Behuising*”) at para [41].

¹⁸ *Ibid* at paras [76]-[77].

¹⁹ 18 of 1936.

²⁰ *DVB Behuising* above n 17 at para [41].

[38] The 13% of the land reserved for use by Africans was divided into homelands.²¹ The Promotion of Bantu Self-government Act,²² passed in 1959, divided Africans into ten groups on the basis of ethnicity and language. Ten homelands were established, one for each ethnic group, namely, Lebowa, QwaQwa, Bophuthatswana, KwaZulu, KaNgwane, Ciskei, Transkei, Gazankulu, Venda and KwaNdebele.²³

[39] The Black Homelands Citizenship Act of 1970²⁴ stripped Africans of their South African citizenship and assigned Africans citizenship in one or other of the homelands on the basis of their ethnic group and required them to exercise their political, economic and social rights in the homelands.²⁵ The Constitutional Court in *eThekwin Municipality v Ingonyama Trust*²⁶ recognised that in this way “many Africans became ‘foreigners’ in the land of their birth”.²⁷

²¹ *Herbert N.O. v Senqu Municipality* [2019] ZACC 31; 2019 (11) BCLR 1343 (CC); 2019 (6) SA 231 (CC) at para [8].

²² 46 of 1959.

²³ *DVB Behuising* above n14 at para [42].

²⁴ 26 of 1970.

²⁵ *DVB Behuising* above n14 at para [42].

²⁶ *eThekwin Municipality v Ingonyama Trust* [2013] ZACC 7; 2013 (5) BCLR 497 (CC); 2014 (3) SA 240 (CC)

²⁷ *Ibid* at para [3].

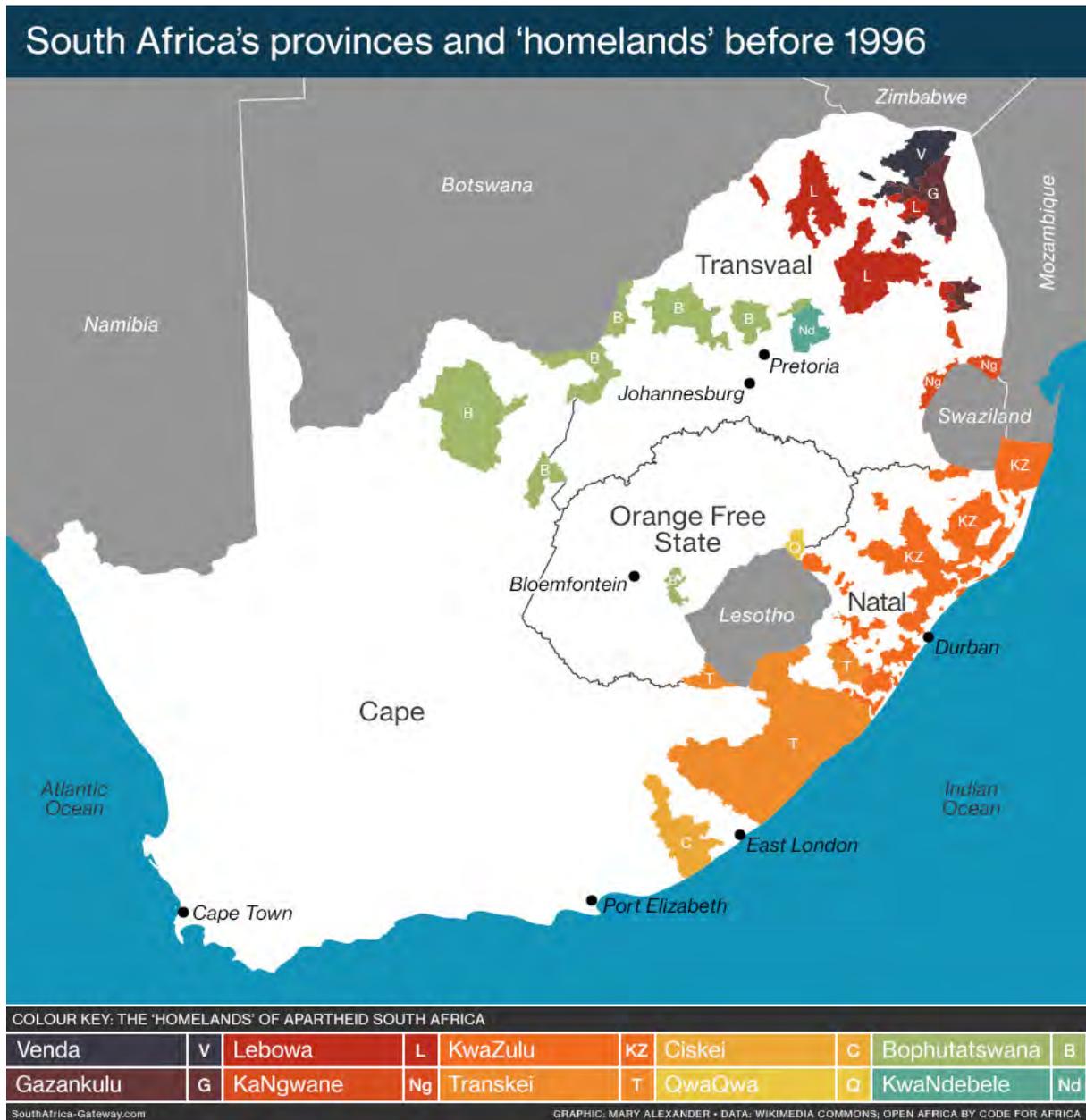
[40] The homeland policy was central to the apartheid system. In the *First Certification Judgment*, the Constitutional Court explained that fundamental to the apartheid system was—

“a denial of socio-political and economic rights to the majority in the bulk of the country, which was identified as ‘white South Africa’, coupled with a Balkanisation of tribal territories in which Africans would theoretically become entitled to enjoy all rights. Race was the basic, all-pervading and inescapable criterion for participation by a person in all aspects of political, economic and social life.”²⁸

[41] Later certain homelands were eventually granted “independence”, namely Transkei, Bophuthatswana, Venda and Ciskei. These independent homelands became known as the TBVC states.

[42] The political geography of South Africa prior to the advent of democracy is depicted in the map below:

²⁸ *Certification of the Constitution of the Republic of South Africa, 1996* [1996] ZACC 26; 1996 (4) SA 744 (CC); 1996 (10) BCLR 1253 (CC) (“*First Certification Judgment*”) at para [7].



[43] When South Africa transitioned to democracy, the homelands were abolished. South Africa became a unitary state and the homelands were reincorporated into

South Africa.²⁹ However, our Constitutional Court has recognised that the areas that were formerly homelands, “in general, still remain underdeveloped and poor”.³⁰

[44] It will be seen from the foregoing historical excursion that colonial and apartheid geography has had a fundamental and adverse impact on access to courts, in particular, and the justice system and services in general. In many ways that explains the constitutional imperative to embark on a rationalisation process.

LEGISLATIVE OVERVIEW OF THE COURT SYSTEM

[45] The origins of the demarcations for areas of jurisdiction of the divisions of the High Court lies in legislation that predates the coming into force of our interim Constitution.

[46] Prior to 27 April 1994, the territory of present day South Africa was divided into different areas: there was a defined area of South Africa, the self-governing territories³¹ and the so-called TBVC states.³² The territory of South Africa was further divided into four provinces.

²⁹ Constitution of the Republic of South Africa Act 200 of 1993 (“**interim Constitution**”).

³⁰ *Mabaso v Law Society of the Northern Provinces* [2004] ZACC 8; 2005 (2) SA 117 (CC); 2005 (2) BCLR 129 (CC) at para [36].

³¹ The Self Governing Territories included Gazankulu, Kangwane, Kwandebele, Kwazulu, Lebowa and Qwaqwa.

³² The TBVC states are Transkei, Boputhatswana, Venda and Ciskei.

[47] There was a single Supreme Court, which was divided in provincial and local divisions. Each provincial division exercised jurisdiction over a province or part of a province. Local divisions shared concurrent jurisdiction with a particular provincial division.³³

[48] The Appellate Division was the highest court in the hierarchy and made the final decision regarding any case appealed to it from the provincial divisions.

Provincial Divisions (6)	Seat of Court
Cape Provincial Division	Cape Town
Eastern Cape Division	Grahamstown
Northern Cape Division	Kimberley
Natal provincial Division	Pietermaritzburg
Orange Free State provincial Division	Bloemfontein
Transvaal provincial Division	Pretoria
Local Divisions (3)	Seat of Court
Durban and local Division	Durban
Witwatersrand Local Division	Johannesburg
South Eastern Cape Local Division	Port Elizabeth

³³ Section 6(2) of the Supreme Court Act 59 of 1959 (“**Supreme Court Act**”).

[49] The areas of jurisdiction of the divisions of the Supreme Court of South Africa were defined in schedule 1 of the Supreme Court Act.³⁴

[50] Each of the TBVC states enacted constitutions, which established the respective states.³⁵ Each of these constitutions established a supreme court for the state, which exercised jurisdiction over the territorial area of the state.³⁶ The supreme courts of the TBVC states had the same status as provincial divisions in the former South Africa.³⁷ The supreme courts in the TBVC states were:

Supreme Courts	Seat of Court
Supreme Court of the Republic of Bophuthatswana	Mmabatho
Supreme Court of the Republic of Ciskei	Bhisho
Supreme Court of the Republic of Transkei	Umtata
Supreme Court of the Republic of Venda	Thohoyandou

[51] When the interim Constitution came into effect, it removed these territorial distinctions and created one sovereign democratic South Africa. The interim

³⁴ 59 of 1959.

³⁵ See the Transkei Constitution Act, 1976 (“**Transkei Constitution**”); Republic of Bophuthatswana Constitution Act, 1977 (“**Bophuthatswana Constitution**”) and the Republic of Venda Constitution Act 1979 (“**Venda Constitution**”); and the Ciskei Constitution Act, 1981 (“**Ciskei Constitution**”).

³⁶ The Supreme Courts were established as follows: section 42 of the Venda Constitution; section 59 of the Bophuthatswana Constitution; section 53 of the Ciskei Constitution and section 44 of the Transkei Constitution.

³⁷ Schedule 6, item 6 of the Constitution.

Constitution also created nine provinces, and the territories of the former homelands and the TBVC States were included to form part of the Republic of South Africa.³⁸

[52] As a transitional arrangement, the interim Constitution retained the *status quo* in that every court of law that was in existence in the national territory, at the time that the interim Constitution came into effect, remained in existence and continued to exercise territorial jurisdiction over the same area, as it did prior to the coming into force of the interim Constitution.³⁹

[53] The wholesale inclusion of all the existing courts, which previously served the TBVC states and South Africa, into the national territory of South Africa engendered the need for these existing court structures and their areas of jurisdiction, to be rationalised.⁴⁰ To achieve this end, the interim Constitution demanded that a rationalisation process take place, in terms of an Act of Parliament.⁴¹

[54] To remove any uncertainty about the status of the courts, the final Constitution expressly recorded that provincial and local divisions of the Supreme Court of South Africa and the Supreme Court of a homeland became a High Court under the

³⁸ Part 1 of schedule 1 of the interim Constitution.

³⁹ Section 241 of the interim Constitution.

⁴⁰ To create the judiciary as envisaged in Chapter 7 of the interim Constitution.

⁴¹ Section 242 of the interim Constitution.

Constitution, without any alteration to its area of jurisdiction, subject to the rationalisation process.⁴²

[55] The final Constitution also required that the courts must be rationalised, to create a judiciary that is suited to the requirements of the Constitution. Rationalisation was described to include the structure, composition, functioning and jurisdiction of the Courts. The Constitution provides:⁴³

“(6) (a) As soon as is practical after the new Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution.

(b) The Cabinet member responsible for the administration of justice, acting after consultation with the Judicial Service Commission, must manage the rationalisation envisaged in paragraph (a).”

[56] Our Parliament passed the Interim Rationalisation of Jurisdiction of High Courts Act⁴⁴ (“**Interim Rationalisation Act**”) as required by the Constitution. The Act recognised that rationalisation would be a “comprehensive and ongoing process” and would require more time. As an interim measure, that Act was promulgated to start the rationalisation process. The Act gave the Minister the power to alter the areas of

⁴² Item 4 of schedule 6 of the Constitution.

⁴³ Item 16 of schedule 6 of the Constitution.

⁴⁴ Interim Rationalisation of Jurisdiction of High Courts Act 41 of 2001 (“**Interim Rationalisation Act**”) which came into force on 5 December 2001.

jurisdiction of the divisions of the High Court. The ministerial power was to be exercised in consultation with the JSC. The alteration of the areas of jurisdiction of the High Court would take effect once a notice to this effect was published in the government gazette. Parliament had to approve the notice prior to publication. The Minister could vary or amend the notices.⁴⁵

[57] The Interim Rationalisation Act repealed the Supreme Court Act, but kept schedule 1 in force. Schedule 1 is the instrument that defined the territorial boundaries of the former provincial and local divisions of the Supreme Court of South Africa. Relying on these powers, successive Ministers have issued notices altering the areas of jurisdiction of the High Court.⁴⁶ During 2009, the High Courts were renamed to reflect the new names of the provinces.⁴⁷

[58] In 2013, a constitutional amendment⁴⁸ established the unitary High Court of South Africa. The divisions of the High Court were to be determined by an Act of Parliament.⁴⁹ Following upon the constitutional amendment, the Superior Courts Act

⁴⁵ Section 2 of the Interim Rationalisation Act.

⁴⁶ These notices are discussed below in the chapters dealing with the various divisions of the High Court.

⁴⁷ This was done in terms of the Renaming of High Courts Act 30 of 2008 (“**Renaming of High Courts Act**”).

⁴⁸ The Constitution 17th Amendment Act, 2012, which came into force on 23 August 2013 (“**Constitution 17th Amendment Act**”).

⁴⁹ The Constitution 17th Amendment Act amended section 169 of the Constitution to this effect.

was passed and it provided for the establishment of divisions of the High Court and conferred the status either of a local seat or main seat on the existing High Courts.⁵⁰

[59] The Superior Courts Act became the legal source for determining the areas of jurisdiction of the divisions of the High Court. This it did, by repealing schedule 1 of the Supreme Court Act.⁵¹

⁵⁰ Section 50(1) of the Superior Courts Act.

⁵¹ Section 50(1) of the Superior Courts Act reads:

“Existing High Courts

(1) On the date of the commencement of this Act, but subject to the issuing of any notice referred to in section 6 (3) (a) or (c), the-

- (a) Eastern Cape High Court, Bhisho, becomes a local seat of the Eastern Cape Division;
- (b) Eastern Cape High Court, Grahamstown, becomes the main seat of the Eastern Cape Division;
- (c) Eastern Cape High Court, Mthatha, becomes a local seat of the Eastern Cape Division;
- (d) Eastern Cape High Court, Port Elizabeth, becomes a local seat of the Eastern Cape Division;
- (e) Free State High Court, Bloemfontein, becomes the main seat of the Free State Division
- (f) KwaZulu-Natal High Court, Durban, becomes a local seat of the KwaZulu-Natal Division;
- (g) KwaZulu-Natal High Court, Pietermaritzburg, becomes the main seat of the KwaZulu-Natal Division;
- (h) Limpopo High Court, Thohoyandou, subject to subsection (2), becomes a local seat of the Limpopo Division;
- (i) Northern Cape High Court, Kimberley, becomes the main seat of the Northern Cape Division;
- (j) North Gauteng High Court, Pretoria, becomes the main seat of the Gauteng Division;
- (k) North West High Court, Mahikeng, becomes the main seat of the North West Division;
- (l) South Gauteng High Court, Johannesburg, becomes a local seat of the Gauteng Division; and
- (m) Western Cape High Court, Cape Town, becomes the main seat of the Western Cape Division, of the High Court of South Africa, and the area of jurisdiction of each of those courts becomes the area of jurisdiction or part of the area of jurisdiction, as the case may be, of the Division in question.”

[60] Also, the Superior Courts Act retained the Minister's power to alter the area of jurisdiction of the divisions of the High Court,⁵² and empowered the Minister to establish local seats for a division of the High Court and to determine the area of jurisdiction of local seats.

[61] This is the legislative context in which the rationalisation of areas of jurisdiction of the divisions of the High Court falls to be considered.

WHAT IS RATIONALISATION?

[62] Rationalisation is a process by which the area of jurisdiction of each division of the High Court is defined or re-defined in a manner that would advance or procure access to courts and justice and a more efficient management of the court establishment. The Committee's understanding of rationalisation is informed by the democratic project which is underpinned by a collection of provisions which make access to justice imperative and here below we consider some of these considerations.

Democracy and the rule of law

⁵² Section 6(3)(a) of the Superior Courts Act provides that:

“The Minister must, after consultation with the Judicial Service Commission, by notice in the Gazette, determine the area under the jurisdiction of a Division, and may in the same manner amend or withdraw such a notice.”

[63] In creating a democratic state, we in effect inducted the rule of law. A vital component of the rule of law is the ability of the population to enjoy the protection of the law. And it goes without saying that that would include meaningful access to justice.

[64] The Constitution proclaims that South Africa is one, sovereign, democratic state founded on constitutional values and principles including the “supremacy of the Constitution and the rule of law”.⁵³ It provides that “everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum”.⁵⁴ The Constitution thus imposes a duty on, and requires of the Minister to provide courts,⁵⁵ and to rationalise all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, as soon as is practical after the Constitution took effect, with a view to establishing a judicial system suited “to the requirements of the new Constitution”.⁵⁶ One of those requirements is to ensure that justice through the courts is accessible to all.

[65] In the South African setting, the Constitution guarantees access to courts and justice informed by the rule of law. Access to justice under the rule of law amounts to the idea that an aggrieved individual’s formal right to litigate or defend a claim must be

⁵³ Section 1(c) of the Constitution.

⁵⁴ Section 34 of the Constitution.

⁵⁵ See schedule 6, items 16 of the Constitution and section 34 of the Constitution. See also section 6(3) of the Superior Courts Act.

⁵⁶ Schedule 6, items 16(6) of the Constitution.

transformed into a right of effective access to the legal system. To this end, South African courts have come to recognise access to justice as a broad principle encapsulating varied factors. The Supreme Court of Appeal recently stated that access to justice – particularly in South Africa – is broad, and “covers a very wide range of social factors”.⁵⁷

Access to justice

[66] The constitutional imperative of rationalisation is driven by, amongst other considerations, access to justice. Therefore, of paramount importance to this Committee is the constitutional requirement of access to justice, a fundamental constitutional right without which the rights guaranteed in the Constitution will bear no meaning. Access to justice is recognised globally as a vital cog in the protection and enforcement of other human rights – a vehicle through which other human rights may be vindicated, protected and promoted. The Constitution guarantees this right against a historical backdrop in which the practice of apartheid laws and policies were crafted and consistently utilised by the state to advance racial segregation and to curtail or completely impede access to justice.

[67] The right of access to justice is guaranteed through the right of access to courts which guarantees a person involved in a dispute that can be resolved by application of law of a right of access to an independent and impartial court or tribunal to decide the

⁵⁷ *The Standard Bank of SA Ltd v Thobejane and The Standard Bank of SA Ltd v Gqirana N O.* [2021] ZASCA 92; [2021] 3 All SA 812 (SCA); 2021 (6) SA 403 (SCA) at para [60].

matter in a fair public hearing.⁵⁸ This right is underpinned by the rule of law and requires the state to take affirmative steps to give practical content to the guarantee of meaningful access to courts and equality before the law. Currently, there is no internationally accepted definition of access to justice. In some countries it has been narrowly defined to concern itself with the civil justice system and the problems it faced.⁵⁹ In some countries it has been broadly defined.⁶⁰

[68] It is welcome that our constitutional arrangements seek to enhance access to justice. The promise is there. Even so, much less has been done to actually enhance access to justice. That the areas under the jurisdiction of the divisions of the High Court have not been rationalised means that the legacy of colonialism and apartheid continues to plague South Africa. Communities in remote rural areas are frequently forced to travel long distances, at a huge cost, to access courts.

⁵⁸ Section 34 of the Constitution provides that “everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”

⁵⁹ Lord Woolf MR *Access to Justice: Final Report to the Lord Chancellor on the civil justice system in England and Wales* (1996) 2; Law Society of New South Wales *Access to Justice – Final Report* (The Society Dec 1998) at page 11 restricts the definition of access to justice to the functioning of the justice system.

⁶⁰ Access to Justice Advisory Committee *Access to Justice: An Action Plan* (Australia, 1994) at 7-9 adopts a wider approach to the concept of access to justice. It considers access to justice to consist of: equality of access to legal services to ensure that all persons, regardless of means, have access to high quality legal services or effective dispute resolution mechanisms necessary to protect their rights and interests; national equity to ensure that all persons enjoy, as nearly as possible, equal access to legal services; and equality before the law to ensure that all persons are entitled to equal opportunities; See Justice Ronald Sackville’s address to the Access to Justice Roundtable in 2002 at [http://www.lawfoundation.net.au/ljf/site/articleIDs/52183CCAB00DB476CA2572730018E0C8/\\$file/AJR_book.pdf](http://www.lawfoundation.net.au/ljf/site/articleIDs/52183CCAB00DB476CA2572730018E0C8/$file/AJR_book.pdf) where he observed that “access to justice” is capable of meaning different things to different people”; The Kenyan National Report on the Global Access to Justice Project considers access to justice to be “the provision of dispute resolution mechanisms which are affordable, proximate and ensure speedy justice and whose processes and procedures are understood by users”, see the report here <https://globalaccesstojustice.com/global-overview-kenya/>.

[69] The right of access to justice through the courts is to be understood in accordance with the approach for the interpretation of the rights in the Bill of Rights. The interpretation must promote the values that underlie an open and democratic society and the spirit, purport and objects of the Bill of Rights.⁶¹ It must seek to realise the objectives of the right.⁶² These objectives are to heal the divisions of the past and to establish a society based on democratic values, social justice and fundamental human rights.⁶³

[70] In South Africa, access to justice must thus be understood in a broad sense because, as Kollapen J said in his keynote address to the Access to Justice Round-Table Discussion, “[j]ustice is not the exclusive preserve of the courts. The Constitution ... is designed to achieve justice in the broader sense including social justice and various functionaries including government, independent institutions, the private sector and indeed civil society take on a special responsibility for the achievement of justice and thus access to justice is more, much more than simply access to courts”.⁶⁴

⁶¹ Section 39(2) of the Constitution.

⁶² *S v Zuma* [1995] ZACC 1; 1995 2 SA 642 (CC); 1995 (1) SACR 568 (CC); 1995 (4) BCLR 401 (SA) at para [15].

⁶³ See the Preamble to the Constitution.

⁶⁴ Kollapen “Access to Justice within the South African context – Keynote Address to Access to Justice Round-Table Discussion 5” 904 2013 *De Jure*.

HIGH COURT JURISDICTION

[71] Much of the debate on access to justice depends on the kind of jurisdiction a court might have. In some instances the particular kind of jurisdiction a court has may increase or diminish access to justice. Below we describe the kinds of jurisdiction envisaged in our Constitution, statutes and the common law.

General jurisdiction

[72] The High Court derives its general jurisdiction from both the Constitution and the Superior Courts Act. Under the Constitution, a division of the High Court may decide any matter except a matter that: only the Constitutional Court may decide or has agreed to hear directly;⁶⁵ or is assigned to another court of similar status by an Act of Parliament.⁶⁶ A division has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance.⁶⁷ A division may in some instances exercise jurisdiction over any person residing or being outside its area of jurisdiction. For instance where such a person is joined as a party to any cause in relation to which such court has jurisdiction.⁶⁸

Inherent jurisdiction

⁶⁵ The Constitutional Court may hear a matter directly in terms of section 167(6)(a) of the Constitution.

⁶⁶ Section 169 of the Constitution.

⁶⁷ Section 21(1) of the Superior Courts Act.

⁶⁸ *Ibid.*

[73] Inherent jurisdiction is a discretionary power possessed by the superior courts in South Africa.⁶⁹ It is described as the unwritten power without which the court is unable to function with justice and good reason.⁷⁰ Section 173 of the Constitution provides that “[t]he Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice”. In *South African Broadcasting Corp*,⁷¹ the Constitutional Court held that this discretionary power is a “key tool” for courts to ensure their own independence and impartiality.⁷² The only qualification to this discretionary power is the obligation to consider the interests of justice.⁷³ To this end, the Constitutional Court said that superior courts’ discretionary powers should only be used in special and extraordinary circumstances. For instance, to prevent any possible abuse of process and to allow a court to act effectively within its jurisdiction”.⁷⁴

Concurrent and exclusive jurisdiction

⁶⁹ In South Africa, superior courts refers to the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa.

⁷⁰ Taitz, J *The Inherent Jurisdiction of the Supreme Court* (1985, Juta) 1.

⁷¹ *South African Broadcasting Corp Ltd v National Director of Public Prosecutions* [2006] ZACC 15; 2007 (1) SA 523 (CC); 2007 (2) BCLR 167 (CC) (“*South African Broadcasting Corp*”).

⁷² *Ibid* at para [36].

⁷³ The Constitutional Court in *Independent Newspapers (Pty) Ltd v Minister for Intelligence Services: In re Masetlha v President of the Republic of South Africa and Another* [2008] ZACC 6; 2008 (5) SA 31 (CC); 2008 (8) BCLR 771 (CC) at para [55] held that courts regulating their own process in terms of section 173 are obliged to consider all relevant circumstances in determining whether a particular course of action is in the interests of justice.

⁷⁴ *Ibid* n 71 above at para [90].

[74] The main seat of a division has exclusive jurisdiction over the magisterial districts that fall within its area of jurisdiction. The main seat also has concurrent jurisdiction over the magisterial districts that fall within the area of jurisdiction of a local seat of that division.⁷⁵ A litigant thus has a choice to institute proceedings in the main seat or the local seat if the defendant resides or the cause of action arose within a magisterial district that falls within the area of jurisdiction of a local seat.

[75] An Act of Parliament may confer exclusive jurisdiction on specialised superior courts, such as the Labour Court, the Land Claims Court, the Competition Tribunal and the Electoral Court. In that event, other courts are compelled to recognise and respect the exclusive jurisdiction so conferred by legislation.

Appellate jurisdiction

[76] Appellate jurisdiction refers to the powers of a court to hear an appeal against a decision of another court. A division of the High Court has the power to hear appeals from Magistrates' Courts within its area of jurisdiction.⁷⁶ A full bench of a division of the High Court may also hear an appeal against the decision of a single judge.

[77] Where a division of the High Court has one or more local seats, the main seat of that division has concurrent appellate jurisdiction with any local seat of that division.⁷⁷

⁷⁵ *Thembani Wholesalers (Pty) Ltd v September* [2014] 3 All SA 722 (ECG).

⁷⁶ Section 21(1)(a)-(c) of the Superior Courts Act.

⁷⁷ Section 6(4)(a) of the Superior Courts Act.

A Judge President of that division may thus direct that an appeal against a decision of a single judge or of a Magistrates' Court within that area of jurisdiction be heard at the main seat of the division.

[78] Later in this report we pose questions about matters which are related to the jurisdiction of a division of the High Court which in the opinion of the Committee, may assist in enhancing access to the courts by litigants. Firmer recommendations in this regard will be made in the final report once the Committee has had the benefit of a wide range of views.

RATIONALISATION OF MAGISTERIAL DISTRICTS

[79] The geographic jurisdiction of a division of the High Court is defined through the magisterial districts that fall under its jurisdiction. Ahead of the rationalisation process undertaken by this Committee, it was essential to demarcate the boundaries of the magisterial districts under each division of the High Court. What follows is a description of the process and outcome of the rationalisation of magisterial districts.

[80] The rationalisation of magisterial districts is both a constitutional and transformative imperative.⁷⁸ To that end, the Minister is authorised by law to create magisterial districts and to establish courts for such districts.⁷⁹

⁷⁸ The imperative finds reflection in schedule 6, items 16 (1) and 16(6) of the Constitution.

⁷⁹ Section 2 of the Magistrates Court Act 32 of 1944.

[81] Prior to rationalisation, the magisterial districts and areas of jurisdiction of the lower courts were largely based on the legacy of racial, spatial and geopolitical separation, which created vast distortion in settlement patterns and resulted in the spatial injustices. The legacy of spatial injustices impedes access to courts, as communities who reside in the areas that formed part of the defunct homelands and self-governing states as well as remote rural villages and Black townships access the courts with great difficulty. These communities were compelled to travel long distances at a huge cost to access courts and justice related services.

[82] The rationalisation of the areas of jurisdiction of the magisterial districts and the alignment with the local government dispensation, such as local, district and metropolitan municipalities, seeks to enhance access to justice by ensuring, among other things, that communities do not have to travel long distances to access services at the relevant seat of the district or sub-district.

[83] The Department commenced with the implementation of the rationalisation of magisterial districts on 1 December 2014. The magisterial districts in respect of the nine provinces have been rationalised to date as follows:

[84] The Eastern Cape province is divided, for local government purposes, into two metropolitan municipalities (Buffalo City and Nelson Mandela Bay) and six district municipalities. The district municipalities are in turn divided into 31 local municipalities. The rationalisation process, implemented with effect from 1 April 2022,

established eight magisterial districts out of the current 81 magisterial districts. The rationalisation further established 30 sub-districts and 68 places for the holding of court.

[85] The Free State province is divided, for local government purposes, into one metropolitan municipality (Mangaung) and five district municipalities. The district municipalities are in turn divided into 18 local municipalities. The rationalisation process, implemented with effect from 1 April 2022, established five magisterial districts out of the current 56 magisterial districts. The rationalisation further established 21 sub-districts and 56 places for the holding of court.

[86] The Gauteng province is divided into three metropolitan municipalities (City of Ekurhuleni, City of Johannesburg and City of Tshwane) as well as two district municipalities, which are further subdivided into six local municipalities. The rationalised magisterial districts implemented with effect from 1 December 2014, established 17 magisterial districts out of the old 26 magisterial districts. The rationalised magisterial districts further established 13 sub-districts, 27 places for the holding of court and periodical court.

[87] The KwaZulu-Natal province is divided, for local government purposes, into one metropolitan municipality (eThekweni) and ten district municipalities. The district municipalities are in turn divided into 18 local municipalities. The rationalisation process, implemented with effect from 1 April 2022, established 11 magisterial districts

out of the current 52 magisterial districts. The proposed rationalisation further established 31 sub-districts and 60 places for the holding of court.

[88] The Limpopo province is divided, for local government purposes, into five district municipalities which are in turn divided into 22 local municipalities. The rationalised magisterial districts implemented with effect from 25 January 2016, established 22 magisterial districts out of the old 37 magisterial districts. The rationalised magisterial districts further established 17 sub-districts, 51 places for the holding of court and periodical court.

[89] The Mpumalanga province is divided, for local government purposes, into three district municipalities which are in turn divided into 17 local municipalities. The rationalised magisterial districts implemented with effect from 25 January 2016, established 18 magisterial districts out of the old 31 magisterial districts. The rationalised magisterial districts further established 17 sub-districts, 37 places for the holding of court and periodical court.

[90] The Northern Cape province is divided, for local government purposes, into five district municipalities which are in turn divided into 26 local municipalities. The rationalised magisterial districts implemented with effect from 1 May 2018 established five magisterial districts aligned to the five district municipalities out of the old 26 magisterial districts. The rationalised magisterial districts further established 32 sub-districts, 26 places for the holding of court and periodical court.

[91] The North West province is divided, for local government purposes, into four district municipalities which are in turn divided into 18 local municipalities. The rationalised magisterial districts implemented with effect from 1 December 2014, established 18 magisterial districts out of the old 27 magisterial districts. The rationalised magisterial districts further established 13 sub-districts, 24 places for the holding of courts and five places for the holding of periodical courts.

[92] The Western Cape province is divided, for local government purposes, into one metropolitan municipality (City of Cape Town) and five district municipalities. The district municipalities are in turn divided into 24 local municipalities. The rationalisation process implemented from 1 April 2022, established seven magisterial districts out of the current 44 magisterial districts. The rationalised magisterial districts further established 27 sub-districts and 62 places for the holding of courts.

[93] The table below outlines the summary of the outcomes of the process per provinces after rationalisation:

Provinces	Magisterial Districts before rationalisation	Magisterial Districts	Sub-Districts	Places for the holding of court and periodical court
Eastern Cape	79	8	30	73
Free State	56	5	21	55

Provinces	Magisterial Districts before rationalisation	Magisterial Districts	Sub-Districts	Places for the holding of court and periodical court
Gauteng	26	17	13	27
KwaZulu-Natal	52	11	31	60
Limpopo	36	22	17	51
Mpumalanga	30	18	18	37
Northern Cape	26	5	32	21
North West	27	18	13	24
Western Cape	44	6	28	62
TOTAL	376	110	203	410

OVERVIEW OF THE DIVISIONS OF THE HIGH COURT

[94] In this chapter we discuss a variety of characteristics of the areas of jurisdiction of the various divisions of the High Court, followed by a recordal of submissions made by key stakeholders and preliminary recommendations of the Committee.

[95] Statistics and information drawn for purposes of discussing relevant national and provincial context in this Chapter have been sourced from reports produced by Statistics

South Africa (“Stats SA”).⁸⁰ Although a national census was undertaken from February to March 2022, the official reports and statistics are not yet available. The most recent population statistics are the 2021 mid-year population estimates.⁸¹ The Municipal Demarcation Board provided the Committee with information pertaining to the population and area of magisterial districts. The population density of magisterial districts is calculated from the 2016 mid-year population estimates provided by Stats SA aggregated at ward level. The surface area of the magisterial districts is calculated by the geographical information system within the South African parameters.

[96] The Committee has drawn upon the proposals made by the Department and the submissions of the Judges President, the NPA, Legal Aid SA and the Magistrates Commission in developing preliminary recommendations pertaining to each division of the High Court.

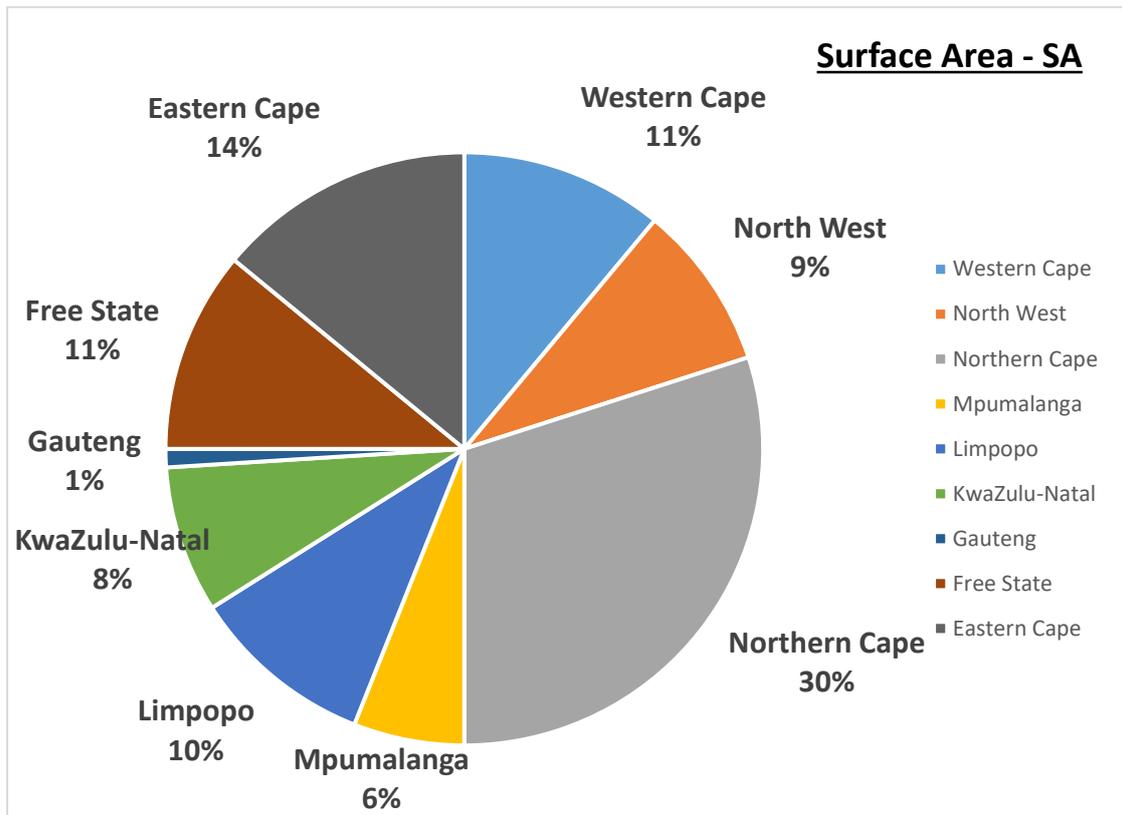
[97] The preliminary recommendations of the Committee are intended to inform public participation and are subject to change. We invite public participation to assist the Committee in making its final recommendations.

Overview of the Republic

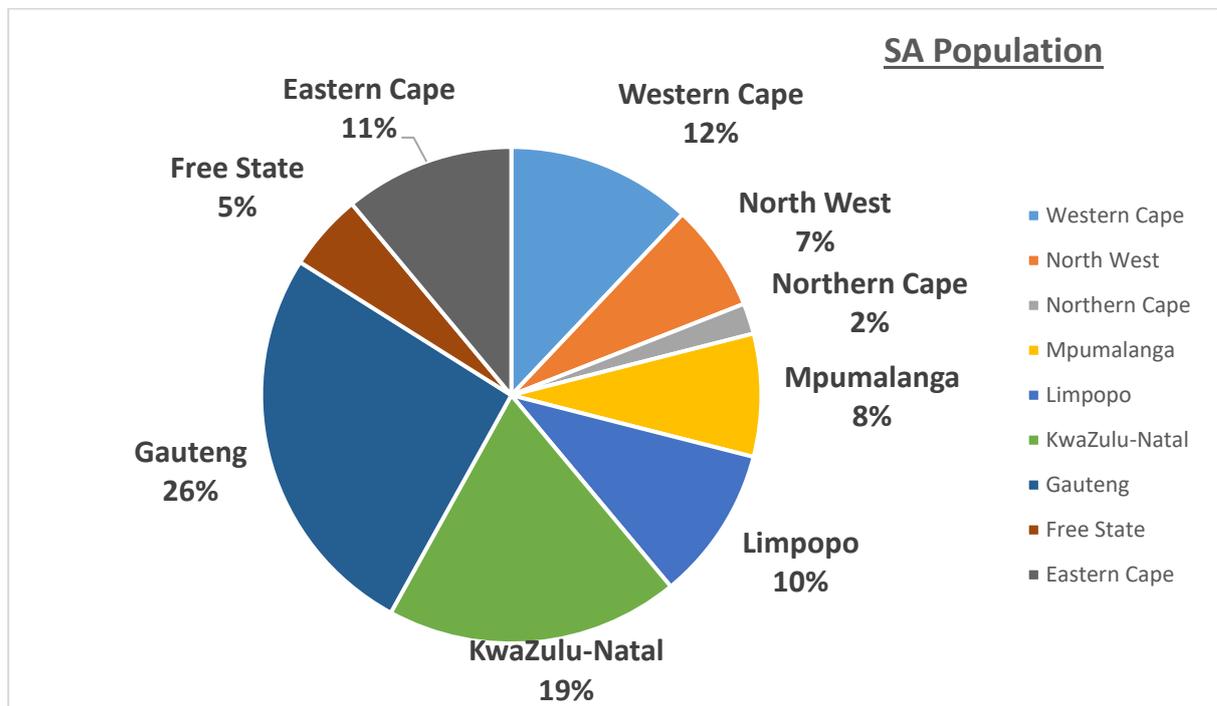
[98] The surface area of the Republic is represented as follows:

⁸⁰ Available at <https://www.statssa.gov.za/>.

⁸¹ Available at <https://www.statssa.gov.za/>.



[99] The estimated population⁸² of the Republic is represented as follows:



[100] The Committee is of the view that the surface area and population estimates of a division will not be solely determinative in settling jurisdictional boundaries. The land surface area and the population estimates remain useful markers to determine the area of jurisdiction of a division. All other factors relevant to access to justice will be weighed in making recommendations.

Overview of the Chapter

[101] We will discuss the divisions of the High Court using the following outline:

⁸² Stats SA 2021 Mid-year population estimates sourced at:

http://www.statssa.gov.za/publications/P0302/Mid%20year%20estimates%202021_presentation.pdf.

- a. The key features of the province and an overview of the metropolitan and district municipalities within the province;
- b. The history of the division;
- c. The *status quo* of the division;
- d. Any existing anomalies in relation to the jurisdictional boundaries of the division and its impact on access to courts and justice;
- e. The caseload of the division;
- f. The Department's submissions;
- g. Submissions made by various stakeholders; and
- h. The Committee's preliminary recommendations.

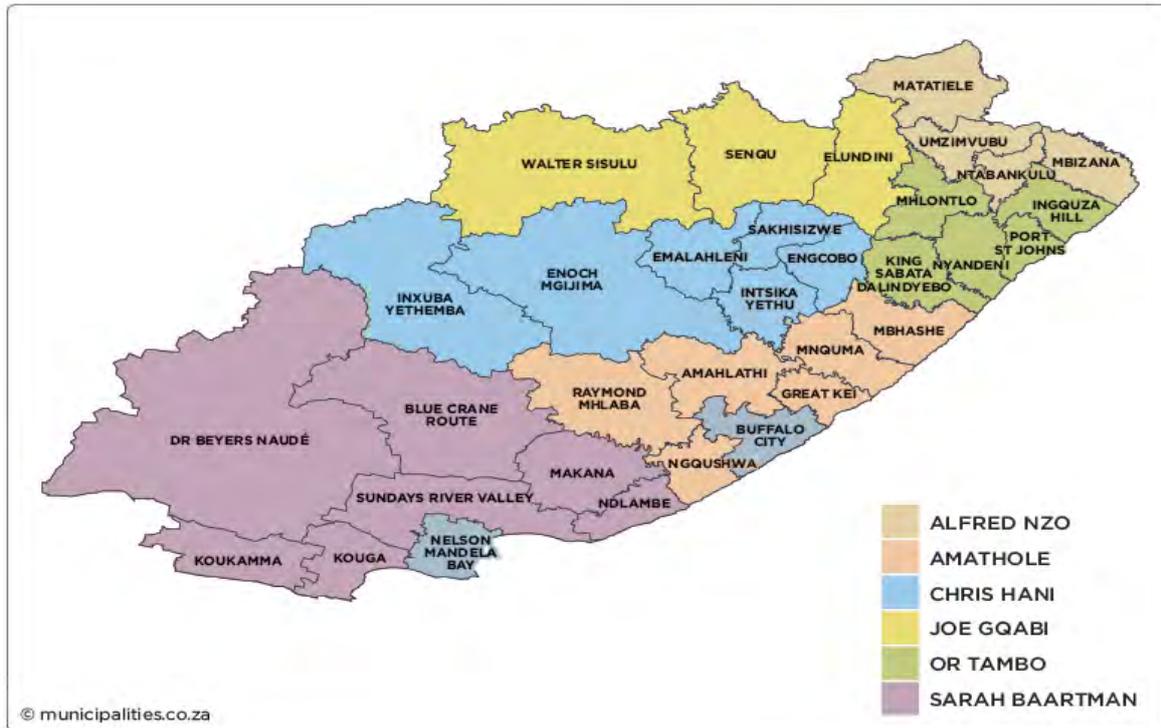
EASTERN CAPE DIVISION OF THE HIGH COURT

Eastern Cape province

[102] The Eastern Cape province is the second largest province in South Africa, having a surface area spanning 168 966 km², which equates to 14% of the total surface area of South Africa. The province has an estimated population of 6 676 590, which amounts to 11% of the total population of the country.

[103] The province has two metropolitan municipalities, namely the Buffalo City and the Nelson Mandela Bay. There are six district municipalities, namely: Alfred Nzo, Amathole, Chris Hani, Joe Gqabi, O R Tambo and Sarah Baartman.

[104] The layout of the metropolitan, district and local municipalities is as follows:



[105] As at 2020, the province's economy was dominated by government services (23%), followed by trade, catering, and accommodation (20%) and finance (18%), manufacturing.⁸³

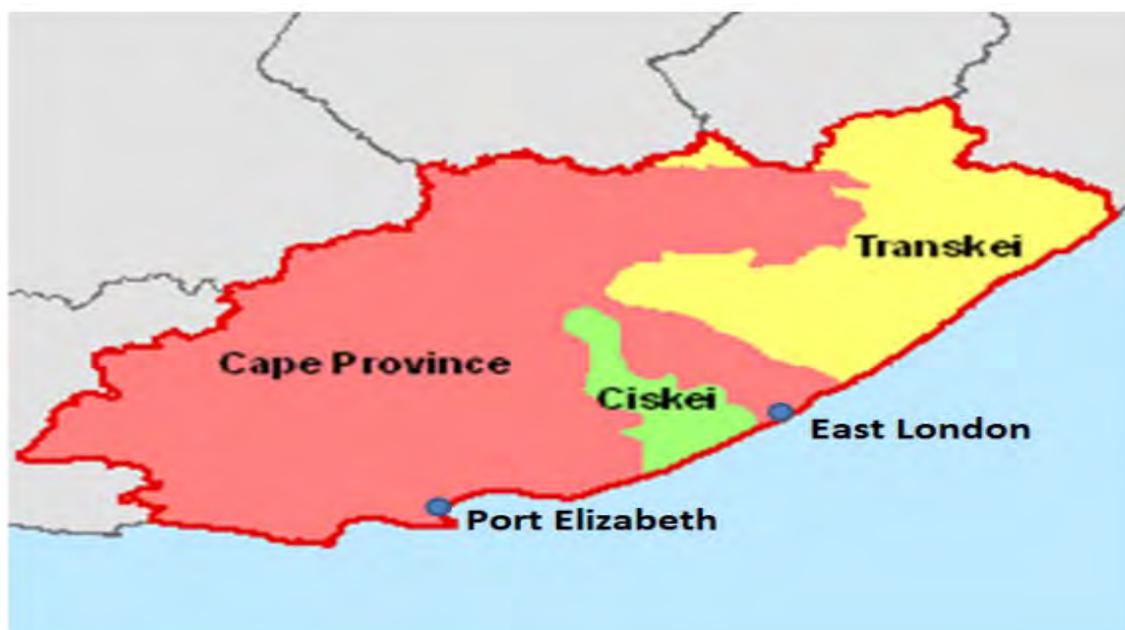
⁸³ According to Stats SA 2020, Q4 report, accessed at:

[http://www.statssa.gov.za/publications/P0441/GDP%202020%20Q4%20\(Media%20presentation\).pdf](http://www.statssa.gov.za/publications/P0441/GDP%202020%20Q4%20(Media%20presentation).pdf) .

The history of the Eastern Cape Division

Pre-constitutional era

[106] The Eastern Cape province previously consisted of a part of the Cape province (known as the South Eastern Cape) and the two former independent states of Ciskei and Transkei.⁸⁴ A map depicting the former area is set out below:⁸⁵



[107] The area that currently constitutes the Eastern Cape province had four courts: the Eastern Cape Division of the Supreme Court of South Africa (sitting at Grahamstown); the South Eastern Cape Local Division of the Supreme Court of South Africa (sitting at Port Elizabeth); the Supreme Court of the former Republic of Ciskei (sitting at Bhisho); and the Supreme Court of the former Republic of Transkei (sitting at Umtata).

⁸⁴ Interim Constitution, sections 124(1)(a) and 124(2) read with schedule 1, part 1.

⁸⁵ The map is found in <https://www.sapecs.org/wp-content/uploads/2013/11/Eastern-Cape-Background-Report.pdf> at p 13.

[108] Schedule 1 of the Supreme Court Act only defined the territorial boundaries of the divisions of the Supreme Court of South Africa.⁸⁶ To ascertain the area of jurisdiction of the Supreme Courts of the former republic of Ciskei and the former republic of Transkei, regard has to be taken of the founding constitutions of each of these former independent states.

[109] The Constitution of the republic of Ciskei created the republic of Ciskei and established the Supreme Court, presided over by the Chief Justice.⁸⁷ The Supreme Court had a general division and an appellate division. The seat of the Supreme Court was located at Bhisho. Schedule 1 of the Ciskei Constitution defined the area of the Ciskei Republic. The Supreme Court exercised jurisdiction over the territory of the Republic of Ciskei.

[110] The Constitution of the republic of Transkei established the republic and defined its territory in schedule 1. The Transkei Constitution created the Supreme Court of Transkei presided over by a Chief Justice.⁸⁸ The area of jurisdiction for this court, was defined in schedule 1 of the Transkei Constitution.

Constitutional era:

⁸⁶ See schedule 1 of the Supreme Court Act.

⁸⁷ Section 53 of the Ciskei Constitution.

⁸⁸ Section 44 of the Transkei Constitution.

[111] The interim Constitution created the province of the Eastern Cape⁸⁹ and, included the areas of the former Ciskei and Transkei to form part of the newly constituted province.⁹⁰

[112] The continued inclusion of some areas into the newly formed Eastern Cape was to be determined by the voters living in that area. The interim Constitution provided for a referendum to be held in some of these areas so that the voters ordinarily resident there would have a say as to whether the areas identified⁹¹ should continue to be included in the territory of the Eastern Cape province or should instead be included within the territory of the KwaZulu Natal province.

[113] All four courts that were in existence prior to the coming into force of the interim Constitution continued to function as courts of law and continued to exercise jurisdiction over the same territory as before.⁹² All four courts became High Courts of the Republic of South Africa.⁹³

Rationalisation

⁸⁹ Section 124 of the interim Constitution.

⁹⁰ Interim Constitution, schedule 1, part 1, the Eastern Cape.

⁹¹ Section 124(5), read with part 2 of schedule 1, of the interim Constitution.

⁹² Section 241(1) of the interim Constitution.

⁹³ Schedule 6, item 4 of the Constitution.

[114] In 2001, the Minister published notices altering the areas of jurisdiction of the courts in the Eastern Cape.⁹⁴ The Willowmore magisterial district was excised from the Cape of Good Hope Provincial Division and added to the Eastern Cape Division, (Grahamstown) with effect from August 2003.⁹⁵

[115] In November 2003, alterations were made to the areas of jurisdiction of the Eastern Cape, Ciskei and Transkei High Courts (“**November 2003 Notice**”).⁹⁶ The November 2003 Notice is significant in two respects:

- a. It excised 11 towns⁹⁷ from the area of jurisdiction of the Eastern Cape Division of the Supreme Court (Grahamstown) and moved these towns to the areas of jurisdiction of the Ciskei Division and the Transkei Division.
 - b. It excised Matatiele (Maluti) and Umzimkulu from the Transkei Division, and included these towns in the area of jurisdiction of the Durban and Coast Local Division and the Natal Provincial Division.
- In effect, although these towns were situated in the Eastern Cape

⁹⁴ Interim Rationalisation Act.

⁹⁵ GN R937 published in GG. 25141 dated 27 June 2003.

⁹⁶ Terminology as used in the schedule to the Supreme Court Act.

⁹⁷ These towns were: Barkley East, Cathcart, East London, Elliot, Indwe, King William’s Town, Komga, Maclear, Queenstown, Stutterheim and Ugie (“**the 11 towns**”). The 11 towns excised from the Eastern Cape Division (Grahamstown) to be added as follows:

To the Ciskei Division: Cathcart, East London, King William’s Town, Komga, Queenstown (Komani) and Stutterheim

To the Transkei Division: Barkley East, Elliot, Indwe, Maclear, Ugie

province, people living in these areas had to litigate high court matters in the KwaZulu-Natal province.

[116] In December 2003, the implementation date of the alterations in respect of Eastern Cape Division of the Supreme Court (Grahamstown), the Ciskei Division and the Transkei Division was postponed until further notice. Stated differently, the movement of the 11 towns from the area of jurisdiction of the Eastern Cape Division (Grahamstown) was suspended.⁹⁸ This meant that the 11 towns remained under the area of jurisdiction of the Eastern Cape Division (Grahamstown). The excision relating to Matatiele (Maluti) and Umzimkulu was not suspended and these areas were included in the areas of jurisdiction of the Durban and Coast Local Division and the Natal Provincial Division.

[117] A 2012 constitutional amendment established a single High Court.⁹⁹ In 2013, the Eastern Cape Division of the High Court was established as a division of the unitary High Court with its main seat at Grahamstown,¹⁰⁰ and local seats at Bhisho, Mthatha and Port Elizabeth.¹⁰¹

⁹⁸ GN 3440 published in GG 25880 dated 23 December 2003.

⁹⁹ Section 5 of the Constitution 17th Amendment.

¹⁰⁰ Section 6(1)(c) of the Superior Courts Act.

¹⁰¹ Section 50(1)(c) of the Superior Courts Act.

[118] The magisterial districts of the Eastern Cape province have been rationalised to accord with the municipal boundaries. There are currently 8 magisterial districts in the province.¹⁰²

Status quo of the Eastern Cape Division

[119] The Eastern Cape Division of the High Court has its main seat at Makhanda¹⁰³ and it has four local seats at Bhisho, Gqeberha¹⁰⁴ and Mthatha. There are currently 30 judges in the division. There are ten judges at the main seat in Makhanda, four judges at Bhisho, eight judges at Gqeberha and eight judges at Mthatha.

[120] There are nine circuit courts. There are 3 circuit courts under the Eastern Cape Division, Makhanda namely, the East London Circuit which has jurisdiction over the East London magisterial districts; the Border Circuit which sits in Queenstown and King Williamstown; and the Midlands Circuit sitting in Graaf-Reinet and Cradock. There are 6 circuit courts under the local seat at Mthatha, sitting at Bizana, Tabankulu, Butterworth, Lady Frere, Port St. Johns and Sterkspruit. There are no circuit courts under the local seats at Bhisho and Gqeberha.

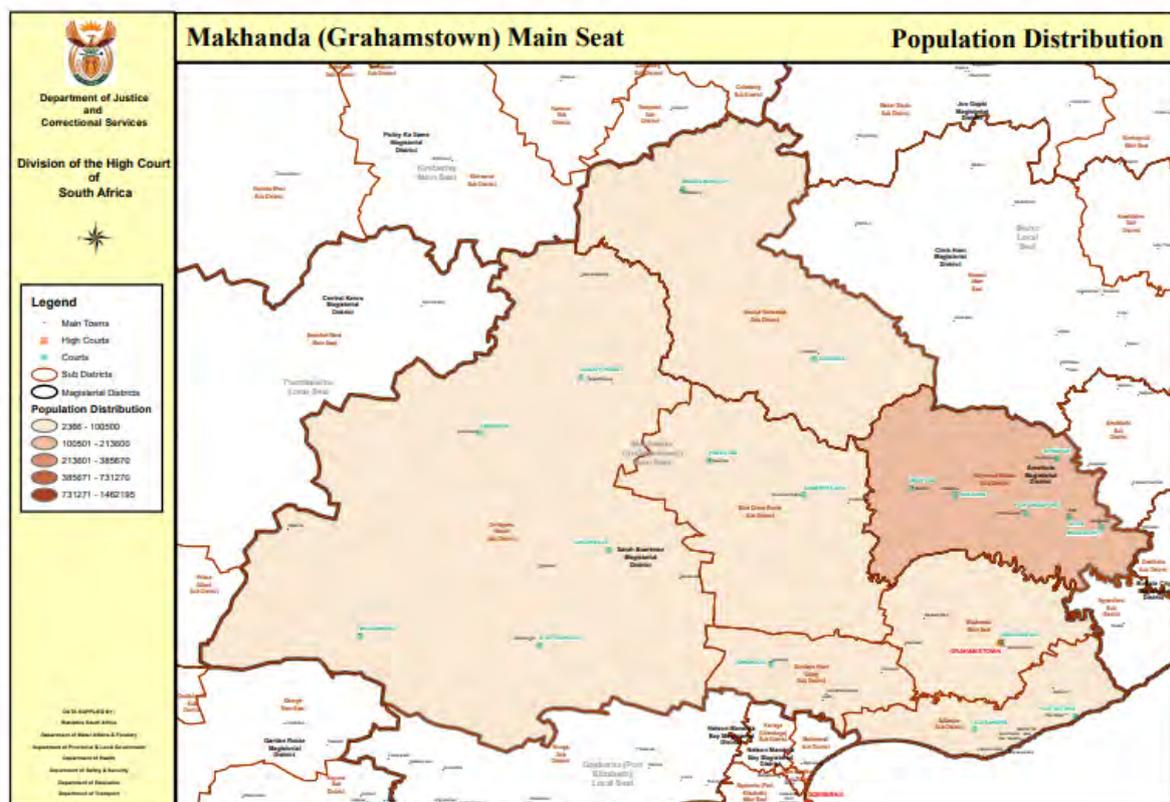
¹⁰² The magisterial districts are: Amathole, Alfred Nzo, Buffalo City, Chris Hani, Joe Gqabi, Nelson Mandela, O R Tambo and Sarah Baartman The Department sets out the maps of the rationalised magisterial districts at: <https://www.justice.gov.za/maps/maps-ec.html>.

¹⁰³ On 31 March 2022, Judge President Mbenenge issued a directive renaming the Eastern Cape Division (Grahamstown) as the Eastern Cape Division, Makhanda.

¹⁰⁴ On 28 January 2022, Judge President Mbenenge issued a directive renaming the Eastern Cape Division (Port Elizabeth) as the Eastern Cape Division, Gqeberha.

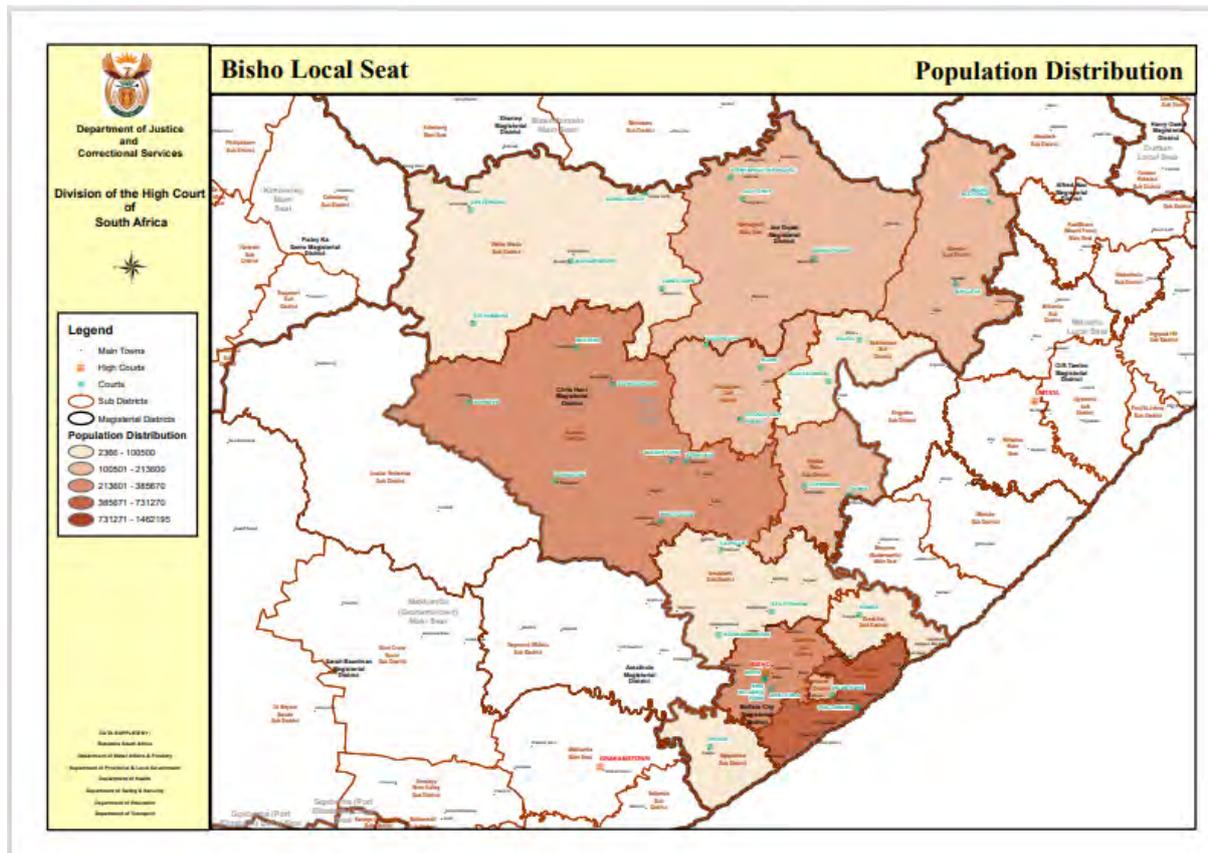
[121] The main seat at Makhanda exercises jurisdiction over territories that constituted the former South Eastern Cape province (pre-1994). It has concurrent jurisdiction with all the local divisions.¹⁰⁵ The Bhisho local seat exercises jurisdiction over the magisterial districts of the former Ciskei. The Gqeberha local seat exercises jurisdiction over the magisterial districts of Gqeberha, Kirkwood, Uitenhage, Hankey, Humansdorp, Joubertina and Steytlerville. The Mthatha local seat exercises jurisdiction over the magisterial districts of the former Transkei.

[122] The map below depicts the population density and the magisterial districts over which the main seat at Makhanda exercises jurisdiction.

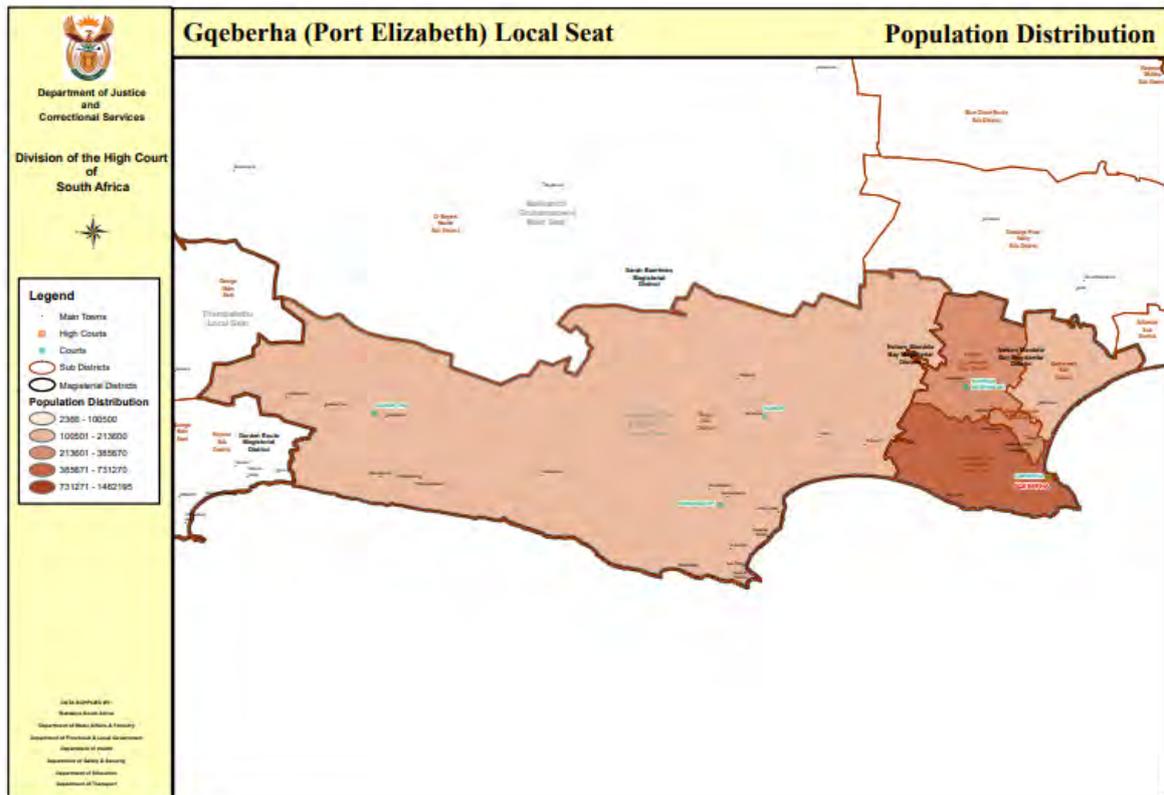


¹⁰⁵ Section 6(4)(a) of the Superior Courts Act.

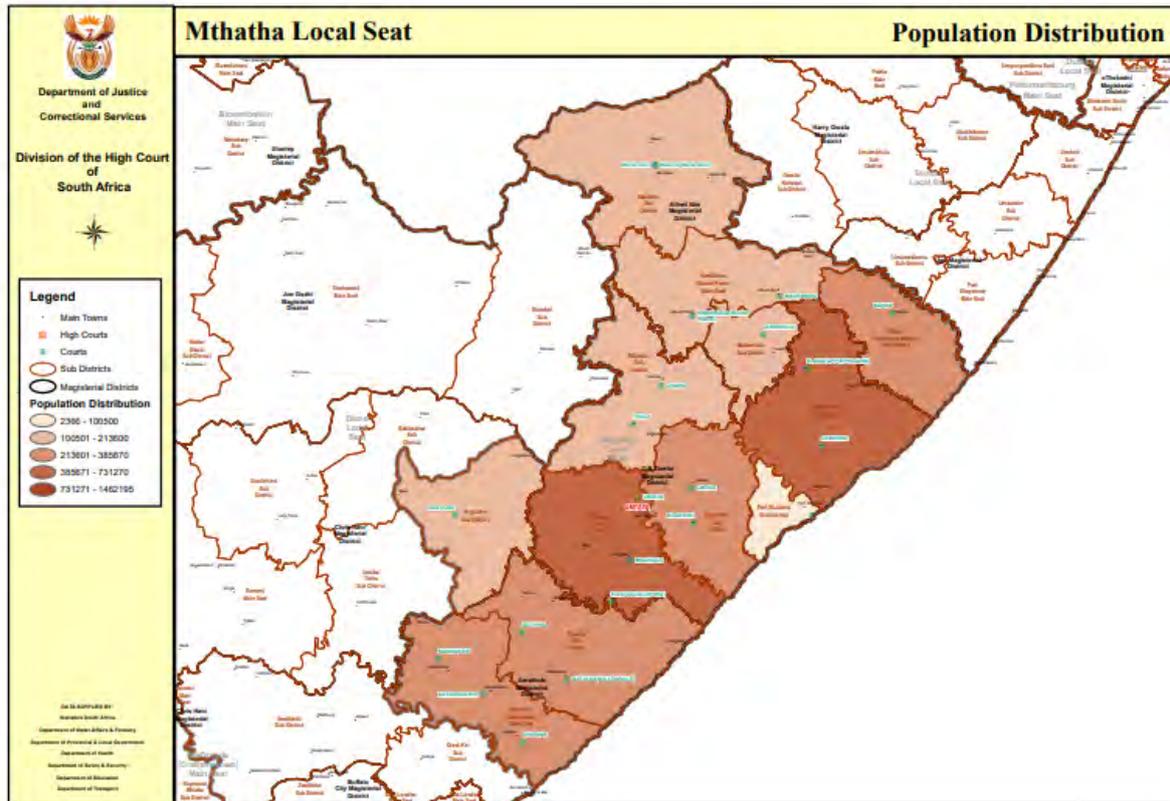
[123] The map below depicts the population density and the magisterial districts over which the local seat at Bhisho exercises jurisdiction.



[124] The map below depicts the population density and the magisterial districts over which the local seat at Gqeberha exercises jurisdiction.



[125] The map below depicts the population density and the magisterial districts over which the local seat at Mthatha exercises jurisdiction.



The anomalies

[126] The non-implementation of a portion of the November 2003 Notice has the following impact on travelling distances and access to courts:

11 TOWNS	To Eastern Cape Division, Makhanda	To various seats of the division in terms of the November 2003 Notice
Barkly East	406 km (5 hours)	To the local seat at Mthatha 200 km (2 h 40min)
Cathcart	178 km (2 h 4 mins)	To the local seat at Bhisho 92.3 km (1 h 3 min)
East London	163,5 km (2 h 13 mins)	To the local seat at Bhisho 66.1 km (52 min)
Elliot	345.4 km (4 h 15 min)	To the local seat at Mthatha 140km (2 h 8 min)

Indwe	323 km (3 h 48 min)	To the local seat at Mthatha 194.4 km (2 h 35 min)
King William's Town	127 km (1 hr 26 m)	To the local seat at Bhisho 6.5 kms (11 mins)
Komga	190 km (2h 22m)	To the local seat at Bhisho 62 kms (48 mins)
Maclear	414 km (5 h 5 m)	To the local seat at Mthatha 119km (1h 48 m)
Matatiele (Maluti)	240 km (3h 29 m)	To the KwaZulu-Natal Division, Pietermaritzburg ¹⁰⁶ 259.7 km (3 h 39m)
Queenstown (Komani)	225km (2h 44 m)	To the local seat at Bhisho (153 km) 1h 49 m
Ugie	392 km (4 h 45 m)	To the local seat at Mthatha 87 km (1 h 20m)

[127] People living in Matatiele are currently accessing high court services at the main seat of the KwaZulu Natal Division of the High Court, at Pietermaritzburg. This is the position even though Matatiele is situated within the provincial borders of the Eastern Cape.

¹⁰⁶ While the November 2003 Notice excises Matatiele from the Transkei Division of the High Court and includes it within the area of jurisdiction of both the Natal Provincial Division and the Durban and Coast Local Division, the Acting Judge President of the KwaZulu-Natal Division advised that cases arising from Matatiele are being heard in the KwaZulu-Natal Division, Pietermaritzburg.

The caseload of the Eastern Cape Division

[128] The Committee has been provided with the following case information for the four seats of the Eastern Cape Division:

The main seat at Makhanda

	2021	2020	2019	Total
No. of civil cases issued	3826	2855	3800	10 481
No. of criminal cases	64	55	81	200
No. of appeals	250	230	334	814
No. of automatic reviews	75	106	164	345
No. of application of further detention of mental patients	1204	837	774	2815

The local seat at Bhisho

	2021	2020	2019	Total
No. of civil cases issued	986	854	923	2763
No. of criminal cases	42	14	18	74
No. of appeals	45	31	29	105
No. of automatic reviews	8	11	33	52
No. of application of further detention of mental patients	0	0	0	0

The local seat at Gqeberha

	2021	2020	2019	Total

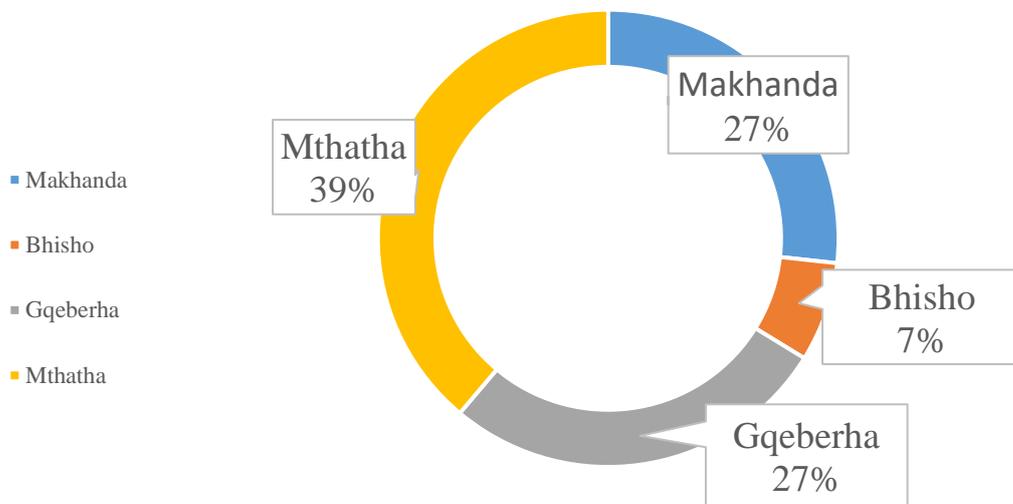
No. of civil cases issued	3915	3157	3652	10 724
No. of criminal cases	51	33	26	110
No. of appeals	N/A	N/A	N/A	-
No. of automatic reviews	N/A	N/A	N/A	-
No. of application of further detention of mental patients	3	0	0	3

The local seat at Mthatha

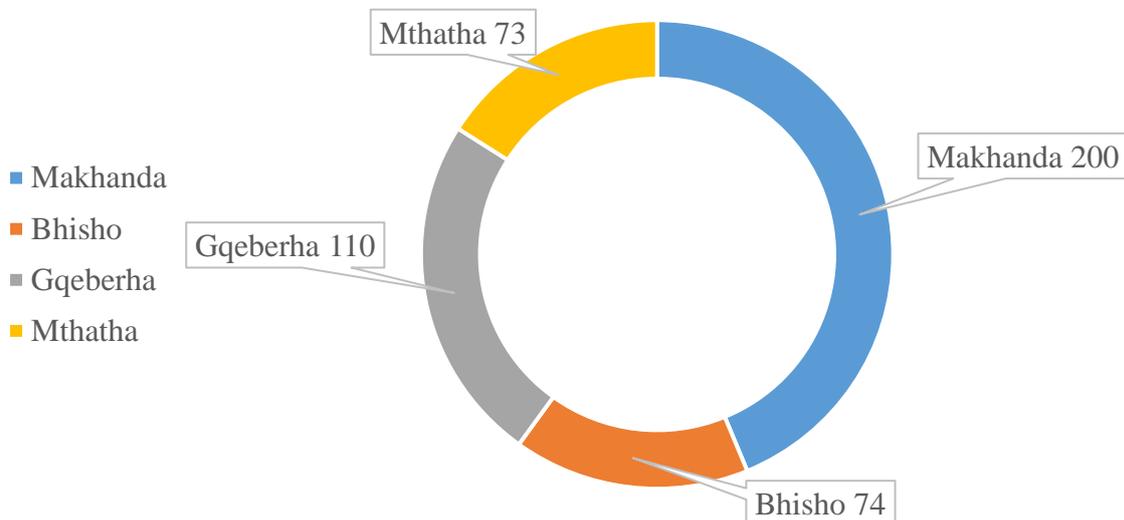
	2021	2020	2019	Total
No. of civil cases issued	5460	5040	4730	15 230
No. of criminal cases	30	23	20	73
No. of appeals	106	64	106	276
No. of automatic reviews	32	33	26	91
No. of application of further detention of mental patients	0	0	0	0

[129] The graphic representation of the caseload is as follows:

Civil Case load per Court : 2019 - 2021



Criminal Caseload 2019-2021



Submissions received from the Department

[130] The Department suggests that the four seats of the division should be retained and that areas of jurisdiction be aligned with magisterial districts in the Eastern Cape.

The re-alignment of the seats of jurisdiction to match that of the magisterial districts, will result in the Bhisho and Mthatha local seats having an increased area of jurisdiction, and increased workloads. It will also reduce the area of jurisdiction of the Makhanda main seat and its caseload. The Department makes no recommendation about the location of the main seat for the division.

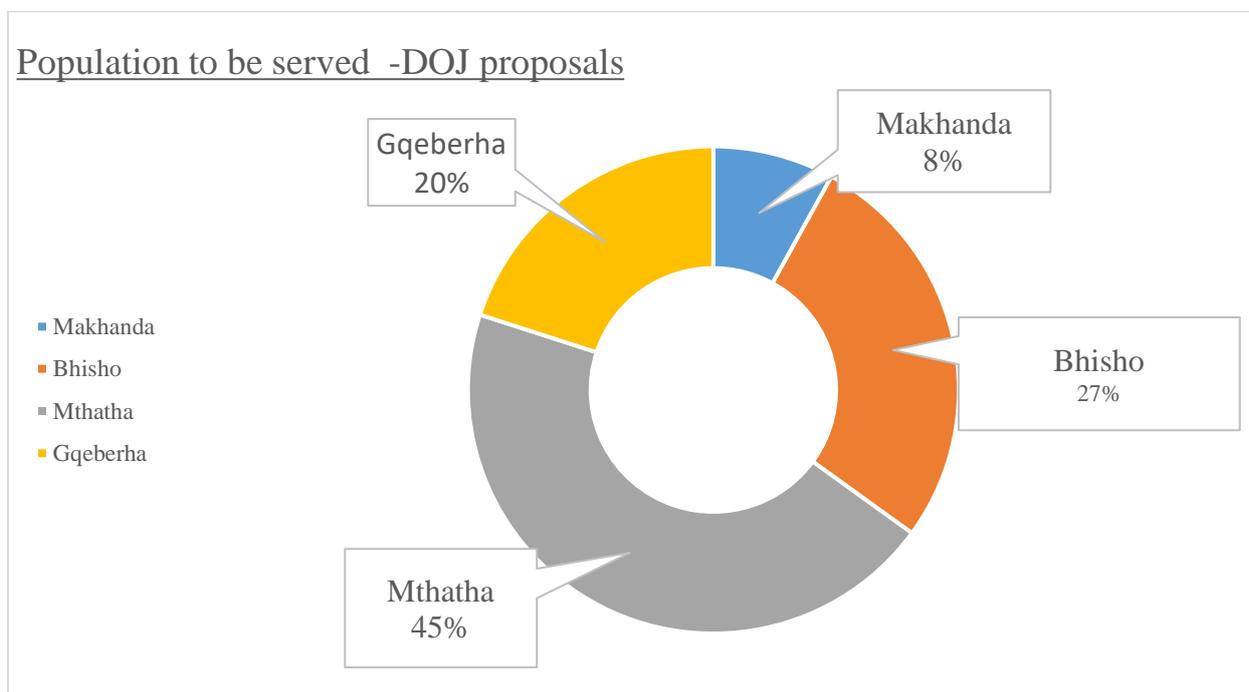
[131] Should the Department's submissions be accepted, the areas of jurisdiction of the four seats of the division would be as depicted on the map below:



[132] This would mean that the towns of Matatiele and Maluti would fall under the area of jurisdiction of Eastern Cape Local Division, Mthatha.

[133] The estimated population that will be served by each of the seats of the division would be:

COURT	ESTIMATED POPULATION TO BE SERVED
Makhanda main seat	528 434
Bhisho local seat	1 781 969
Gqeberha local seat	1 35 561
Mthatha local seat	3 011 577



Submissions received from the Judge President

[134] Judge President Mbenenge has made submissions in relation to each of the seats of the division:¹⁰⁷

¹⁰⁷ A copy of the written submissions is attached as annexure “2” in the appendices chapter.

Proposed area of jurisdiction of the main seat at Makhanda

[135] The proposed changes are not expected to result in an increased workload for the main seat. The workload of the main seat at Makhanda is relatively less than the other seats and the proposed changes will result in a further reduction of the workload. The reduced caseload will likely result in two judges from Makhanda being transferred to the Bhisho local seat. This transfer is envisaged as the area of jurisdiction of the Bhisho local seat and its resultant workload will increase. This outcome is suggested bearing in mind that as a main seat of the division, the Eastern Cape Division, Makhanda has concurrent jurisdiction over matters falling within the jurisdiction of all local seats.

Proposed area of jurisdiction of the local seat at Bhisho

[136] The proposed area of jurisdiction of the Bhisho local seat will increase the size of the area to be served by this court. This will likely increase the caseload of the court. If the Department's proposal for this seat is accepted, this court will serve almost 40% of the entire population of the province. There will be a significant increase in the number of criminal matters with which the court will be required to deal. This is borne out by the statistics provided by the DPP. Of the 29 criminal cases enrolled for hearing to date at the main seat in Makhanda for the current year, 22 would under the proposed suggestion have to be heard in the Bhisho local seat. At present, the Bhisho local seat has two criminal courts.

[137] It is also envisaged that there will be an increase of civil work with which this court will have to deal. It is unlikely that one civil court sitting in Bhisho would be able

to effectively deal with the increased caseload. It is anticipated that an additional court will have to be convened to deal with motion court matters on a weekly basis.¹⁰⁸

Proposed area of jurisdiction of the local seat at Gqeberha

[138] No challenges are anticipated by the proposed changes to the jurisdictional area of this seat. The proposed changes are not expected to result in an increased workload of this seat and will not require changes to the existing court functions, infrastructure and facilities.

Proposed area of jurisdiction of the local seat at Mthatha

[139] Judge President Mbenenge noted that this seat is already carrying a heavy workload. The proposed change to the area of jurisdiction of this court is likely to increase the already significant caseload.¹⁰⁹

Other considerations

[140] Judge President Mbenenge highlights the position of the towns of Kokstad, Elliot, Tsomo and Cofimvaba. Given Kokstad's location straddling Mount Ayliff and Matatiele, both of which are served by the Eastern Cape Local Division, Mthatha, the question is raised as to whether Kokstad, although located in KwaZulu-Natal should

¹⁰⁸ Judge President Mbenenge suggests that the current facilities at the Bhisho local seat (including the number of court rooms) will be inadequate to deal with the increased work-load of this court. However, this should not be viewed as an obstacle to the proposed increase in the area of jurisdiction of this court.

¹⁰⁹ The proposed changes will heighten the need to create additional judicial posts, together with the appointment of judicial officers to fill the posts.

instead be served by the local seat at Mthatha , rather than the KwaZulu-Natal Division, Pietermaritzburg.¹¹⁰ It is suggested that the town of Elliot should be included in the area of jurisdiction of the Eastern Cape Local Division, Mthatha and not to the Eastern Cape Local Division, Bhisho as suggested by the Department. It is suggested that the towns of Tsomo and Cofimvaba should be included in the area of jurisdiction of the local seat at Mthatha and not the local seat at Bhisho as suggested by the Department.

Submissions received from the NPA

[141] The submissions received from the NPA are an input from the Lower Court Performance Monitoring Committee. The submissions describe the Committee as consisting of:

“Heads in the Justice Cluster Institutions within the Region, comprising of Judiciary, NPA, Legal Aid, SAPS, Private Attorney, Department of Health and the Department of Correctional Services”.

[142] The submissions incorrectly make reference to having considered the “Moseneke Report”. The Secretariat of this Committee provided the NPA with a copy of a presentation about the *status quo* of the Eastern Cape Division of the High Court as well as a copy of the Department’s submissions to this Committee. There is no document styled as the “Moseneke Report”.

¹¹⁰ This is based on section 6(3)(b) of the Superior Courts Act, 2013.

[143] It appears that the Lower Court Performance Monitoring Committee has considered the Department's proposed areas of jurisdiction and makes comment on the proposal. The Lower Court Performance Monitoring Committee suggests the following about the proposed areas of jurisdiction, all of which are premised on closer proximity to the court in whose area of jurisdiction the town is to be included:

- a. The main seat at Makhanda: the towns of Middeldrift and Alice should be removed from the area of jurisdiction of the Eastern Cape Division, Makhanda and be included in the area of jurisdiction of the Eastern Cape Local Division, Bhisho. The travelling distances would be shorter. The distance from Middeldrift to Makhanda is 124 km, and the distance to Bhisho is 51 km. The distance from Alice to Makhanda is 105 km and to Bhisho is 67 km. The towns of Kirkwood and Addo are nearer to the Eastern Cape Local Division, Gqeberha and should be removed from the area of jurisdiction of the main seat at Makhanda. Kirkwood and Addo should be moved to the area of jurisdiction of the Eastern Cape Local Division, Gqeberha.
- b. The local seat at Bhisho: the towns of Elliot and Cala should be removed from the area of jurisdiction of the Eastern Cape Division, Bhisho and be included in the area of jurisdiction of the Eastern Cape Local Division, Mthatha .
- c. The local seat at Gqeberha: the proposal is accepted and the towns of Addo and Kirkwood must be added to the area of jurisdiction of the Eastern Cape Local Division, Gqeberha.

- d. The local seat at Mthatha: the towns of Elliot and Cala must be included in the area of jurisdiction of the Eastern Cape Local Division, Mthatha.

Submissions received from Legal Aid SA

[144] Legal Aid SA notes that the proposed rationalisation of the areas of jurisdiction of the four seats will not have an adverse impact on how Legal Aid SA is operating in the Eastern Cape.

[145] Prior to its consultation with the Judge President, the Committee received written submissions from Pan African Bar Association of South Africa, Mthatha (DHZ Chambers); Mthatha Society of Advocates and Wild Coast Attorneys Association. The Committee will consider these submissions at a later stage, after input has been received from other professional bodies and members of the public, in preparation of the final report.

The Committee's Preliminary Recommendations

[146] Having weighed up all the relevant considerations and having heard the Judge President and other stakeholders, the Committee makes the following preliminary recommendations:

- a. The Eastern Cape Division, Makhanda will exercise jurisdiction over the following areas:
 - i. A portion of the Sarah Baartman district municipality: consisting of the areas of Makhanda, Alicedale, Somerset East, Cookhouse, Pearston,

Graaf-Reinet, Aberdeen, Jansenville, Klipplaat, Steytlerville, Willowmoore, Port Alfred, Alexandria, Kenton on Sea, Kinkelbos, and Petersen, excluding the towns of Kirkwood and Addo. The following area from the Sarah Baartman district to be excluded: the Kouga sub-district which consists of the Kouga and Koukamma local municipalities. The latter local municipalities are constituted by the following areas: Humansdorp, Hankey, Patensie, Stormsrivier, Joubertina, and Kareedouw.

- ii. A portion of the Amathole district municipality consisting of Raymond Mhlaba sub-district, which includes the areas of Adelaide, Bedford, Fort Beaufort, Seymour and Balfour.
- iii. A portion of the Chris Hani district municipality consisting of the Inxuba Yethemba sub-district, which includes the areas of Cradock and Middelburg (Murraysburg in the Western Cape to be excluded).

b. The Eastern Cape Local Division, Bhisho will exercise jurisdiction over the following areas:

- i. A portion of the Amathole district consisting of Nqushwa, Great Kei and the Amahlathi sub-districts. The Nqushwa sub-district includes the area of Peddie. The Great Kei sub-district includes the areas of Komga and Kei Mouth. The Amahlathi sub-district includes the areas of Stutterheim, Cathcart and Kieskammahoek.
- ii. The entire Buffalo City magisterial district which includes the areas of East London, Zwelitsha, Dimbaza, King William's Town and Mdantsane.

- iii. The Chris Hani Magisterial District consisting of Komani (seat of the district), which includes Hofmeyr, Molteno, Ntabethemba, Sterkstroom, Tarkastad, Ezibeleni, and Whittlesea.
 - iv. A portion of the Emalahleni sub-district which includes the areas of Cacadu (Lady Frere), and Dordrecht, excluding the town of Indwe.
 - v. The Sakhisizwe sub-district excluding the towns Cala and Khowa (formerly Elliot)
 - vi. A portion of the Joe Gqabi magisterial district consisting of Sterkspruit, and Lady Grey and the areas of Walter Sisulu sub-district, which includes Aliwal North and Venterstad.
 - vii. A portion of the Amathole district municipality consisting of the towns of Alice and Middledrift.
 - viii. A portion of the Intsika Yethu sub-district, excluding the towns of Tsomo and Cofimvaba.
- c. The Eastern Cape Local Division, Gqeberha will exercise jurisdiction over following areas:
- i. The entire Nelson Mandela Bay magisterial district which includes the areas of Port Elizabeth, Gelvandale, Motherwell, New Brighton, Kariega (Uitenhage) and KwaNobuhle; and
 - ii. A portion of the Sarah Baartman magisterial district consisting of a portion of the Sunday's River Valley sub-district towns of Kirkwood and Addo; and the Kouga sub-district, which includes the areas of Humansdorp, Hankey, Patensie, Stormsrivier, Joubertina and Kareedouw.

- d. The Eastern Cape Local Division, Mthatha will exercise jurisdiction over the following areas:
- i. The entire Alfred Nzo magisterial district, which consists of KwaBhaca (Mount Frere), MaXesibini (Mount Ayliff), the Matatiele sub-district, which includes the areas of Matatiele and Maluti, the Winnie Madikizela Mandela sub-district, which includes the areas of Bizana and Mzamba, and the Ntabankulu sub-district, which includes the areas of Ntabankulu and Cweraland;
 - ii. A portion of the Amathole magisterial district consisting of Mnquma (Butterworth) and Centane. The Mbashe sub-district, which includes the areas of Dutywa, Xhora (Elliotdale) and Willowvale.
 - iii. A portion of the Chris Hani magisterial district consisting of the Engcobo sub-district, which includes the areas of Ngcobo and Dalasile.
 - iv. A portion of the Joe Gqabi magisterial district consisting of Barkley East, the Elundini sub-district, which includes the areas of Mount Fletcher, Nqanqarhu (Maclear) and Ugie.
 - v. The entire OR Tambo magisterial district, which includes the areas of Mthatha, Bityi, Mqanduli, Kwaaiman, Lusikisiki, Flagstaff, Mtontsasa, Libode, Ngqeleni, Qumbu, Tina Falls, Tsolo and Port St. Johns.
 - vi. A portion of the Intsika Yethu sub-district consisting of the towns of Tsomo and Cofimvaba.

- vii. A portion of the Sakhisizwe sub-district consisting of the towns of Khowa (formerly Elliot) and Cala.
- viii. A portion of the Emalahleni sub-district consisting of the town of Indwe.
- e. The 11 towns referred to as the “White Corridor” be removed from the area of jurisdiction of the Eastern Cape Division, Makhanda and be allocated between the Eastern Cape Local Division, Bhisho and the Eastern Cape Local Division, Mthatha.
- f. The towns of Matatiele and Maluti be removed from the jurisdiction of the KwaZulu-Natal Division, Pietermaritzburg and be included in the jurisdiction of the Eastern Cape Local Division, Mthatha. Matatiele and Maluti fall within the provincial boundary of the Eastern Cape.
- g. The towns of Tsomo and Cofimvaba should be included in the area of jurisdiction of Eastern Cape Local Division, Mthatha.
- h. The towns of Cathcart, East London, King Williamstown, Komga and Komani (previously Queenstown) must be removed from the jurisdiction of the Eastern Cape Local Division, Mthatha and must be included into the jurisdiction of the Eastern Cape Local Division, Bhisho.
- i. The towns of Barkley East, Elliot, Indwe, Maclear and Ugie must be removed from the area of jurisdiction of the Eastern Cape Division, Makhanda and must be included into the area of jurisdiction of the Eastern Cape Local Division, Mthatha.

- j. The towns of Kirkwood and Addo must be included in the area of jurisdiction of the Eastern Cape Local Division, Gqeberha.
- k. The towns of Alice and Middledrift must be included in the area of jurisdiction of the Eastern Cape Local Division, Bhisho.
- l. The town of Cala must be removed from the area of jurisdiction of the Eastern Cape Local Division, Bhisho and included in the area of jurisdiction of the Eastern Cape Local Division, Mthatha.
- m. We recommend that the main seat of the Eastern Cape Division must be moved to Bhisho. Bhisho is the provincial capital of the Eastern Cape. Ordinarily the main seat of a provincial division of the High Court is located at the capital of the province. It follows that in the Eastern Cape too, the same situation should prevail.

[147] The effect of the Committee's recommendation would reduce the travelling time for litigants and would increase their access to justice:

Towns	To be included in the area of jurisdiction of:	Distance
Alice	Eastern Cape Local Division, Bhisho High Court	67.4 kms (59 m)
Addo	Eastern Cape Local Division, Gqeberha	59.2 kms (52 mins)
Barkly East	Eastern Cape Local Division, Mthatha	200 km (2 h 40min)
Cala	Eastern Cape Local Division, Mthatha	140.9 kms (2h 26 m)
Cathcart	Eastern Cape Local Division, Bhisho	92.3 km (1 h 3 min)

Towns	To be included in the area of jurisdiction of:	Distance
Cofimvaba	Eastern Cape Local Division, Mthatha	147.3 kms (2h 13m)
East London	Eastern Cape Local Division, Bhisho	66.1 km (52 min)
Elliot	Eastern Cape Local Division, Mthatha	140 km (2 h 8 min)
Indwe	Eastern Cape Local Division, Mthatha	194.4 km (2 h 35 min)
King William's Town	Eastern Cape Local Division, Bhisho	6.5 kms (11 mins)
Kirkwood	Eastern Cape Local Division, Gqeberha	81.1 kms (1 h)
Komga	Eastern Cape Local Division, Bhisho	62 kms (48 mins)
Maclear	Eastern Cape Local Division, Mthatha	119 km (1h 48 m)
Matatiele (including Maluti)	Eastern Cape Local Division, Mthatha	239.9 (3h 29 m)
Middledrift	Eastern Cape Local Division, Bhisho	50.6 kms (50 m)
Queenstown (Komani)	Eastern Cape Local Division, Bhisho	(153 km) 1h 49 m
Tsomo	Eastern Cape Local Division, Mthatha	132.1 kms (2 h)
Ugie	Eastern Cape Local Division, Mthatha	87 km (1 h 20m)

FREE STATE DIVISION OF THE HIGH COURT

Free State province

[151] As at 2020, the province's economy was dominated by government services (17%), followed by finance (16%), manufacturing and other trade, catering, and accommodation (14%).¹¹¹

The history of the Free State Division

Pre-constitutional era

[152] In 1910, the Supreme Court sitting in Bloemfontein became known as the Orange Free State Provincial Division of the Supreme Court.

[153] Over time, the territorial area of jurisdiction was defined by schedule 1 of the Supreme Court Act. Its jurisdiction was the same as that of the provincial boundary. Schedule 1 of the Supreme Court Act reflected the area of jurisdiction of the Orange Free State Provincial Division as that of "the province of the Orange Free State".¹¹²

Constitutional era:

[154] The interim Constitution created the province of the Orange Free State and demarcated its boundaries by including the magisterial districts that existed prior to the coming into force of the Constitution, as well as some parts of the territory that formed

¹¹¹ According to Stats SA 2020, Q4 report, accessed at:

[http://www.statssa.gov.za/publications/P0441/GDP%202020%20Q4%20\(Media%20presentation\).pdf](http://www.statssa.gov.za/publications/P0441/GDP%202020%20Q4%20(Media%20presentation).pdf) and <https://southafrica-info.com/infographics/animation-economic-sectors-of-south-africas-provinces/>

¹¹² As it then was.

part of the former Bophuthatswana.¹¹³ It also included, as part of the newly constituted province, areas that formally fell under the self-governing territory of QwaQwa.¹¹⁴

[155] During March 2006, the province was renamed as the province of the Free State.¹¹⁵ During March 2009, the High Court was renamed as the Free State High Court, and its seat was retained at Bloemfontein.¹¹⁶

Rationalisation

[156] With effect from August 2003, the district of Thaba Nchu was excised from the area of jurisdiction of the Bophuthatswana High Court and included into the jurisdiction of the Free State High Court.

[157] A constitutional amendment in 2012 established a single High Court.¹¹⁷ In 2013, the Free State Division of the High Court was established as a division of the unitary High Court with its main seat at Bloemfontein.¹¹⁸

¹¹³ Interim Constitution, schedule 1, part 1, province of the Orange Free State, para (a).

¹¹⁴ Interim Constitution, schedule 1, part 1, the province of the Orange Free State, para (b).

¹¹⁵ Constitution 12th Amendment Act.

¹¹⁶ Renaming of High Courts Act.

¹¹⁷ Section 5 of the Constitution 17th Amendment Act.

¹¹⁸ Section 6(1)(c) of the Superior Courts Act.

[158] The magisterial districts of the Free State province have been rationalised to accord with the municipal boundaries. There are currently five magisterial districts in the province.¹¹⁹

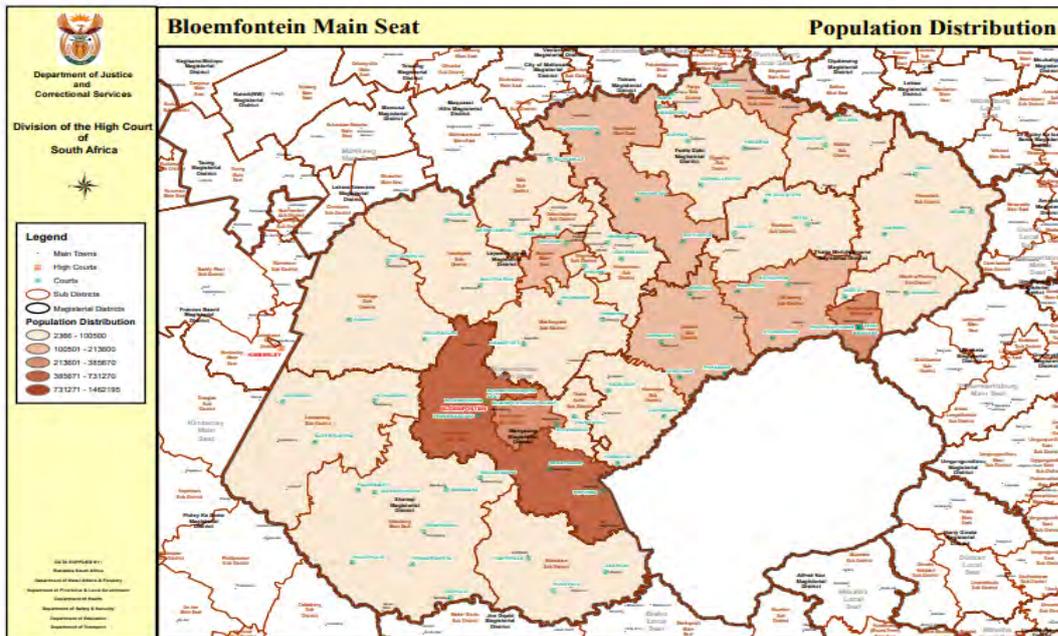
Status quo of the Free State Division

[159] The Free State Division has its seat at Bloemfontein. There are currently 16 judges in the division and one vacant post.¹²⁰ There are 19 circuit courts sitting at the following Magistrates' Courts: Botshabelo; Ladybrand; Ficksburg; Bethlehem; Harrismith; Phuthaditjhaba; Sasolburg; Parys; Kroonstad; Welkom; Virginia; Bethulie; Bothaville; Vrede; Koffiefontein; Odendaalsrus; Fouriesburg; Heilbron and Smithfield.

[160] The map below depicts the population density and the magisterial districts over which the main seat at Bloemfontein exercises jurisdiction.

¹¹⁹ The magisterial districts are: Fezile Dabi , Lejweleputswa , Mangaung , Thabo Mofutsanyane and Xhariep. The Department sets out the maps of the rationalised magisterial districts at: <https://www.justice.gov.za/maps/maps-fs.html>.

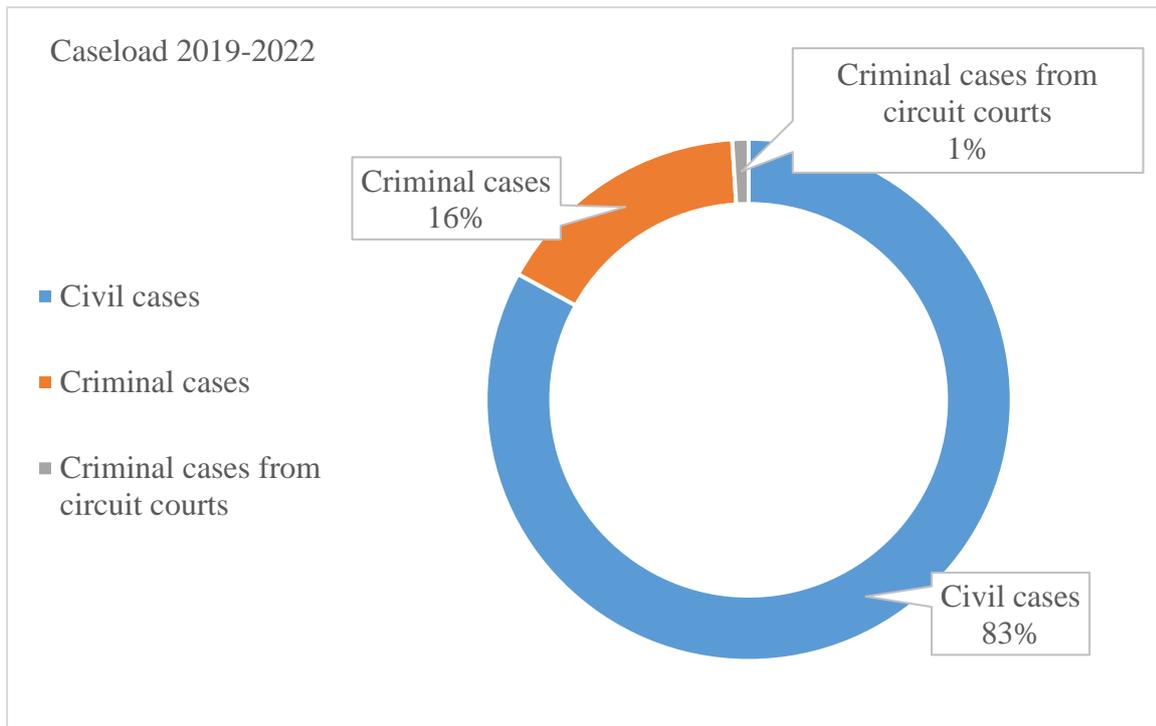
¹²⁰ A copy of the written submissions is attached as annexure "3" in the appendices chapter.



The caseload of the Free State Division

[161] Acting Judge President Mbhele provided caseload information for the period 2018-2022.

[162] During 2018-2019, 3970 civil cases were enrolled and 3367 were finalised, 930 criminal cases were enrolled and 861 were finalised. During 2019-2020, 3956 civil cases were enrolled and 3467 were finalised, 673 criminal cases were enrolled and 622 were finalised. For the period 2020-2021, 3493 civil cases were enrolled and 3129 were finalised, 406 criminal cases were enrolled and 378 were finalised. During 2021-2022, 4980 civil cases were enrolled and 4557 were finalised, 1000 criminal cases were enrolled and 966 were finalised.



[163] There have been no circuit courts sitting at: Bothaville, Botshabelo, Fouriesburg, Heilbron, Koffiefontein, Odendaalsrus and Smithfield.

Submissions received from the Department

[164] The Department makes no suggestions to alter the area of jurisdiction of the Free State Division of the High Court.

Submissions received from the Judge President

[165] In written submissions, Acting Judge President Mbhele suggests that a local seat of the division be established either at Welkom or Bethlehem. The suggestion is that the local seat be conferred with appellate status for the areas under its jurisdiction.

[166] If a local seat is created either at Bethlehem or at Welkom, it will have the following impact in terms of distances and estimated travel time to the local seat:

Town	Distance to the main seat at Bloemfontein	Distance to the proposed new local seat at Welkom	Distance to the proposed new local seat at Bethlehem
Bethlehem	249 kms (2 h 34 mins)	175 kms (2h 2 mins)	
Harrismith	337 kms (3h 31 mins)	264 kms (3 h)	92 km (1 h 9 min)
Phuthaditjhaba	327 kms (3 h 35 mins)	253 kms (3 h 4 mins)	82 km (1 h 10 min)
Sasolburg	332 kms (3 h 9 mins)	190.5 kms (1 h 55 mins)	194,7 km (2 h 26 min)
Vrede	393 kms (4 h 4 mins)	287 kms (3 h 1 min)	148,3 km (1 h 47 min)

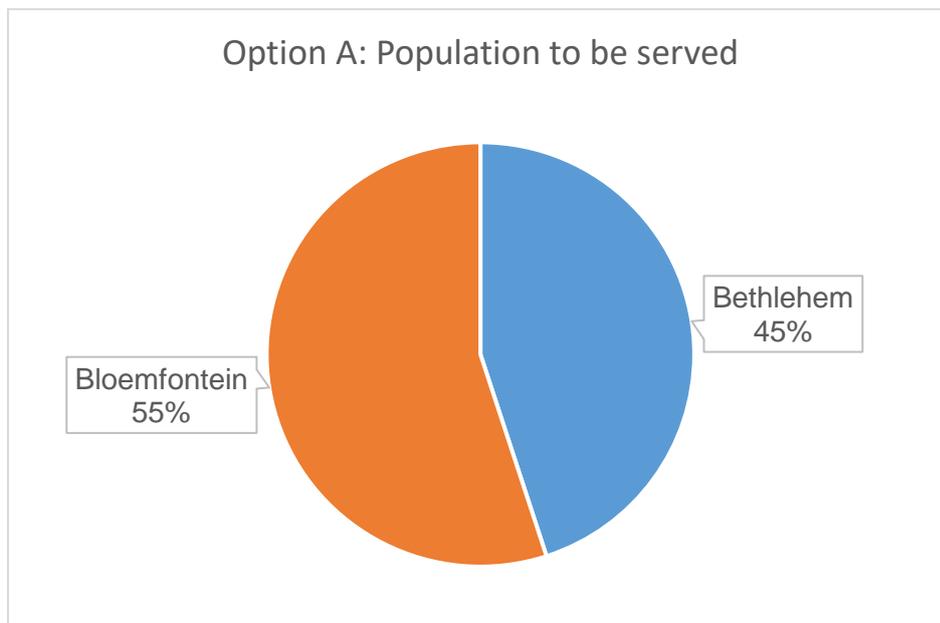
Option A:

[167] Option A suggests that a new local seat be established at Bethlehem. It is suggested that the current main seat at Bloemfontein will exercise jurisdiction over the following magisterial districts and will serve an estimated 45% of the population of the Free State:

- Mangaung magisterial district, with a population of 747 431.
- Lejweleputswa magisterial district, with a population of 627 626.
- Xhariep magisterial district, with a population of 146 259.

[168] The new local seat at Bethlehem will exercise jurisdiction over the following magisterial districts and will serve an estimated 55% of the population of the Free State:

- Fezile Dabi magisterial district, with a population of 527 788.
- Thabo Mofutsanyana magisterial district with a population of 736 238.



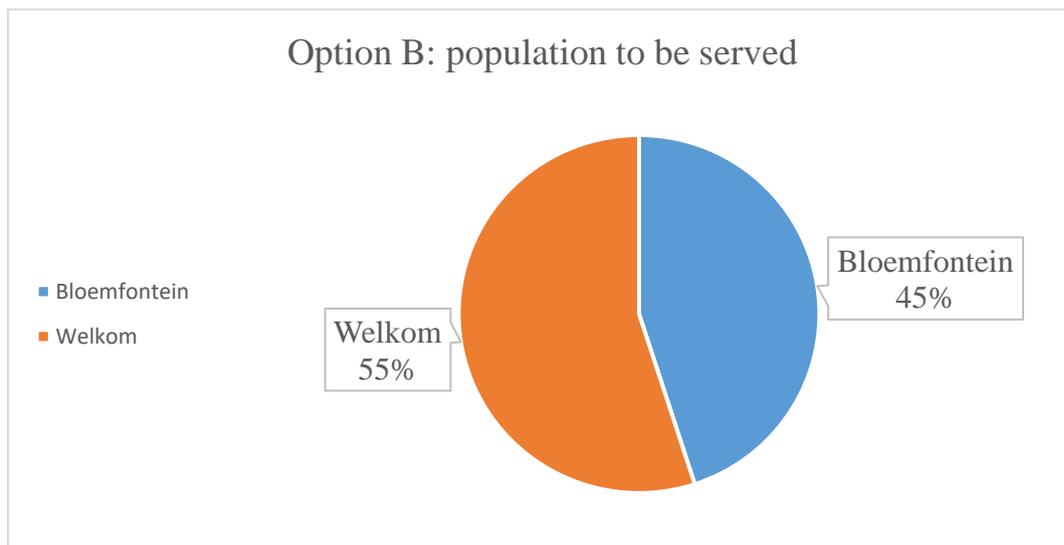
Option B:

[169] Option B suggests that a local seat be created at Welkom. If this suggestion is adopted, it is proposed that the main seat at Bloemfontein would serve the following magisterial districts, having an estimated population of 45% of the province:

- Mangaung magisterial district, with a population of 747 431.
- Lejweleputswa magisterial district, with a population of 627 626.
- Xhariep magisterial district, with a population of 146 259.

[170] It is proposed that the new local seat at Welkom would serve the following magisterial districts having an estimated population of 55% of the province:

- Fezile Dabi magisterial district, with a population of 527 788.
- Thabo Mofutsanyana magisterial district with a population of 736 238.



[171] The suggestion records that the proximity of the police and other state functionaries to the main seat in Bloemfontein is quite significant and has an adverse impact on the running of the circuit courts as there is a delay in bringing detainees to court and this results in lost court hours. It is also noted that the Department of Correctional Services has to transport detainees over long distances from remote areas in the province to the main seat in Bloemfontein.

[172] We are informed that the circuit courts are not well resourced as they are being held at various Magistrates' Courts in the province. A lack of security measures and infrastructure challenges including access to water, proper roads and other municipal services are cited as few challenges in the *status quo*. The submissions particularly note

that some areas such as Parys and Phuthaditjhaba have serious challenges with water and electricity supply.

[173] Acting Judge President Mbhele also reported that the magistrates' court sitting at Bloemspruit was recently closed. This court functioned as an extension of the magistrates' court sitting in Bloemfontein and serviced many people, especially women who needed to access family court services, such as maintenance claims and domestic violence matters. The closure of the Bloemspruit Magistrates' Court means that litigants travel a further distance to the Bloemfontein Magistrates' Court. The closure of the Bloemspruit Magistrates' Court does not advance access to justice. The Committee's terms of reference do not extend to the jurisdiction of the magistrates' courts and we say no more about this issue. The Department has assured this Committee that issues arising from the closure of the Bloemspruit Magistrates' Court are being considered and there should be resolution shortly.

[174] Acting Judge President Mbhele's submissions notes that the civil case roll has been sampled to establish the areas from which civil cases emanate. A sample of 732 cases showed that 520 cases originated from remote areas in the province and only 212 came from the Bloemfontein area.

[175] The creation of a new local seat is suggested to address the excessive distances that people travel to access the main seat in Bloemfontein.

Submissions received from Legal Aid SA

[176] Legal Aid SA does not support the creation of a new local seat at Welkom. They suggest that the creation of a new local seat at Welkom will not have a “big impact” on travelling distances for litigants. There will be cost implications if a new Legal Aid SA High Court Unit is established at Welkom. The new local division will not have appeal jurisdiction and appeals arising from Welkom will still have to be heard by the main seat in Bloemfontein. The costs of creating a new local seat at Welkom will not justify the handling of criminal trials in the areas.

Submissions received from the NPA

[177] The NPA has pointed out that the biggest challenge in the province is the lack of public transport in many outlying areas of the province. It supports the establishment of a local seat at Welkom as this will assist by taking justice to the people.

[178] The submissions also point out that the renovations at Welkom resulted in 2 new court rooms, offices and waiting areas specifically designed for high court services. The establishment of the new local seat will not impact on the prosecution services and there will be no change to the management of criminal matters.

The Committee’s Preliminary Recommendations

[179] The Committee accepts that the proximity of the police and other state functionaries to the town of Welkom, supports the creation of the local seat at Welkom. In addition, the Committee accepts that the circuit court at Welkom is the busiest circuit

court and has the highest caseload. The Committee further accepts that the new local seat at Welkom will reduce the significant distances that people have to travel to the main seat at Bloemfontein.

[180] Having weighed up all the relevant considerations and having heard the Judge President and other stakeholders, the Committee makes the following preliminary recommendations:

- a. The main seat of the Free State Division of the High Court will remain at Bloemfontein. The main seat will exercise jurisdiction over the magisterial districts of Mangaung, Lejweleputswa and Xhariep.
- b. A new local seat be established at Welkom, which shall exercise jurisdiction over the magisterial districts of Fezile Dabi and Thabo Mofutsanyana.

GAUTENG DIVISION OF THE HIGH COURT

Gauteng province

[181] Gauteng is the smallest province in South Africa; with an area of 18 178 km², approximately 1.5% of the total surface area of South Africa. Notwithstanding this, Gauteng has the largest population of all the provinces with approximately 15 810 388 people living in Gauteng. This is 26.3% of people in South Africa.¹²¹

¹²¹ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

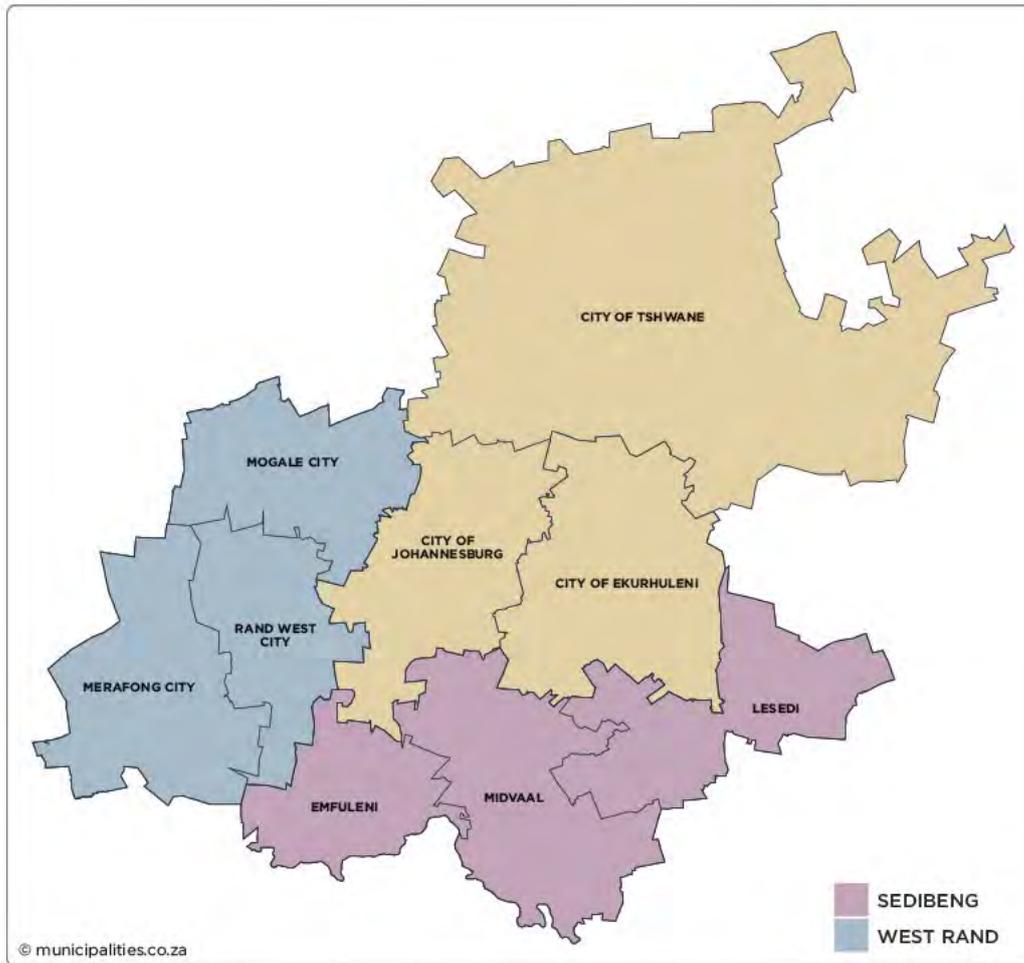
[182] Gauteng is the largest provincial economy in South Africa and the biggest contributor to the national GDP – contributing more than a third of national GDP.¹²² It has significant representation of nearly all economic activity, but finance, real estate and business services (25%), government services (21%) and manufacturing (15%) are the largest industries in the Gauteng economy.¹²³

[183] There are three metropolitan municipalities in Gauteng, namely Tshwane, Johannesburg and Ekurhuleni, and two district municipalities, namely Sedibeng and West Rand. The municipalities in Gauteng are depicted on the map below.¹²⁴

¹²² STATS SA ‘Four facts about our provincial economies’ (29 March 2019) available at <https://www.statssa.gov.za/?p=12056>.

¹²³ South Africa Gateway ‘The economies of South Africa’s nine provinces’ (last updated 17 June 2021) available at <https://southafrica-info.com/infographics/animation-economic-sectors-of-south-africas-provinces/>.

¹²⁴ Maps of municipalities by province are available at <https://municipalities.co.za/>.



The history of the Gauteng Division

Pre-constitutional era:

[184] The Gauteng province previously fell within the Transvaal province in the former South Africa together with Limpopo, Mpumalanga and parts of North West.

[185] The Transvaal had two courts within the province – a provincial division and a local seat. The Transvaal Provincial Division (“**TPD**”) sat at Pretoria with jurisdiction

over the entire province of Transvaal (excluding Pongola and Simdlangentsha),¹²⁵ while the Witwatersrand Local Division (“**WLD**”) sat at Johannesburg with concurrent jurisdiction over the area around Johannesburg.¹²⁶

Constitutional era:

[186] With the enactment of the interim Constitution, both the TPD and WLD became High Courts.¹²⁷ The seats and the area of jurisdiction of the courts remained the same.¹²⁸ The TPD had jurisdiction over Gauteng, Mpumalanga, Limpopo and portions of North West. The WLD retained concurrent jurisdiction over the area around Johannesburg.

[187] An early attempt was made to rationalise the areas of jurisdiction of the High Courts in accordance with provincial boundaries. In 2003, portions of the North West were excised from the jurisdiction of the TPD and included under the jurisdiction of the Bophuthatswana High Court.¹²⁹ In 2008, the TPD and WLD were

¹²⁵ Schedule 1 of the Supreme Court Act. Schedule 1 provides that the TPD has jurisdiction over the province of Transvaal excluding the areas of Pongola and Simdlangentsha.

¹²⁶ Schedule 1 provides that the WLD has jurisdiction in civil matters over the magisterial districts of Alberton, Benoni, Boksburg, Brakpan, Delmas, Germiston, Johannesburg, Kempton Park, Krugersdorp, Nigel, Randburg, Randfontein, Roodepoort, Springs, Vanderbijlpark, Vereeniging and Westonaria, and in criminal matters over the magisterial districts of Alberton, Boksburg, Germiston, Johannesburg, Kempton Park, Krugersdorp, Randburg, Randfontein, Roodepoort and Westonaria

¹²⁷ Interim constitution.

¹²⁸ Section 4(2) of the Interim Rationalisation Act.

¹²⁹ The Minister exercised the power under section 2(1) of the Interim Rationalisation Act to excise the following districts from the jurisdiction of the Transvaal provincial division and include them under the jurisdiction of the Bophuthatswana High Court: Vryburg, Lichtenburg, Coligny, Zeerust, Groot Marico, Swartruggens, Koster, Rustenburg, Delareyville. GN937 published in GG 25141 dated 27 June 2003.

renamed North Gauteng High Court, Pretoria and South Gauteng High Court, Johannesburg.¹³⁰

[188] A constitutional amendment, enacted in 2012, established a single High Court.¹³¹ In 2013, the Gauteng Division of the High Court was established as a division of the unitary High Court with its main seat at Pretoria¹³² and a local seat at Johannesburg.¹³³ The *status quo* was maintained with the main and local seats' areas of jurisdiction remaining the same. The Gauteng Division, Pretoria was to function as the Limpopo and Mpumalanga Divisions until a notice was published determining the area of jurisdiction of those divisions.¹³⁴

Rationalisation:

[189] The magisterial districts of the Gauteng province have been rationalised to accord with the municipal boundaries. There are currently 17 magisterial districts within Gauteng province.¹³⁵

¹³⁰ Section 1 of the Renaming of High Courts Act.

¹³¹ Section 5 of the Constitution 17th Amendment Act.

¹³² Section 6(1)(c) of the Superior Courts Act.

¹³³ Section 50 of the Superior Courts Act.

¹³⁴ Section 50(2) of the Superior Courts Act.

¹³⁵ The magisterial districts are: Tshwane North, Tshwane Central, Tshwane East, Johannesburg North, Johannesburg Central, Johannesburg West, Ekurhuleni North, Ekurhuleni South East, Ekurhuleni Central, Ekurhuleni East, Mogale City, Merafong, Emfuleni, Midvaal, Lesedi, Randfontein and Westonaria.

[190] In 2016, the Minister caused a notice to be published in the government gazette determining the areas of jurisdiction of certain divisions of the High Court, including the Gauteng Division.¹³⁶ The Gauteng Division was conferred jurisdiction over magisterial districts in Gauteng,¹³⁷ Mpumalanga¹³⁸ and the North West.¹³⁹ The main and local seats now have concurrent jurisdiction.¹⁴⁰ The local seat has concurrent jurisdiction with the main seat only until such time as its area of jurisdiction is determined by the Minister.

[191] In the same notice, the Minister determined the areas of jurisdiction of the Limpopo Division.¹⁴¹ The magisterial districts in the Limpopo province were excised from the Gauteng Division's jurisdiction. Later the Minister published notices

¹³⁶ GN30 in GG 39601 dated 15 January 2016.

¹³⁷ The following magisterial districts: Ekurhuleni Central (and Germiston sub-district), Ekurhuleni East (and Nigel sub-district), Ekurhuleni North (and Boksburg and Tembisa sub-districts), Ekurhuleni South East (and Brakpan, Daveyton and Tsakane sub-districts), Emfuleni (and Sebokeng and Vereeniging sub-districts), Johannesburg Central (and Soweto sub-district), Johannesburg North (and Alexandra sub-district), Johannesburg West, Lesedi, Merafong (and Fochville sub-district), Midvaal, Mogale City (and Kagiso sub-district), Tshwane Central (and Atteridgeville and Mamelodi sub-districts), Tshwane East (and Bronkhorstspuit and Cullinan sub-district), Tshwane North (and Soshanguve sub-district), Randfontein and Westonaria.

¹³⁸ The following magisterial districts: Bushbuckridge (and Mhala sub-district), Chief Albert Luthuli (and Carolina sub-district), Dipaleseng, Dr JS Moroka (and Mbibana sub-district), Dr Pixley Ka Isaka Seme (and Amersfoort and Wakkerstroom sub-districts), Emalahleni (and Kriel and Vosman sub-districts), Emakhazeni (and Waterval Boven sub-district), Govan Mbeki (and Bethal and Secunda sub-districts), Lekwa, Mbombela (and Nsikazi and White River sub-districts), Mkhondo (and Amsterdam sub-district), Msukaligwa, and Breyten sub-district), Nkomazi (and Komatipoort sub-district), Steve Tshwete (and Hendrina sub-district), Thaba Chweu (and Graskop and Sabie sub-districts), Thembisile Hani (and KwaMhlanga sub-district), Umjindi and Victor Khanye.

¹³⁹ The following magisterial districts: Madibeng (with the exclusion of the Ga- Rankuwa sub-district), Tlokwe (and Orkney and Stilfontein sub-districts) and Ventersdorp.

¹⁴⁰ Ibid.

¹⁴¹ Item 1 of the Schedule to GN30 published in GG 39601 dated 15 January 2016 relating to Limpopo.

determining the areas of jurisdiction of the Mpumalanga¹⁴² and North West Divisions.¹⁴³ The effect of these notices is that the magisterial districts falling within the Mpumalanga and North West provinces were also excised from the jurisdiction of the Gauteng Division. One notable exception to this is the magisterial district of Madibeng in the North West province.

Status quo of the Gauteng Division

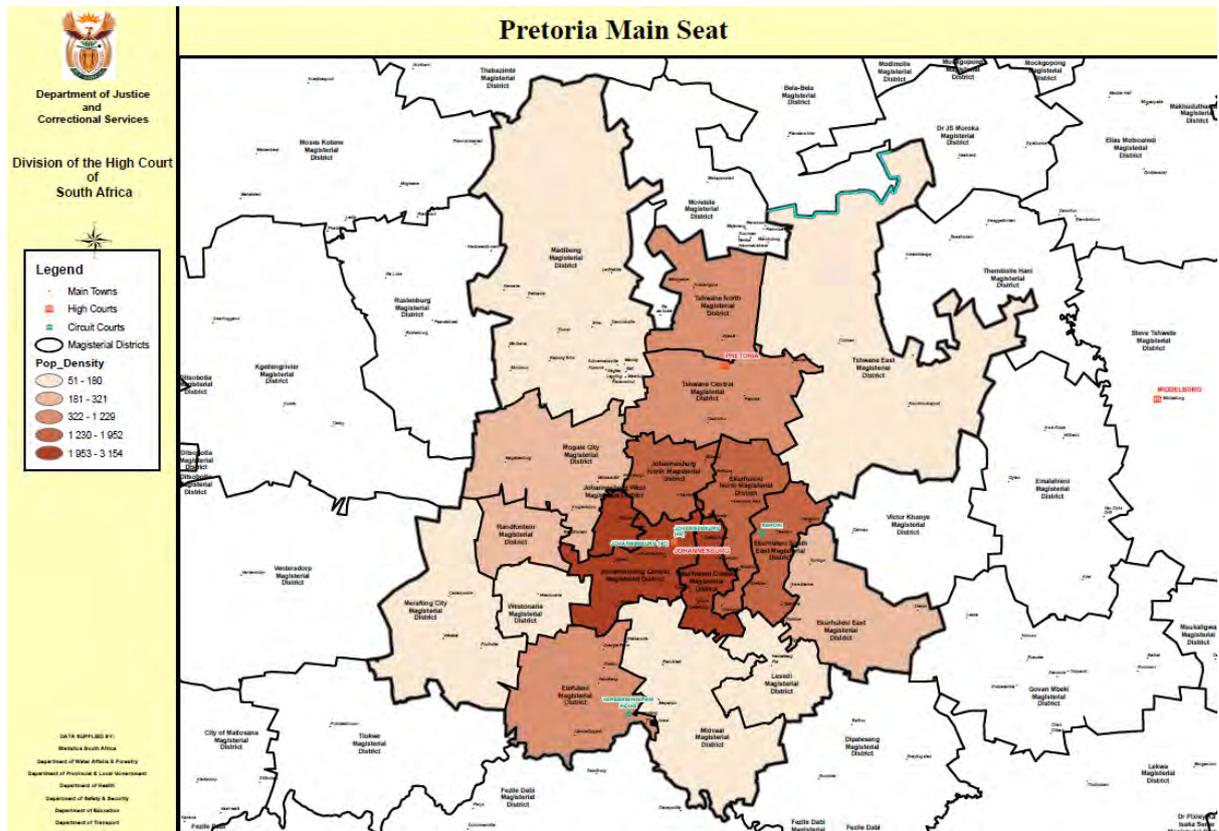
[192] The Gauteng Division now has its main seat in Pretoria and a local seat in Johannesburg. The courts have concurrent jurisdiction over all magisterial districts in Gauteng province as well as Madibeng magisterial district in the North West province excluding the sub-district of Ga-Rankuwa.

[193] There are a total of 80 judges on the establishment in the Gauteng Division. The Pretoria main seat has 42 judges, while the Johannesburg local seat has 38 judges. There is also a court at Palm Ridge, which is served on circuit by the Gauteng Division.

[194] The magisterial districts over which the main seat and the local seat have concurrent jurisdiction is depicted in the map below, which also shows the population density of the magisterial districts.

¹⁴² GN 615 published in GG 42420 dated 26 April 2019 relating to the Mpumalanga Division. GN 30 omits to delete areas now included within the area of jurisdiction of the Mpumalanga Division from the area of jurisdiction of the Gauteng Division.

¹⁴³ GN 408 published in GG 41552 dated 29 March 2018 relating to the North West Division. The GN 408 omits to delete Ventersdorp from the Gauteng Division's area of jurisdiction, while including it under the North West Division's area of jurisdiction.



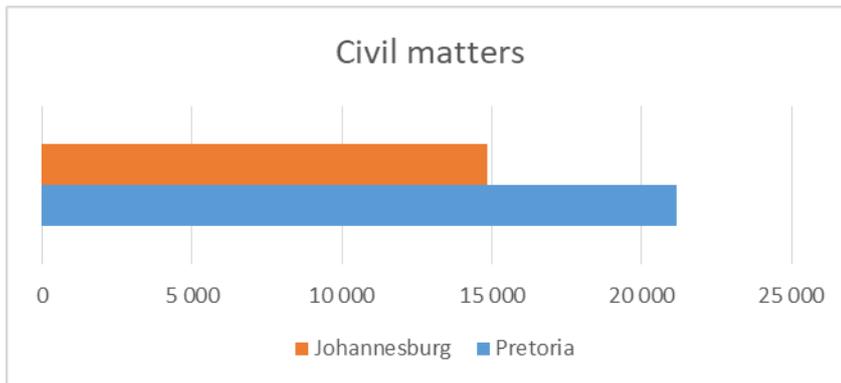
The caseload of the Gauteng Division

[195] The Judiciary Annual Report 2020/2021¹⁴⁴ sets out the number of criminal and civil matters heard in the Gauteng Division from the 1 April 2020 to 31 March 2021, and the percentage of matters finalised during that period. The Report provides a key insight into the caseloads of the various divisions.

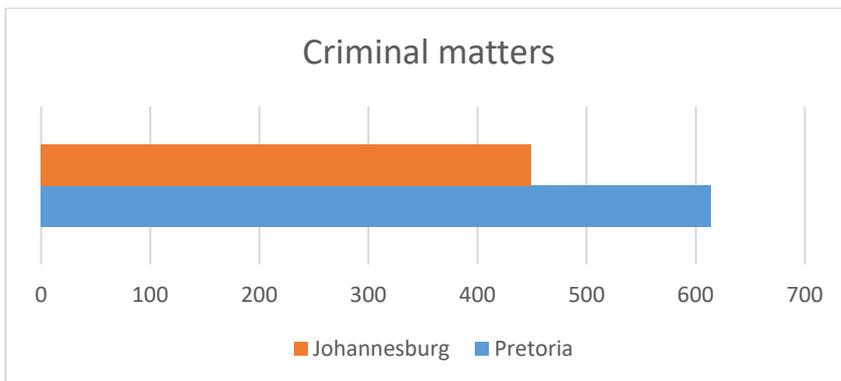
[196] During the relevant period:

¹⁴⁴ Available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.

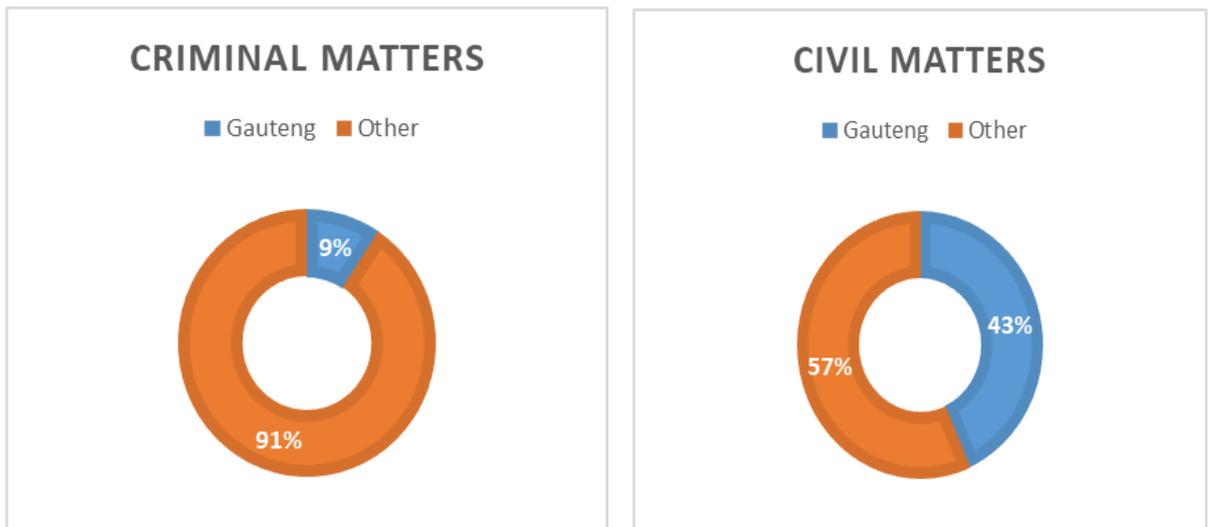
- a. The main seat at Pretoria heard a total of 21 188 civil matters (59% of civil matters heard by the division); of which it finalised 89%. The local seat at Johannesburg heard 14 869 civil matters (41% of civil matters heard by the division); of which it finalised 86%.



- b. The main seat at Pretoria heard a total of 614 criminal matters (58% of criminal matters heard by the division); of which it finalised 66%. The local seat at Johannesburg heard 449 criminal matters (42% of criminal matters heard by the division); of which it finalised 43%.



- c. Collectively, the courts heard 1063 criminal matters (9% of all criminal matters heard in the High Court) and 36 057 civil matters (43% of all civil matters heard in the High Court).



Submissions received from the Department

[197] The Department submitted two proposals concerning the area of jurisdiction of the Gauteng Division.

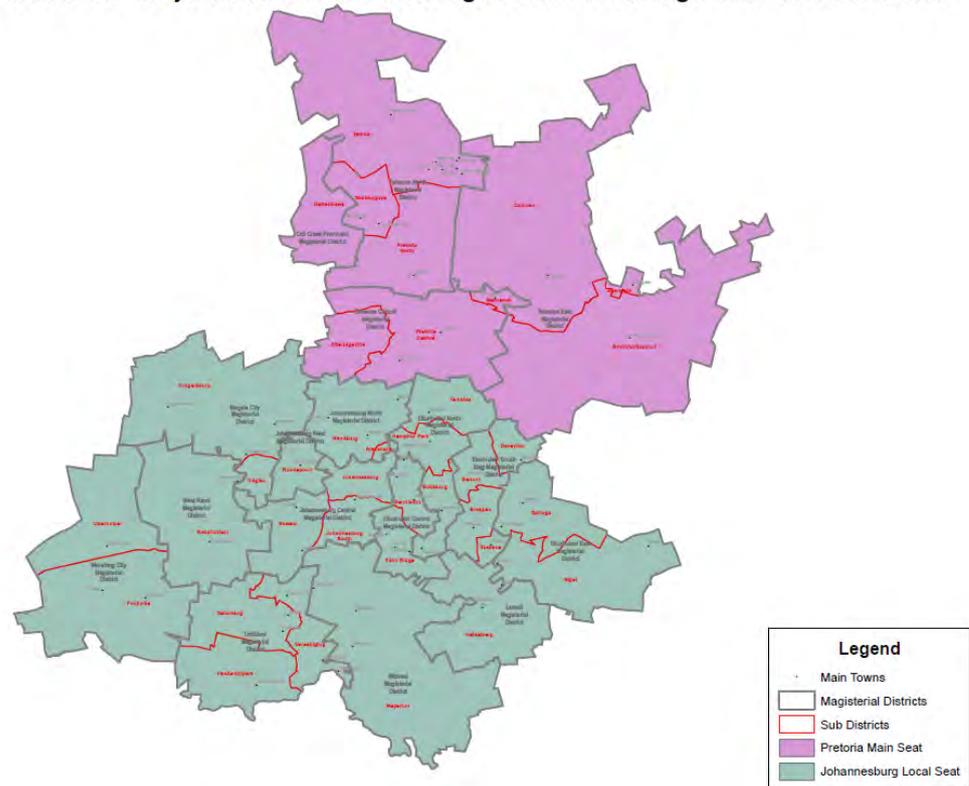
[198] The first proposal is that the areas of jurisdiction of the main seat in Pretoria and the local seat in Johannesburg be delimited. In terms of the first proposal:

- a. The Gauteng Division, Pretoria is to exercise jurisdiction over the following magisterial districts: Tshwane Central, Tshwane North and Tshwane East.
- b. The Gauteng Division, Pretoria will also exercise jurisdiction over the Madibeng magisterial district in the North West province until a local seat is established at Rustenburg.
- c. The Gauteng Local Division, Johannesburg is to exercise jurisdiction over the following magisterial districts: Johannesburg Central, Johannesburg North, Johannesburg West, Ekurhuleni Central, Ekurhuleni East, Ekurhuleni

North, Ekurhuleni South East, Emfuleni, Lesedi, Merafong, Mogale City, Midvaal, West Rand.

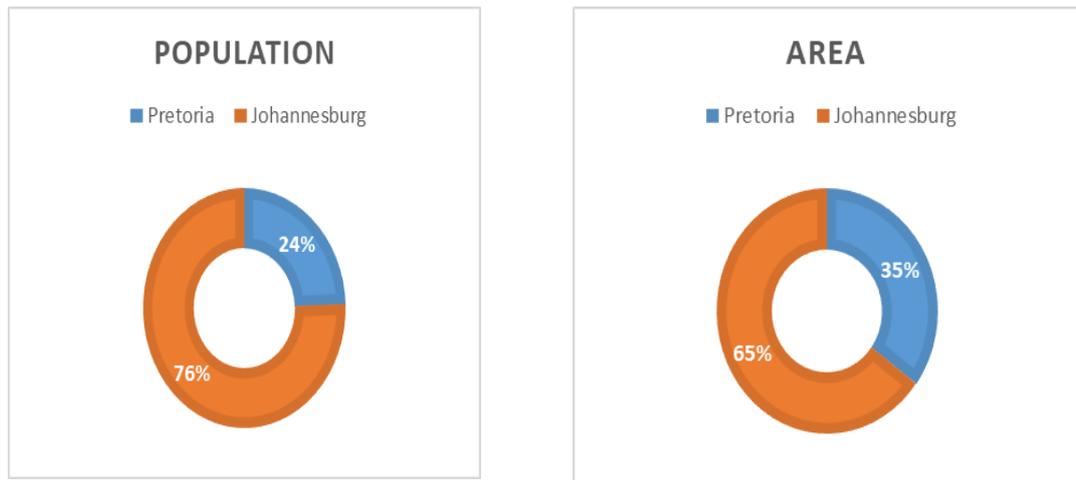
[199] The Department's first proposal is depicted in the map below.

The proposed area under the jurisdiction of the Gauteng Division of the High Court of South Africa



[200] The effect of the first proposal would be that:

- a. The Gauteng Division, Pretoria would have exclusive jurisdiction over approximately 6 368 km² (35% of the area of Gauteng) and the Gauteng Local Division, Johannesburg would exercise jurisdiction over approximately 11 801 km² (65% of the area of Gauteng).
- b. The Gauteng Division, Pretoria would have exclusive jurisdiction over approximately 3 864 059 people (24% of the population of Gauteng) and the Gauteng Local Division, Johannesburg would exercise jurisdiction over approximately 11 933 904 people (76% of the population of Gauteng).



[201] Keeping the magisterial district of Madibeng within the area of jurisdiction of the Gauteng Division, Pretoria in the interim until a local seat is established at Rustenburg would significantly reduce the distance that litigants are required to travel in order to access a court. The distance from Madibeng as calculated from the Brits Magistrates' Court to the various courts that could exercise jurisdiction over the magisterial district is depicted in the table below.

Magisterial District	Gauteng Division, Pretoria	North West Division, Mahikeng	Rustenburg
Madibeng	51 km (via R511 and N4) Travel time: Approx. 55 min.	262 km (via N4) Travel time: Approx. 3hr 15 min	67 km (via N4) Travel time: Approx. 1hr.

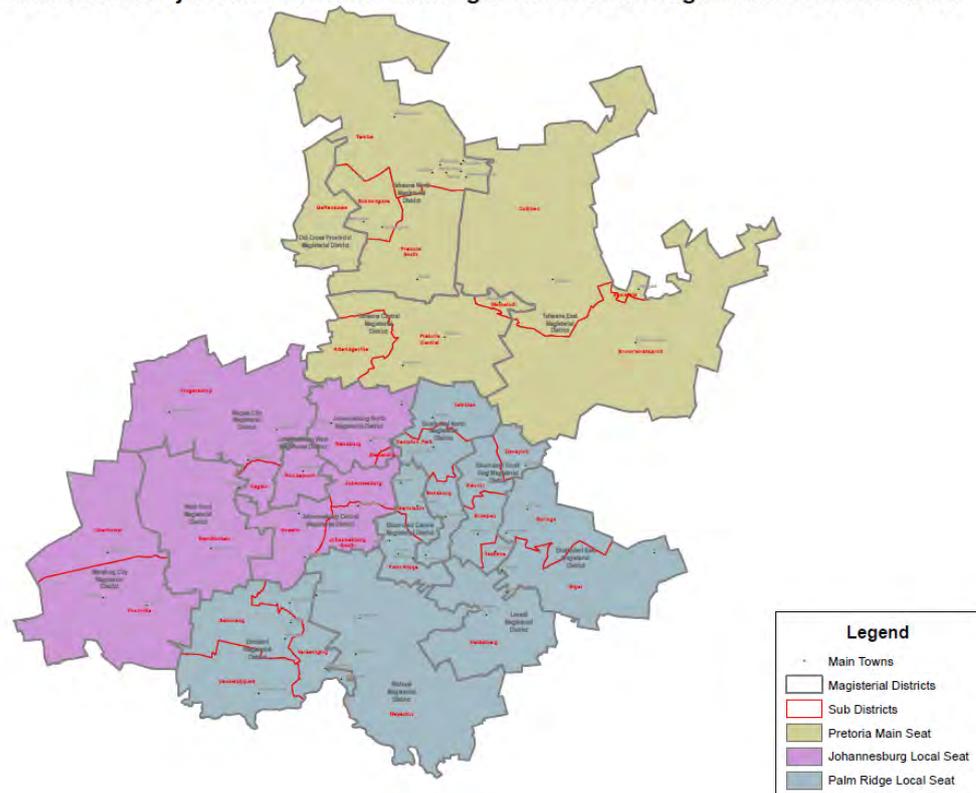
[202] The Department's second proposal is the establishment of a second local seat at Palm Ridge, Ekurhuleni. In terms of the second proposal:

- a. The Gauteng Division, Pretoria is to have the same area of jurisdiction as in the first proposal.

- b. Gauteng Local Division, Johannesburg is to exercise jurisdiction over the following magisterial districts: Johannesburg Central, Johannesburg North, Johannesburg West, Merafong, Mogale City, West Rand.
- c. The new local seat at Palm Ridge is to exercise jurisdiction over the following magisterial districts: Ekurhuleni Central, Ekurhuleni East, Ekurhuleni North, Ekurhuleni South East, Emfuleni, Lesedi and Midvaal.

[203] The Department's second proposal is depicted in the map below.

The proposed area under the jurisdiction of the Gauteng Division of the High Court of South Africa

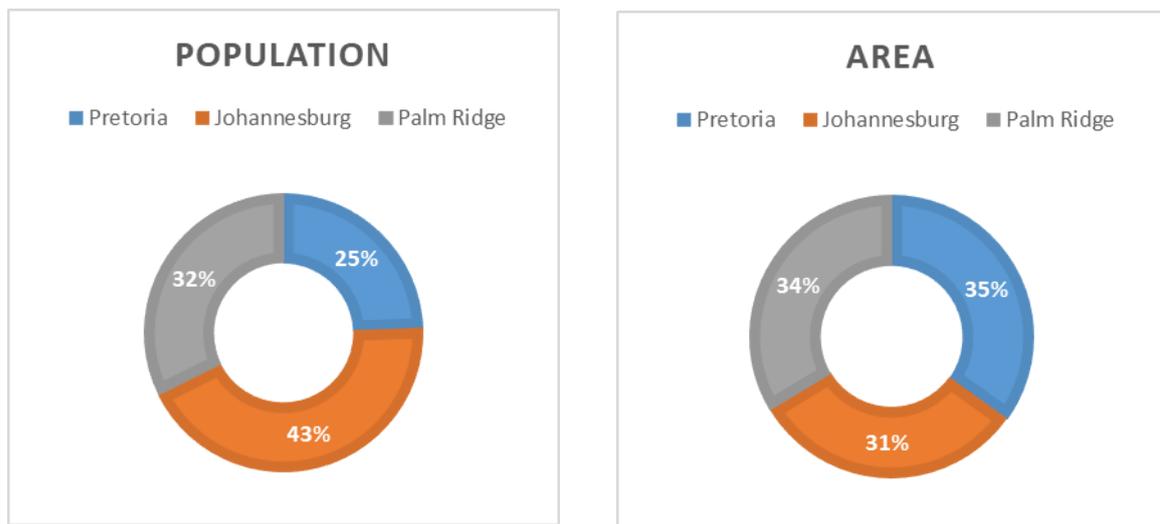


[204] The effect of the second proposal would be that:

- a. The Gauteng Division, Pretoria would have exclusive jurisdiction over approximately 6 368 km² (35% of the area of Gauteng), the Gauteng Local Division, Johannesburg would exercise jurisdiction over approximately 5

740 km² (31% of the area of Gauteng) and the new local seat at Palm Ridge would exercise jurisdiction over approximately 6 148 km² (34% of the area of Gauteng).

- b. The Gauteng Division, Pretoria would have exclusive jurisdiction over approximately 3 864 059 people (24% of the population of Gauteng), the Gauteng Local Division, Johannesburg would exercise jurisdiction over approximately 6 823 763 people (43% of the population of Gauteng) and the new local seat at Palm Ridge would exercise jurisdiction over approximately 5 116 242 (32% of the area of Gauteng).



Submissions received from the Acting Judge President

[205] On 29 July 2022, the Committee met with Acting Judge President Ledwaba of the Gauteng Division together with the Judges President of the Mpumalanga, Limpopo and North West Divisions.

[206] Acting Judge President Ledwaba emphasised that caseload is a factor that needs to be taken into account when considering areas of jurisdiction and the establishment of further local seats. He further explained that the one reason for the high caseload of the Gauteng Division with respect to civil matters relates to the common law rules on jurisdiction in terms of which jurisdiction follows the defendant, and proposed that the Committee consider making a recommendation regarding a possible legislative solution. No formal written submission from the Acting Judge President of Gauteng Division have been received.

Submissions received from the NPA

[207] The NPA supports the establishment of a second local seat at Palm Ridge on the basis that this would enhance access to justice and lead to a more equitable division of the population of Gauteng between the three seats. The NPA further supports the inclusion of the Madibeng magisterial district under the area of jurisdiction of the Gauteng Division, Pretoria on the basis that this will enhance access to justice.

Submissions received from Legal Aid SA

[208] Legal Aid SA does not support either of the proposals made by the Department. It supports the retention of the *status quo* in the Gauteng Division. Legal Aid SA also highlights that the establishment of a new local seat at Palm Ridge will have cost implications for it.

The Committee's Preliminary Recommendations

[209] The Committee accepts that there is an obvious need for a court in Palm Ridge. The establishment of an additional local seat will result in a more even spread of the population that will be served and reduce the caseloads of the other seats. It will also bring justice closer to the residents of Ekurhuleni and Sedibeng. The travel distance for residents will be reduced – facilitating access to justice. In any event, there is an existing court infrastructure at Palm Ridge so a recommendation to this effect can be implemented immediately.

[210] Having weighed up all the relevant considerations and having heard the Acting Judge President and other stakeholders, the Committee makes the following preliminary recommendations:

- a. The main seat of the Gauteng Division of the High Court will remain in Pretoria.
- b. The Gauteng Division of the High Court, Pretoria will exercise jurisdiction over the following magisterial districts: Tshwane Central, Tshwane North and Tshwane East.
- c. The Gauteng Division of the High Court, Pretoria continue to exercise jurisdiction over the Madibeng magisterial district including the sub-district of Ga-Rankuwa until a new local seat is established at Rustenburg in the North West province.
- d. The Gauteng Division of the High Court, Pretoria will exercise jurisdiction over Moretele magisterial district, which falls within the Bojanala Platinum

district in the North West province, until a new local seat is established at Rustenburg.

- e. The Gauteng Local Division of the High Court, Johannesburg will exercise jurisdiction over the following magisterial districts: Johannesburg Central, Johannesburg North, Johannesburg West, Merafong, Mogale City and West Rand.
- f. A new local seat to be established at Palm Ridge, which will exercise jurisdiction over the following magisterial districts: Ekurhuleni Central, Ekurhuleni East, Ekurhuleni North, Ekurhuleni South East, Emfuleni, Lesedi and Midvaal.

KWAZULU-NATAL DIVISION OF THE HIGH COURT

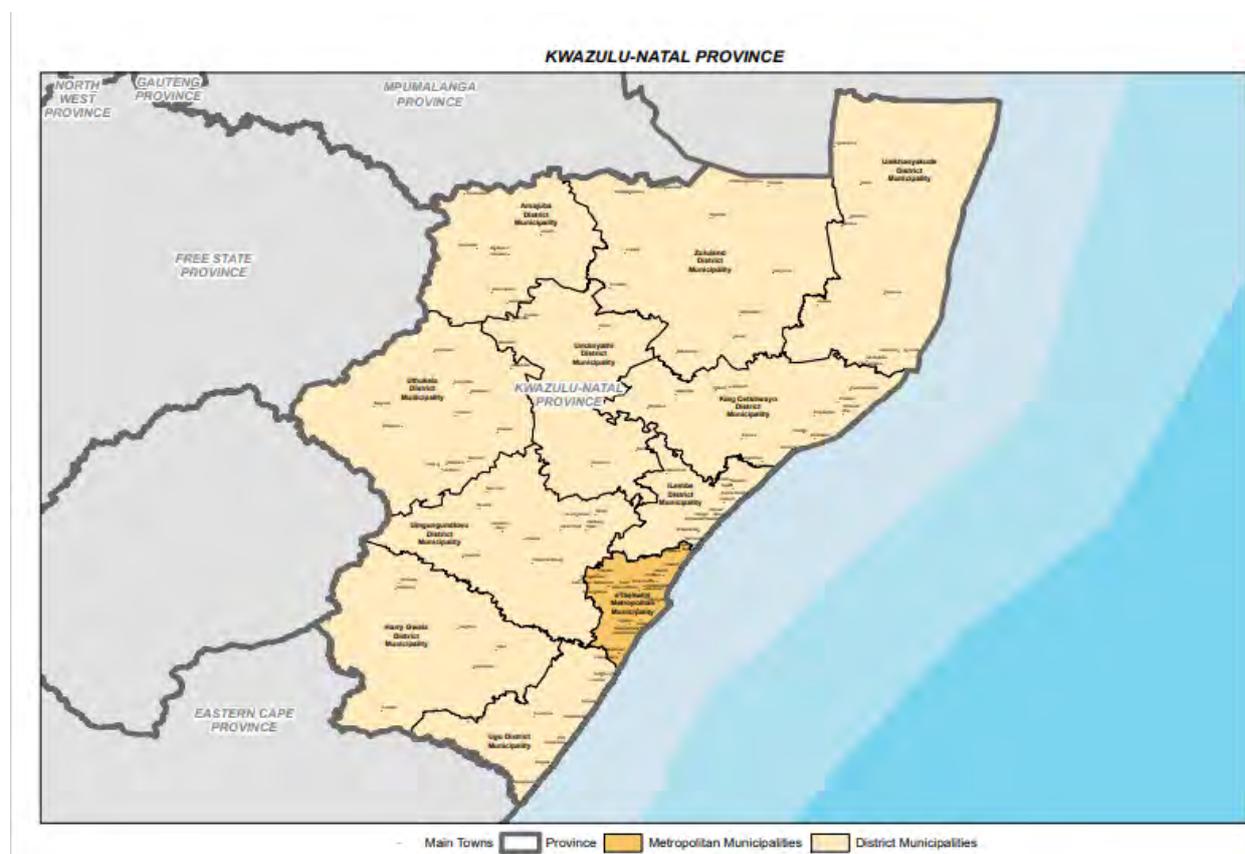
Kwazulu-Natal province

[211] Kwazulu-Natal is located in the south east of the country and shares borders with Mpumalanga, Free State and the Eastern Cape provinces. It has a surface area of 94 361 km², 8% of the total country's surface area making it the third smallest province in the country. That notwithstanding, KwaZulu-Natal is the second highly populated province after Gauteng with an estimated population of 11 513 575 people, 19% of the country's total population.¹⁴⁵

¹⁴⁵ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

[212] KwaZulu-Natal is the second biggest contributor to the country's GDP.¹⁴⁶ The province is fairly represented in varied industries such as finance (16.28%), agriculture (3.9%), manufacturing (18.2%) and government services (16.7%).¹⁴⁷

[213] KwaZulu-Natal is made up of one metropolitan municipality of eThekweni and 10 district municipalities, namely: Amajuba, Harry Gwala, iLembe, King Cetshwayo, Ugu, uMgungundlovu, uMkhanyakude, uMzinyathi, uThukela and Zululand.



¹⁴⁶ South Africa Gateway 'The economies of South Africa's nine provinces' (last updated 17 June 2021) available at <https://southafrica-info.com/infographics/animation-economic-sectors-of-south-africas-provinces/>.

¹⁴⁷ Ibid.

The History of KwaZulu-Natal Division

Pre-Constitutional Era

[214] The KwaZulu-Natal Division previously fell within the former Natal province. The court had its main seat at Pietermaritzburg called the Natal Provincial Division of the Supreme Court of South Africa and exercised jurisdiction over what is now the KwaZulu-Natal province. The court also had a local seat at Durban called the Durban and Coast Local Division of the Supreme Court of South Africa.¹⁴⁸ The local division exercised jurisdiction over certain specified magisterial districts.¹⁴⁹

Constitutional Era

[215] When the Constitution came into force, the courts became High Courts.¹⁵⁰ The courts continue to exercise jurisdiction as they did before the coming into effect of the Constitution.

[216] In 2009 they were renamed the KwaZulu-Natal High Court, Durban and KwaZulu-Natal High Court, Pietermaritzburg.¹⁵¹ In 2013, the courts became two seats of the KwaZulu-Natal Division of the High Court of South Africa.¹⁵² The main seat in

¹⁴⁸ Schedule 1 of the Supreme Court Act.

¹⁴⁹ In terms of schedule 1 of the Supreme Court Act, these magisterial districts are Alfred, Port Shepstone, Umzinto, Umlazi, Durban, Pinetown, Inanda, Ndwedwe, Mapumulo, Lower Tugela, Mtunzini, Eshowe, Nkandhla, Entonjaneni, Lower Urnfolozi, Mahlabatini, Hlabisa, Nongoma, Ubombo and Ingwavuma.

¹⁵⁰ See Item 16(4) of the Constitution.

¹⁵¹ See section 1 of the Renaming of High Courts Act.

¹⁵² Section 6(1) of the Superior Courts Act.

Pietermaritzburg continues to exercise jurisdiction over the whole province and the local seat at Durban exercises jurisdiction over certain magisterial districts.¹⁵³

Rationalisation

[217] The magisterial districts in the KwaZulu-Natal had not been rationalised until recently when the Minister caused a notice to be published in the government gazette creating magisterial districts in the KwaZulu-Natal.¹⁵⁴ According to the notice, one metropolitan municipality and ten magisterial districts have been established.¹⁵⁵

[218] Currently, no notice has been issued establishing the areas under the jurisdiction of the KwaZulu-Natal Division. The effect of this is that the areas under the jurisdiction of the KwaZulu-Natal Division remain as they were under the Supreme Court Act.¹⁵⁶

Status Quo of the KwaZulu-Natal Division.

[219] The KwaZulu-Natal Division has both a main and a local seat. The division has a main seat at Pietermaritzburg and a local seat at Durban. The main seat at Pietermaritzburg exercises jurisdiction over the entire KwaZulu-Natal province and certain areas specifically excised from under the areas of jurisdiction of the Eastern Cape Division. The local seat at Durban exercises jurisdiction over the magisterial

¹⁵³ See schedule 1 to the Supreme Court Act.

¹⁵⁴ GN. 930 published in GG 46132 dated 30 March 2022.

¹⁵⁵ The metropolitan municipality is eThekwin and the magisterial districts are Amajuba, Harry Gwala, iLembe, King Cetshwayo, Ugu, uMgungundlovu, Umkhanyakude, uMzinyathi, Uthukela and Zululand.

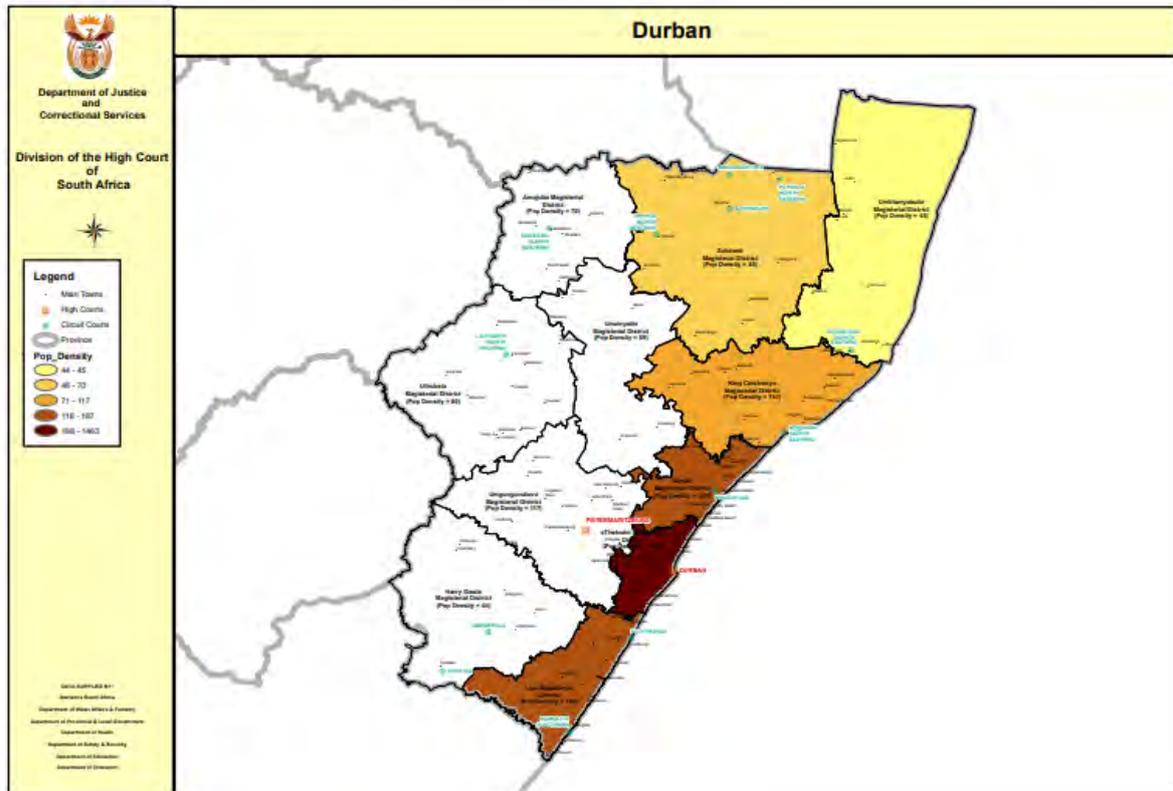
¹⁵⁶ See section 51 of the Supreme Court Act.

districts of: Ugu, eThekweni, iLembe, King Cetshwayo, uMkhanyakude and Zululand.¹⁵⁷

[220] The court is made up of 23 judges with nine judges at the main seat at Pietermaritzburg and 14 judges at the local seat in Durban. There are two circuit courts under the main seat at Ramsgate and Madadeni and three circuit courts under the local seat at Pongola, Mtubatuba and Mtunzini. The indication is that Pongola circuit court no longer sits.

[221] The map below depicts magisterial districts over which the main seat at Pietermaritzburg exercises jurisdiction with population density.

¹⁵⁷ This is according to schedule 1 to the Supreme Court Act.

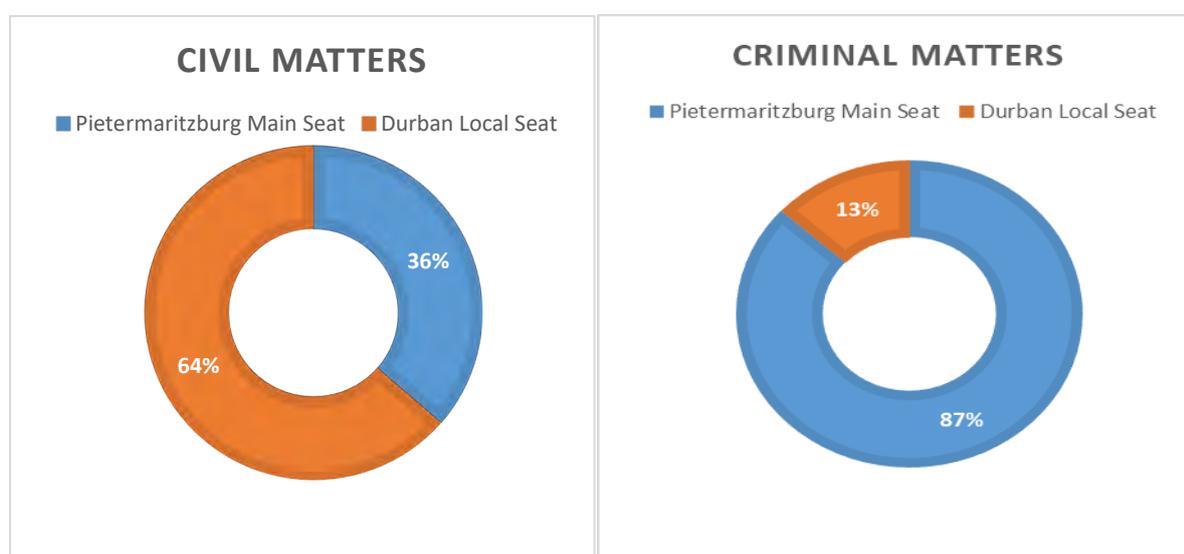


[223] Apart from the magisterial districts depicted on these maps, the KwaZulu-Natal Division exercises jurisdiction over the area and population of Matatiele (Maluti) which provincially resides in the Eastern Cape, Alfred Nzo magisterial district.

[224] The implication is that the jurisdiction of the main seat at Pietermaritzburg extends over the entire provincial surface area and population, the local seat at Durban exercises jurisdiction over an area of 34 025 km², occupied by approximately 6 996 823 people, 69% of the province's population.

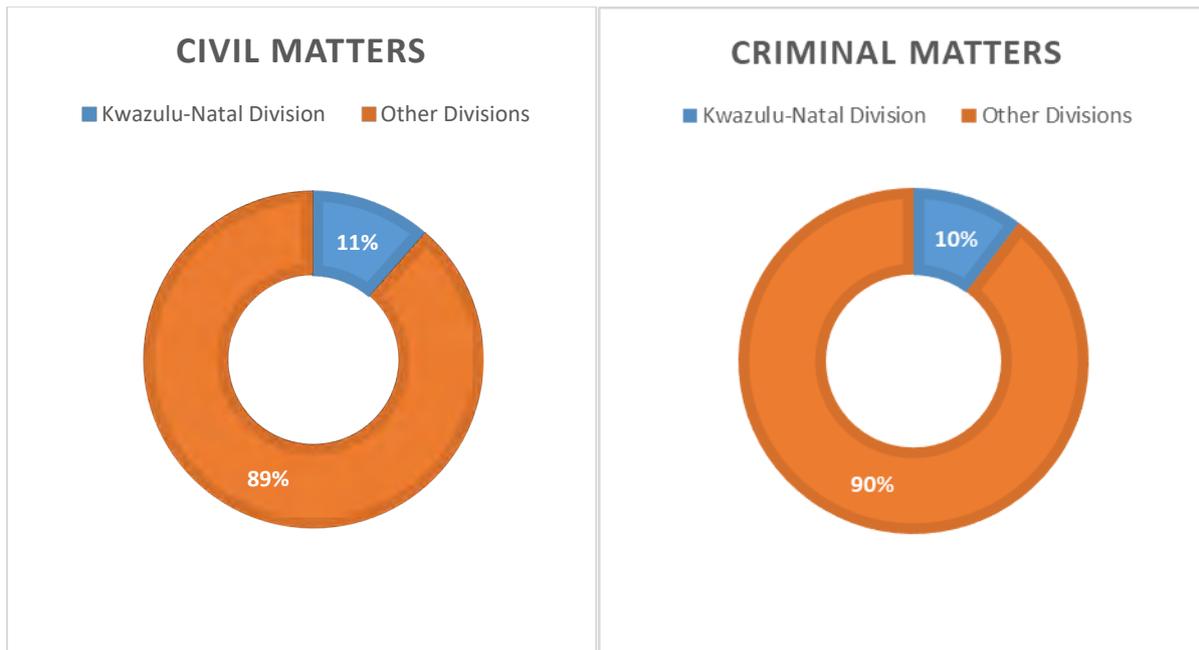
The Caseload of KwaZulu-Natal Division

[225] According to the annual report of the Judiciary for the period 2020 to 2021, the main seat at Pietermaritzburg heard a total of 3 890 civil matters and finalised 3 072 civil matters. The local seat at Durban on the other hand, heard a total of 6 799 civil matters and finalised 4 975 of those matters. In relation to criminal matters, main seat heard approximately 1 133 criminal matters and finalised 944 of those matters. The local seat heard about 173 and finalised 94 of those criminal matters.¹⁵⁸



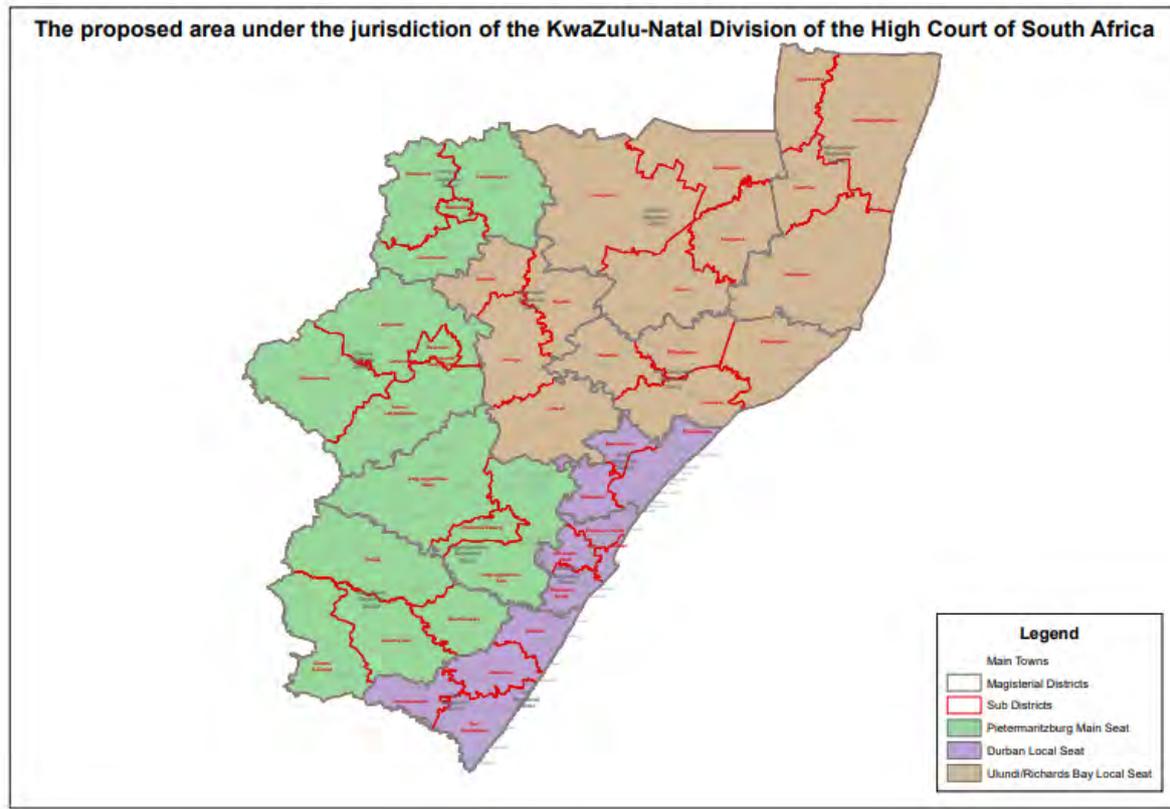
[226] Compared to other divisions of the High Court, the KwaZulu-Natal Division heard a total of 10 689 of all civil matters heard in the High Court and a total of 1 306 of all criminal matters in the High Court.

¹⁵⁸ The Judiciary Annual Report 2020/2021 available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.



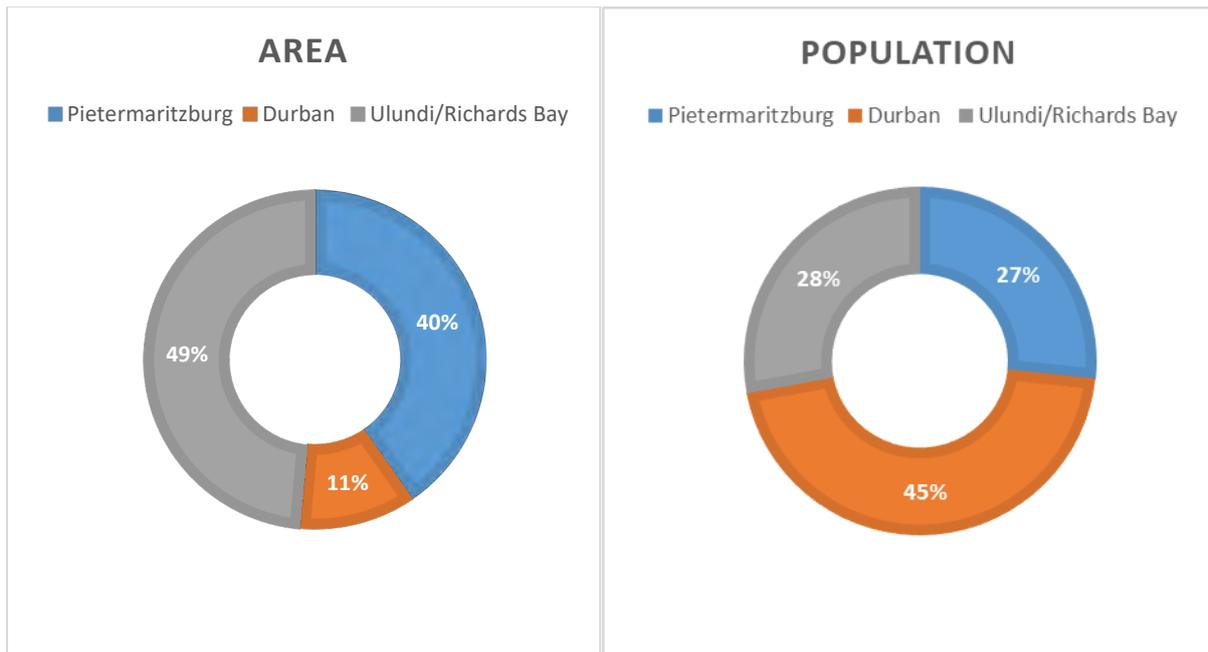
Submissions received from the Department

[227] The Department proposes that – to enhance access to justice for communities in the northern part of the province – a second local seat be established in Ulundi or Richards Bay. According to the Department’s proposal, the main seat will exercise jurisdiction over the magisterial districts of: Amajuba, Harry Gwala, uMgungundlovu, and uThukela. The local seat will exercise jurisdiction over the magisterial district of eThekwini, iLembe and Ugu. The proposed local seat at Ulundi or Richards Bay will then serve the following magisterial districts: King Cetshwayo, uMkhanyakude, uMzinyathi and Zululand. Below is the Department’s proposal depicted in a map. The main seat will have concurrent jurisdiction over the magisterial districts served by the local seats.



[228] In terms of this proposal:

- (a) the main seat at Pietermaritzburg will have exclusive jurisdiction over an area of 38 108 km² while the local seat at Durban and Ulundi/Richards Bay will serve areas of 10 458 km² and 45 821 km², respectively.
- (b) the main seat at Pietermaritzburg will have exclusive jurisdiction over a population of approximately 2 738 973 people while the local seats at Durban and Ulundi/Richards Bay serve approximately 4 659 884 and 2 868 438 people, respectively.



Submissions received from the Acting Judge President

[229] During the consultation with Acting Judge President Madondo, he indicated that matters arising from the Matatiele (Maluti) area in the Alfred Nzo magisterial district in the Eastern Cape are currently covered by the KwaZulu-Natal Division, particularly the main seat at Pietermaritzburg.

[230] The Acting Judge President made written submissions to the Committee,¹⁵⁹ wherein he expresses his support for the establishment of a local seat of the division either at Ulundi or Richards Bay. This, the Acting Judge President submits, will reduce travelling distances particularly for residents of areas such as uMhlabuyalingana and Pongola, who are currently required to travel excessive distances to access the courts.

¹⁵⁹ The AJP's submissions are attached as annexure "4" in the appendices chapter.

Submission received from the NPA

[231] The NPA submits that instead of establishing a local seat of the division either at Ulundi or Richards Bay, setting up more circuit courts and re-opening circuit courts that are currently not operational would advance access to justice. This is so because: there is no NPA office in either of these areas to service the local seat; there is no court structure to house a local seat in Richards Bay; and in Ulundi, although there is a court structure, this structure currently houses the regional court with permanent court support staff, prosecutors and magistrates.

[232] The NPA concludes that Matatiele and Umzimkhulu were properly excised to the Eastern Cape. The NPA supports the suggestion that Matatiele and Uzimkhulu be serviced by the Eastern Cape Division.

The Committee's Preliminary Recommendations

[233] The Committee accepts that the establishment of a second local seat will have greater reach to the population of the province and equally reduce travelling distances to access courts. The Committee concludes that this establishment will bring justice closer to many communities in the province. The Committee's preferred location for a second local seat has also seen significant economic development.

[234] Having weighed up all the relevant considerations and having heard the Judge President and other stakeholders, the Committee makes the following preliminary recommendations:

- a. The main seat of the KwaZulu-Natal Division of the High Court remains at Pietermaritzburg.
- b. The KwaZulu-Natal Division of the High Court, Pietermaritzburg will exercise jurisdiction over the magisterial districts of Amajuba, Harry Gwala, uMgungundlovu, and uThukela.
- c. The KwaZulu-Natal Local Division of the High Court, Durban will exercise jurisdiction over the eThekweni metropolitan municipality and the magisterial districts of iLembe and Ugu.
- d. A second local seat of the KwaZulu-Natal Division of the High Court be established at Richards Bay, which will exercise jurisdiction over the magisterial districts of King Cetshwayo, uMkhanyakude, uMzinyathi and Zululand.
- e. Matatiele (including Maluti) be removed from areas under the jurisdiction of the KwaZulu-Natal Division of the High Court and be included into the area under the jurisdiction of the Eastern Cape Division of the High Court, Mthatha.

LIMPOPO DIVISION OF THE HIGH COURT

Limpopo province

[235] Limpopo has a surface area of 125 755 km², which covers approximately 10% of the total surface area of South Africa. Limpopo has a population of approximately 5 926 724 people, which means that 10% of people in South Africa live in Limpopo.¹⁶⁰

[236] Limpopo is among the smaller economies in South Africa.¹⁶¹ Mining (28%) is the largest industry in Limpopo, followed by general government services (20%) and trade, catering and accommodation (15%).¹⁶²

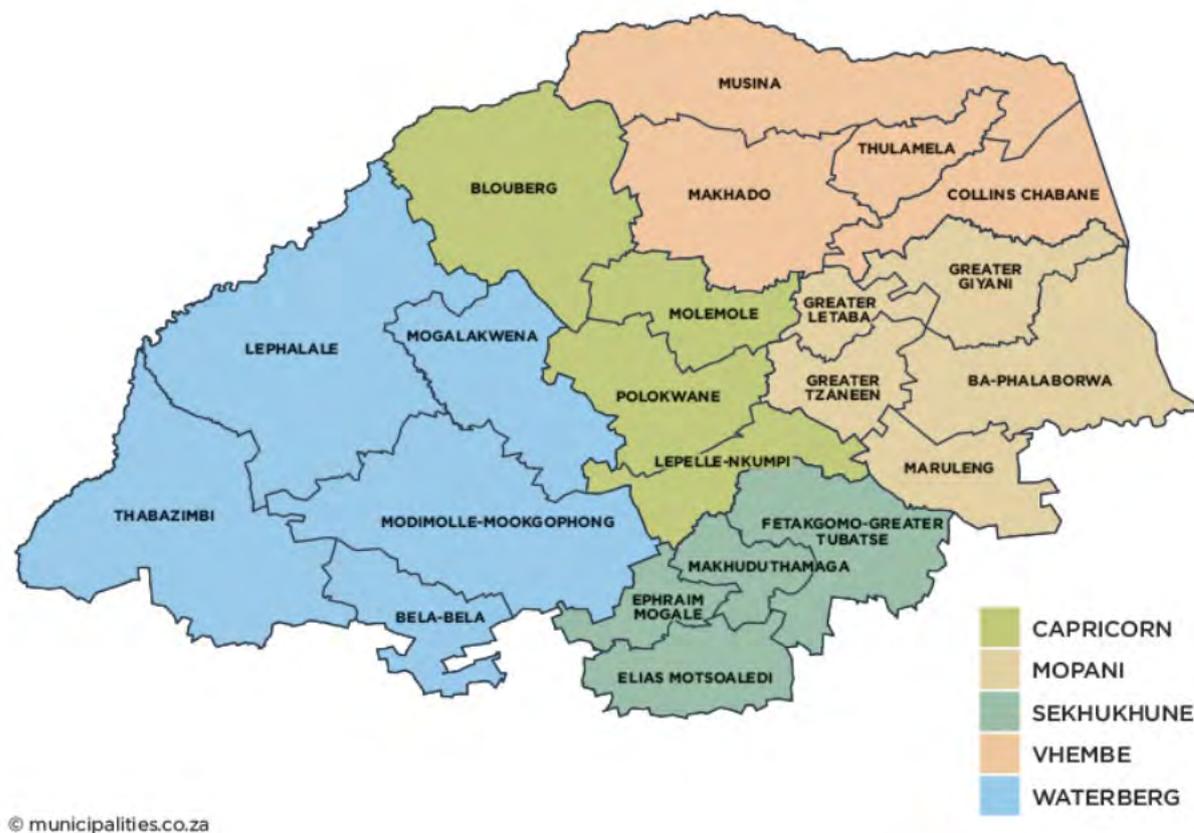
[237] There are five district municipalities in Limpopo, namely Capricorn, Mopani, Sekhukhune, Vhembe and Waterberg. The municipalities in Limpopo are depicted on the map below.¹⁶³

¹⁶⁰ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

¹⁶¹ South Africa Gateway 'The economies of South Africa's nine provinces' (last updated 17 June 2021) available at <https://southafrica-info.com/infographics/animation-economic-sectors-of-south-africas-provinces/>.

¹⁶² Ibid.

¹⁶³ Maps of municipalities by province are available at <https://municipalities.co.za/>.



The history of the Limpopo Division

Pre-constitutional era:

[238] The Limpopo province previously fell within the Transvaal province in the former South Africa. The TPD had jurisdiction over much of Limpopo.¹⁶⁴

The Limpopo province included the former self-governing areas of Gazankulu and Lebowa as well as the former ‘independent’ republic of Venda. The former republic of Venda established the Venda Supreme Court with its seat at Thohoyandou and with jurisdiction over the republic of Venda.¹⁶⁵

¹⁶⁴ Schedule 1 of the Supreme Court Act.

¹⁶⁵ Sections 42 and 43 of the Republic of Venda Constitution Act, 1979.

Constitutional era:

[239] With the enactment of the interim Constitution, the Venda Supreme Court became a High Court;¹⁶⁶ retaining its seat and area of jurisdiction.¹⁶⁷ The rest of the Limpopo province continued to fall under the jurisdiction of the TPD, which was later renamed the North Gauteng High Court, Pretoria.¹⁶⁸ The Venda Supreme Court was renamed the Limpopo High Court, Thohoyandou.¹⁶⁹

[240] With the establishment of a unitary High Court, the Limpopo Division of the High Court was established as a division of the High Court with its main seat at Polokwane.¹⁷⁰ The court at Thohoyandou became a local seat of the division.¹⁷¹ The Gauteng Division initially functioned as the Limpopo Division.¹⁷²

Rationalisation:

¹⁶⁶ Interim Constitution.

¹⁶⁷ Section 4(2) of the Interim Rationalisation Act.

¹⁶⁸ Ibid.

¹⁶⁹ Section 1 of the Renaming of High Courts Act.

¹⁷⁰ Section 6(1)(c) of the Superior Courts Act.

¹⁷¹ Section 50(1) of the Superior Courts Act.

¹⁷² Section 50(2) of the Superior Courts Act.

[241] The magisterial districts of the Limpopo province have been rationalised to accord with the municipal boundaries. There are currently 22 magisterial districts within the Limpopo province.¹⁷³

[242] In 2016, the Minister caused a notice to be published in the government gazette determining the areas of jurisdiction of certain divisions of the High Court, including the Limpopo Division.¹⁷⁴ The Minister established an additional local seat of the division at Lephalale, and determined the areas of jurisdiction of the main and local seats of the Limpopo Division.¹⁷⁵

[243] The effect of the notice is that the Limpopo Division functions as any other division of the High Court and the magisterial districts in the Limpopo province have been excised from the jurisdiction of the Gauteng Division.

Status quo of the Limpopo Division

¹⁷³ The magisterial districts are: Polokwane, Blouberg, Molemole, Lepele-Nkumpi, Ba-Phalaborwa, Tzaneem, Tubatse, Letaba, Makhuduthamaga, Elias Motsoaledi, Mookgopong, Mogalakwena, Giyani, Malamulele, Thulamela, Mutale, Musina, Makhado, Lephalale, Thabazimbi, Bela-Bela, Modimolle.

¹⁷⁴ GN30 published in GG 39601 dated 15 January 2016.

¹⁷⁵ Magisterial districts within the areas of jurisdiction of the main seat in Polokwane: Phalaborwa (and Namakgale and Lulekani sub-districts), Blouberg, Elias Motsoaledi (and Moutse sub-district), Letaba, Lepelle-Nkumpi, Makhuduthamaga (and Sekhukhune sub-district), Mogalakwena (and Mokopane sub-district), Molemole, Mookgophong, Polokwane (and Mankweng and Seshego sub-districts), Tubatse and Tzaneen (and Lenyenye and Tzaneen sub-districts).

Magisterial districts within the areas of jurisdiction of the local seat at Lephalale: Bela-Bela, Lephalale (and Phalala sub-district), Modimolle, and Thabazimbi (and Northarm sub-district).

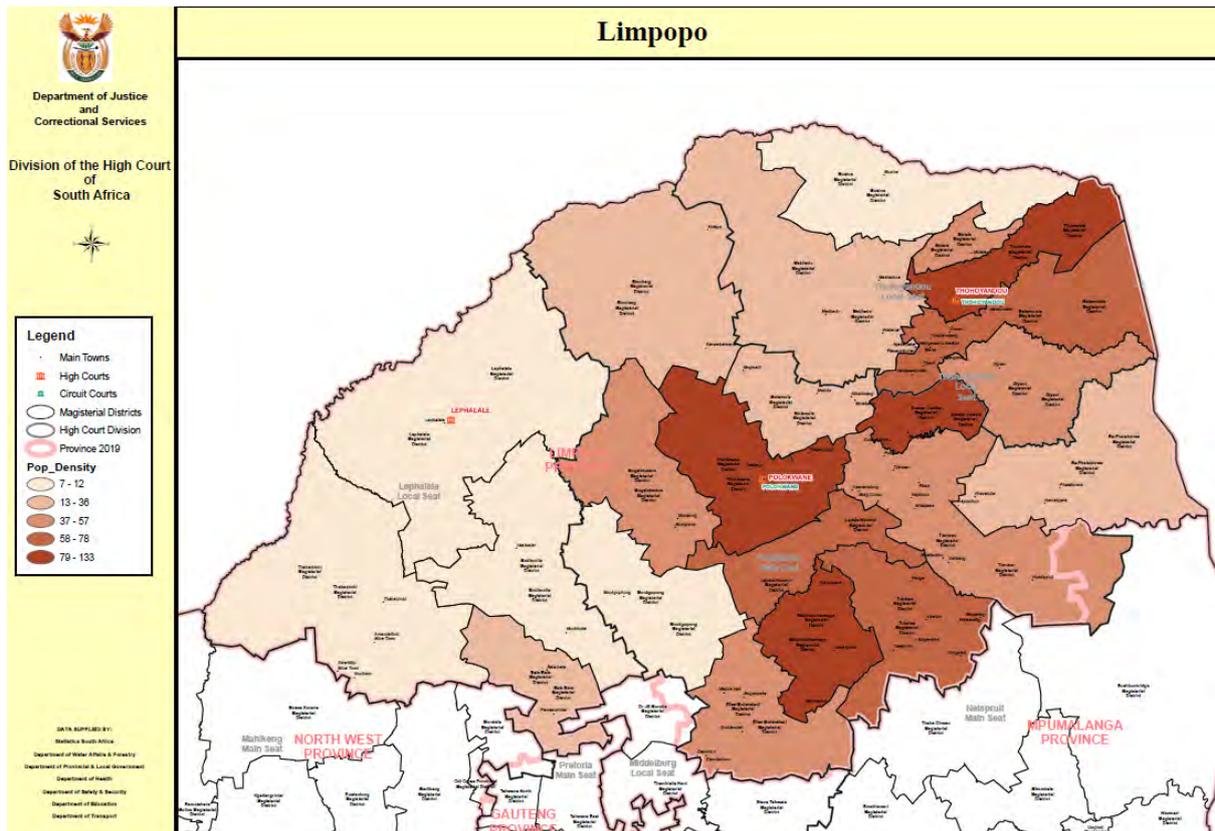
Magisterial districts within the areas of jurisdiction of the local seat at Thohoyandou: Giyani, Makhado (and Dzanani, Hlanganani, Tshilwavhusiku and Tshitale sub-districts), Malamulele (and Tiyani and Vuwani sub-districts), Mutale, Musina and Thulamela.

[244] The Limpopo Division has its main seat in Polokwane and two local seats at Thohoyandou and Lephalale.

[245] The main seat at Polokwane has exclusive jurisdiction over Phalaborwa, Blouberg, Elias Motsoaledi, Letaba, Lepelle-Nkumpi, Makhuduthamaga, Mogalakwena, Molemole, Mookgophong, Polokwane, Tubatse and Tzaneen. The local seat at Thohoyandou has jurisdiction over Giyani, Makhado, Malamulele, Mutale, Musina and Thulamela. The local seat Lephalale has jurisdiction over Bela-Bela, Lephalale, Modimolle, and Thabazimbi. The main seat has concurrent jurisdiction with the local seats over the magisterial districts falling within their areas of jurisdiction. However, the local seat at Lephalale is not operational.

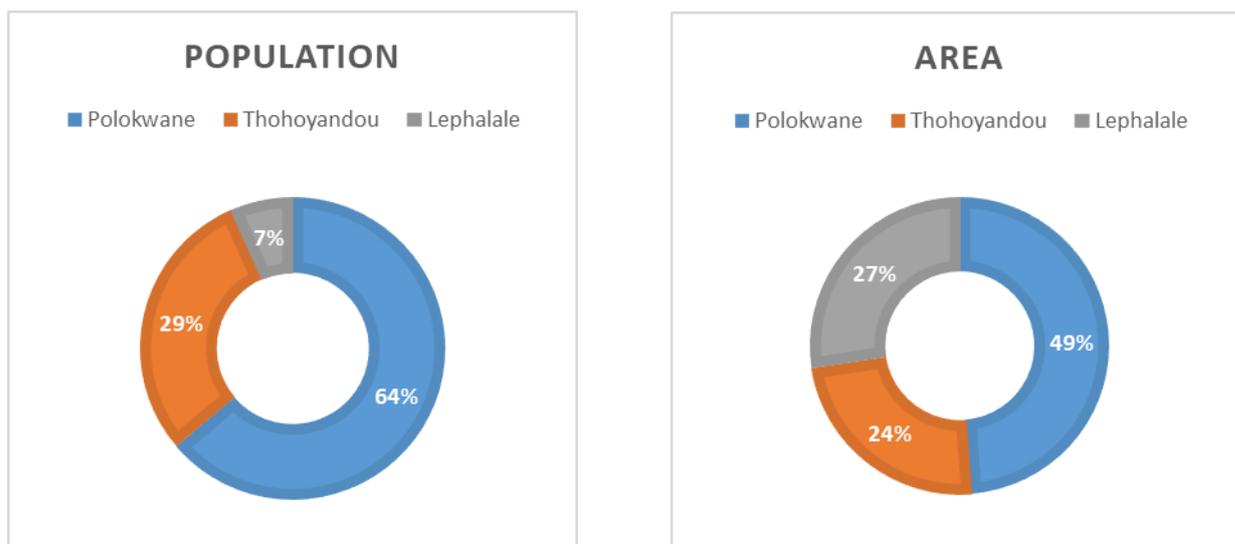
[246] There are a total of nine judges on the establishment in the Limpopo Division. The Polokwane main seat has six judges, while the Thohoyandou local seat has three judges. There are three courts served on circuit by the Limpopo Division at Lephalale, Phalaborwa and Sekhukhune.

[247] The magisterial districts over which the main seat and local seats exercise jurisdiction is depicted in the map below.



[249] The effect of the *status quo* is that:

- a. The Limpopo Division, Polokwane has exclusive jurisdiction over approximately 61 846 km² (49% of the area of Limpopo), the area of jurisdiction of the Limpopo Local Division, Thohoyandou covers approximately 30 153 km² (24% of the area of Limpopo) and the area of jurisdiction of the local seat at Lephalale would cover approximately 34 763 km² (27% of the area of Limpopo),
- b. The Limpopo Division, Polokwane has exclusive jurisdiction over 3 406 456 people (64% of the population of Limpopo) and the Limpopo Local Division, Thohoyandou serves approximately 1 575 570 people (29% of the population of Limpopo) and the local seat at Lephalale would serve approximately 356 378 (7% of the population of Limpopo).



Anomalies

[250] The local seat at Lephalale has never functioned as a fully-fledged local division of the High Court. The explanation provided for this is that there is insufficient court infrastructure. Lephalale has operated as a circuit court served by the main seat at Polokwane.

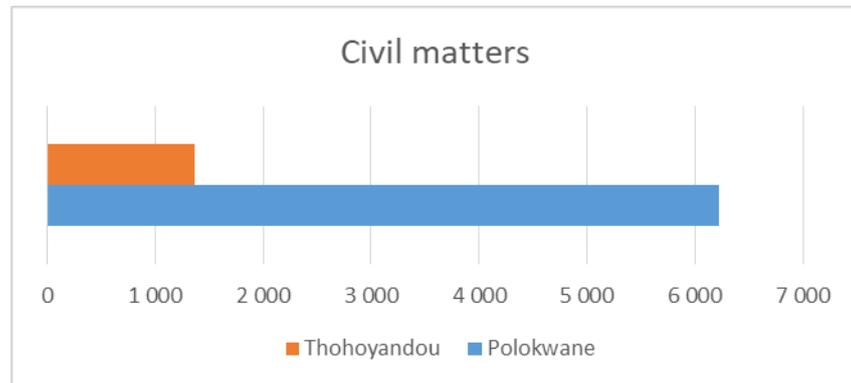
The Caseload of the Limpopo Division

[251] The Judiciary Annual Report 2020/2021¹⁷⁶ sets out the number of criminal and civil matters heard in the Limpopo Division from 1 April 2020 to 31 March 2021, and the percentage of matters finalised during that period.

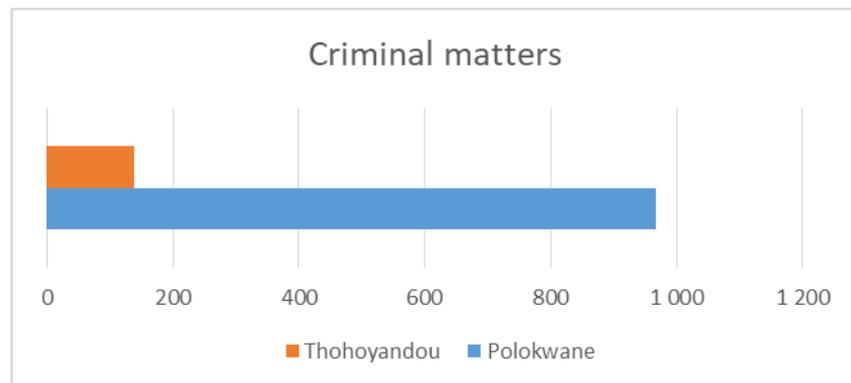
[252] During the relevant period:

¹⁷⁶ Available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.

- a. The Limpopo Division, Polokwane heard a total of 6 228 civil matters (82% of civil matters heard by the division); of which it finalised 89%. The Limpopo Local Division, Thohoyandou heard 1 367 civil matters (18% of civil matters heard by the division); of which it finalised 93%.



- b. The Limpopo Division, Polokwane heard a total of 967 criminal matters (88% of criminal matters heard by the division); of which it finalised 92%. The Limpopo Local Division, Thohoyandou heard 138 criminal matters (12% of criminal matters heard by the division); of which it finalised 47%.



- c. Collectively, the courts heard 7 595 civil matters (9% of all civil matters heard in the High Court) and 1105 criminal matters (10% of all criminal matters heard in the High Court).



Submissions received from the Department

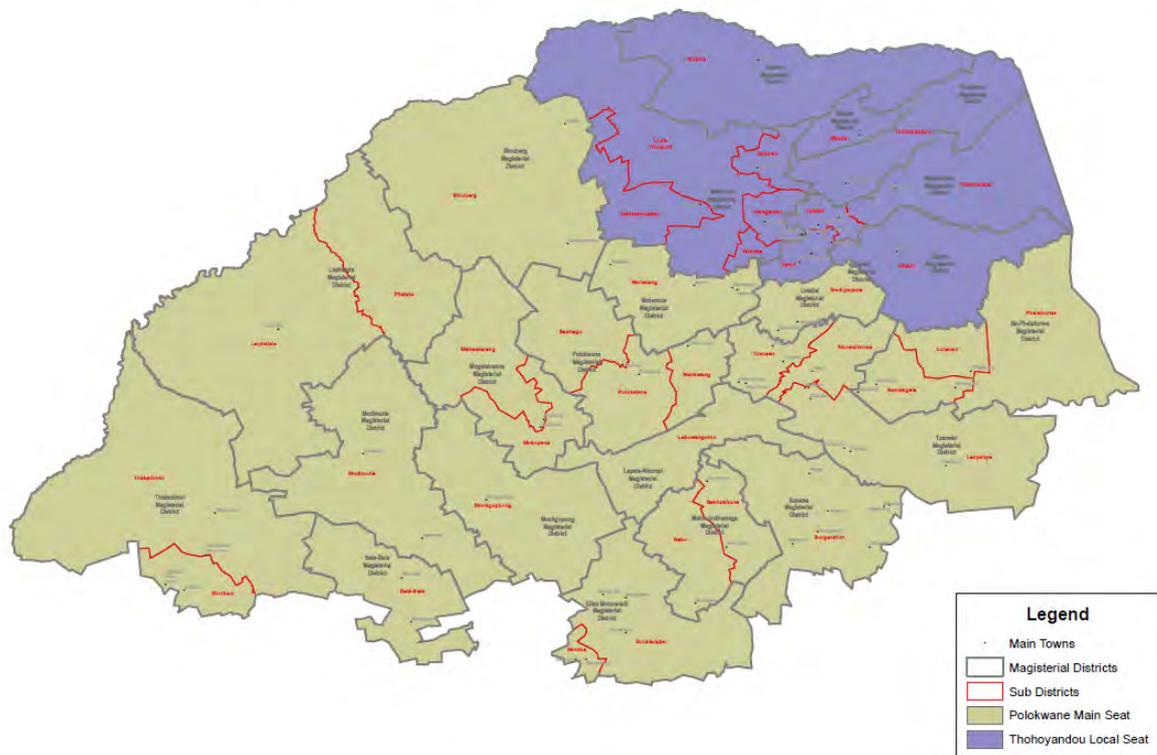
[253] The Department proposed that the local seat at Lephalale be disestablished and that the magisterial districts currently listed as falling under the jurisdiction of the Limpopo Local Division, Lephalale instead be served by the Limpopo Division, Polokwane.

[254] In terms of the Department's proposal:

- a. The Limpopo Division, Polokwane is to exercise jurisdiction over the following magisterial districts: Phalaborwa, Blouberg, Elias Motsoaledi, Letaba, Lepelle-Nkumpi, Makhuduthamaga, Mogalakwena, Molemole, Mookgophong, Polokwane, Tubatse and Tzaneen, Bela-Bela, Lephalale, Modimolle, and Thabazimbi.
- b. The Limpopo Local Division, Thohoyandou is to exercise jurisdiction over the following magisterial districts: Giyani, Makhado (and Dzanani, Hlanganani, Tshilwavhusiku and Tshitale sub-districts), Malamulele (and Tiyani and Vuwani sub-districts), Mutale, Musina and Thulamela.

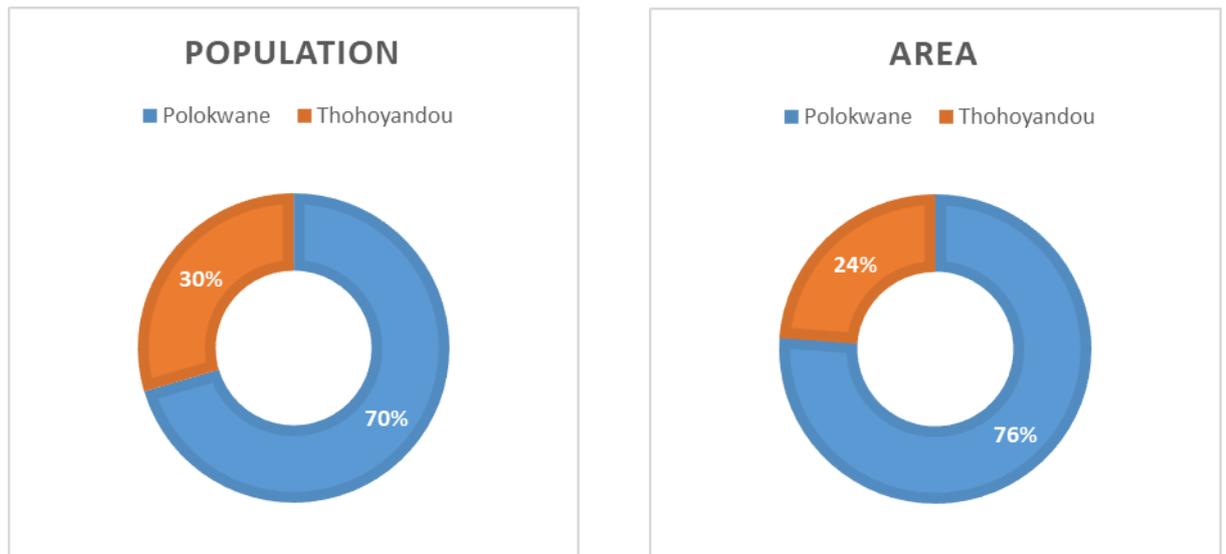
[255] The Department's proposal is depicted in the map below.

The proposed area under the jurisdiction of the Limpopo Division of the High Court of South Africa



[256] The effect of the proposal would be that:

- a. The Limpopo Division, Polokwane would have exclusive jurisdiction over approximately 96 609 km² (76% of the area of Limpopo) and the Limpopo Local Division, Thohoyandou would exercise jurisdiction over approximately 30 153 km² (24% of the area of Limpopo).
- b. The Limpopo Division, Polokwane would have exclusive jurisdiction over approximately 3 762 834 people (70% of the population of Limpopo) and the Limpopo Local Division, Thohoyandou would serve approximately 1 575 570 people (30% of the population of Limpopo).



Submissions received from the Judge President

[257] On 29 July 2022, the Committee met with Judge President Makgoba of the Limpopo Division together with the Judges President of the Mpumalanga and North West Divisions and the Acting Judge President of the Gauteng Division.

[258] Judge President Makgoba explained that Lephalale was not able to operate as a local seat because there is insufficient court infrastructure in Lephalale. The Judge President supported the Department's proposal to disestablish the local seat at Lephalale and suggested the area continue to be served on circuit.

[259] The Judge President also emphasised that there is a shortage of judges on the establishment in the division, which has a negative impact on the ability of the division to deal with its caseload as well as on the establishment and holding of circuit courts.

We have noted the submission of the Judge President and it is a matter that will be considered in the second phase of our task.¹⁷⁷

Submissions received from the NPA

[260] The NPA supports the proposal of the Department to disestablish the local seat at Lephalale. The NPA suggests that there is a need for more courts served on circuit by the division. The Committee notes that this is a matter within the discretion of the Judge President of the division.

Submissions received from Legal Aid SA

[261] Legal Aid SA supports the proposal of the Department that the local seat at Lephalale be disestablished.

The Committee's Preliminary Recommendations

[262] The Committee accepts that the local seat at Lephalale is intended to serve a small population and that there would likely be insufficient work for a local seat in Lephalale.

[263] Having weighed up all the relevant considerations and having heard the Judge President and other stakeholders, the Committee makes the following preliminary recommendations:

¹⁷⁷ A formal written submission from the Limpopo division is annexure "5" in the appendices chapter.

- a. The main seat of the Limpopo Division of the High Court, Polokwane remains at Polokwane.
- b. The Limpopo Division of the High Court, Polokwane will exercise jurisdiction over the following magisterial districts: Phalaborwa, Blouberg, Elias Motsoaledi, Letaba, Lepelle-Nkumpi, Makhuduthamaga, Mogalakwena, Molemole, Mookgophong, Polokwane, Tubatse and Tzaneen, Bela-Bela, Lephalale, Modimolle, and Thabazimbi.
- c. The Limpopo Local Division of the High Court, Thohoyandou will exercise jurisdiction over the following magisterial districts: Giyani, Makhado (and Dzanani, Hlanganani, Tshilwavhusiku and Tshitale sub-districts), Malamulele (and Tiyani and Vuwani sub-districts), Mutale, Musina and Thulamela.
- d. The Limpopo Local Division of the High Court, Lephalale be disestablished and that the magisterial districts falling within its area of jurisdiction be included within the area of jurisdiction of the main seat.

MPUMALANGA DIVISION OF THE HIGH COURT

Mpumalanga Province

[264] Mpumalanga has a surface area of 76 495 km², which covers approximately 6% of the total surface area of South Africa. Mpumalanga has a population of

approximately 4 743 583 people, which means that 8% of people in South Africa live in Mpumalanga.¹⁷⁸

[265] Mpumalanga is among the smaller economies in South Africa.¹⁷⁹ Mining (23%) is the largest industry in Mpumalanga, followed by trade, catering and accommodation (15%), and manufacturing (14%).¹⁸⁰

[266] There are three district municipalities in Mpumalanga, namely Ehlanzeni, Gert Sibande, Nkangala. The municipalities in Mpumalanga are depicted on the map below.¹⁸¹

¹⁷⁸ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>

¹⁷⁹ South Africa Gateway ‘The economies of South Africa’s nine provinces’ (last updated 17 June 2021) available at <https://southafrica-info.com/infographics/animation-economic-sectors-of-south-africas-provinces/>.

¹⁸⁰ Ibid.

¹⁸¹ Maps of municipalities by province are available at <https://municipalities.co.za/>.



The history of the Mpumalanga Division

Pre-constitutional era:

[267] Mpumalanga province previously fell within the Transvaal province in the former South Africa. The Mpumalanga province included the former self-governing areas of KwaNdebele and KaNgwane. The TPD had jurisdiction over the entire province of Mpumalanga.¹⁸²

¹⁸² Schedule 1 of the Supreme Court Act.

Constitutional era:

[268] With the enactment of the interim Constitution, the TPD became a High Court;¹⁸³ retaining its seat and area of jurisdiction.¹⁸⁴ Mpumalanga continued to fall under the jurisdiction of the TPD, which was later renamed the North Gauteng High Court, Pretoria.¹⁸⁵

[269] With the establishment of the unitary High Court, the Mpumalanga Division of the High Court was established as a division of the High Court with its main seat at Mbombela.¹⁸⁶ The Gauteng Division initially functioned as the Mpumalanga Division.¹⁸⁷

Rationalisation:

[270] The magisterial districts of the Mpumalanga province have been rationalised to accord with the municipal boundaries. There are currently 18 magisterial districts within Mpumalanga province.¹⁸⁸

¹⁸³ Interim Constitution.

¹⁸⁴ Section 4(2) of the Interim Rationalisation Act.

¹⁸⁵ Ibid.

¹⁸⁶ Section 6(1)(c) of the Superior Courts Act.

¹⁸⁷ Section 50(2) of the Superior Courts Act.

¹⁸⁸ The magisterial districts are: Bushbuckridge, Nkomazi, Umjindi, Mbombela, Chief Albert Luthuli, eMakhazeni, Thaba Chweu, Steve Tshwete, Thembisile Hani, Emalahleni, Govan Mbeki, Msukaligwa, Mkhondo, Dr Pixley Ka Isaka Seme, Lekwa, Dipaleseng, Victor Khanye and Dr JS Moroka.

[271] In 2019, the Minister caused a notice to be published in the government gazette establishing a new local seat of the Mpumalanga Division at Middleburg.¹⁸⁹ The areas of jurisdiction of the main and local seats were also determined.¹⁹⁰

[272] The effect of the notice was that the Mpumalanga Division functioned as any other division of the High Court and the magisterial districts in the Mpumalanga province were excised from the jurisdiction of the Gauteng Division.

Status quo of the Mpumalanga Division

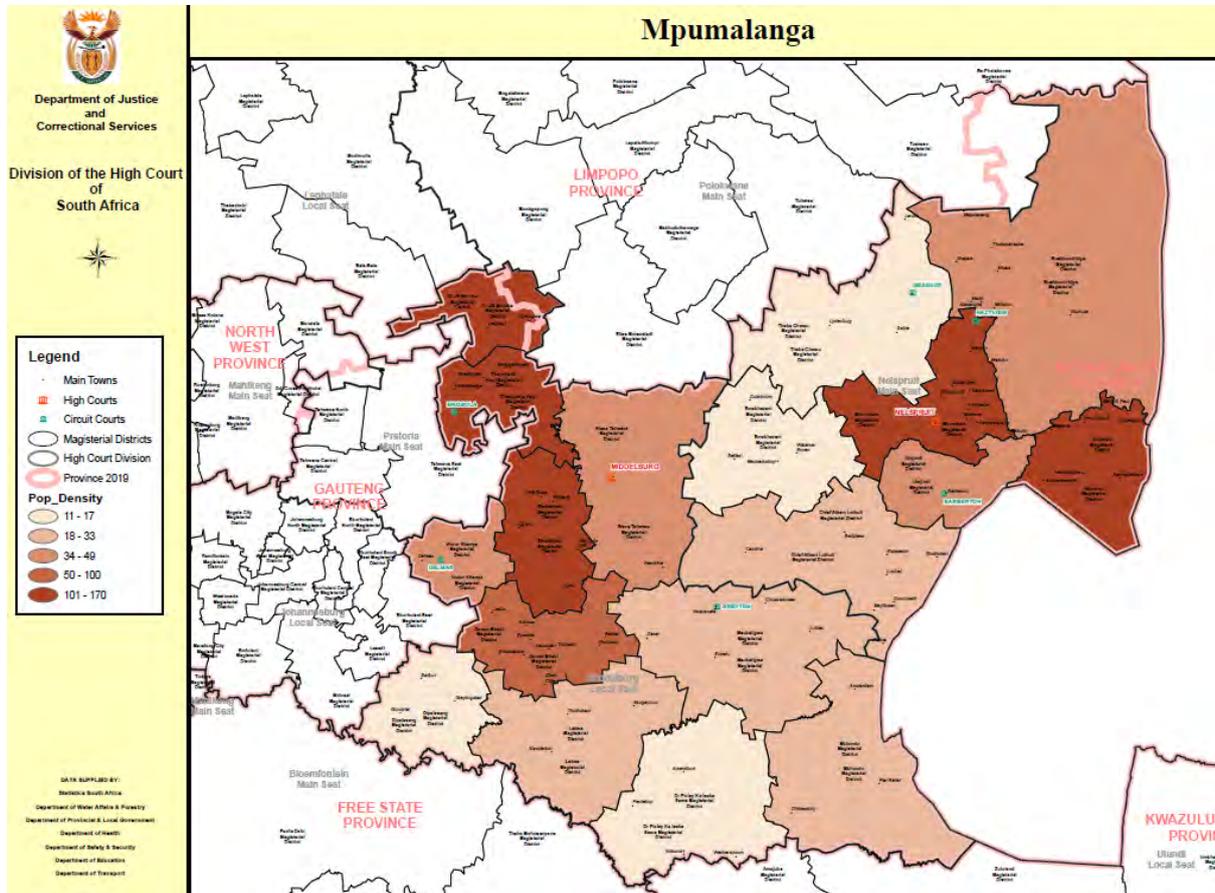
[273] The Mpumalanga Division now has its main seat in Mbombela and a local seat at Middelburg. The main seat at Mbombela has exclusive jurisdiction over Bushbuckridge, Chief Albert Luthuli, Emgwenya sub-district of eMakhazeni district incorporating the adjacent farms, Mbombela, Nkomazi, Thaba Chweu and Umjindi. The local seat at Middleburg has jurisdiction over Dipaleseng, Dr JS Moroka, eMakhazeni (excluding a portion of the Emgwenya sub-district), eMalahleni, Dr Pixley

¹⁸⁹ GN615 published in GG 42420 dated 26 April 2019

¹⁹⁰ The following magisterial districts fall under the jurisdiction of the main seat at Mbombela: Bushbuckridge (including Mhala sub-district); Chief Albert Luthuli (including Carolina sub-district); Emgwenya sub-district of eMakhazeni district (consisting of farms listed in a footnote); Mbombela (including White River and Nsikazi sub-districts); Nkomazi (including Komatipoort sub-district); Thaba Chweu (including Graskop and Sabie sub-districts) and Umjindi.

The following magisterial districts fall under the jurisdiction of the local seat at Middelburg: Dipaleseng; Dr JS Moroka (including Mbibana sub-district); eMakhazeni (excluding a portion of the Emgwenya sub-district); eMalahleni (including Ga-Nala and Vosman sub-districts); Dr Pixley Ka Isaka Seme (including Amersfoort and Wakkerstroom sub-districts); Govan Mbeki (including Bethal and Secunda sub-districts); Lekwa; Mkhondo (including Amsterdam sub-district); Msukaligwa (including Breyten sub-district), Steve Tshwete (including Hendrina sub-district) and Thembisile Hani (including KwaMhlanga sub-district) and Victor Khanye.

[276] The map below depicts the population density of the magisterial districts in the Mpumalanga province.



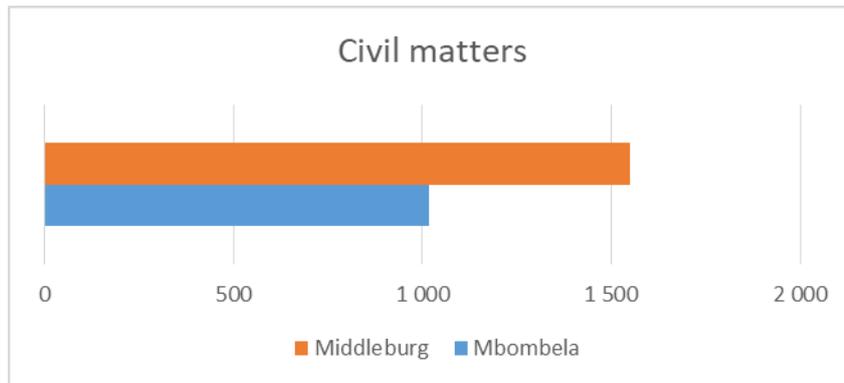
The caseload of the Mpumalanga Division

[277] The Judiciary Annual Report 2020/2021¹⁹¹ sets out the number of criminal and civil matters heard in the Mpumalanga Division from 1 April 2020 to 31 March 2021, and the percentage of matters finalised during that period.

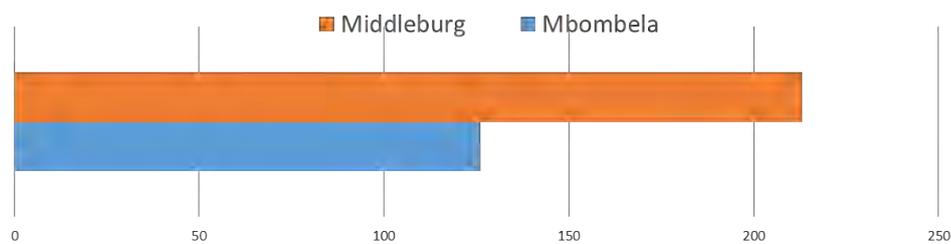
[278] During the relevant period:

¹⁹¹ Available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.

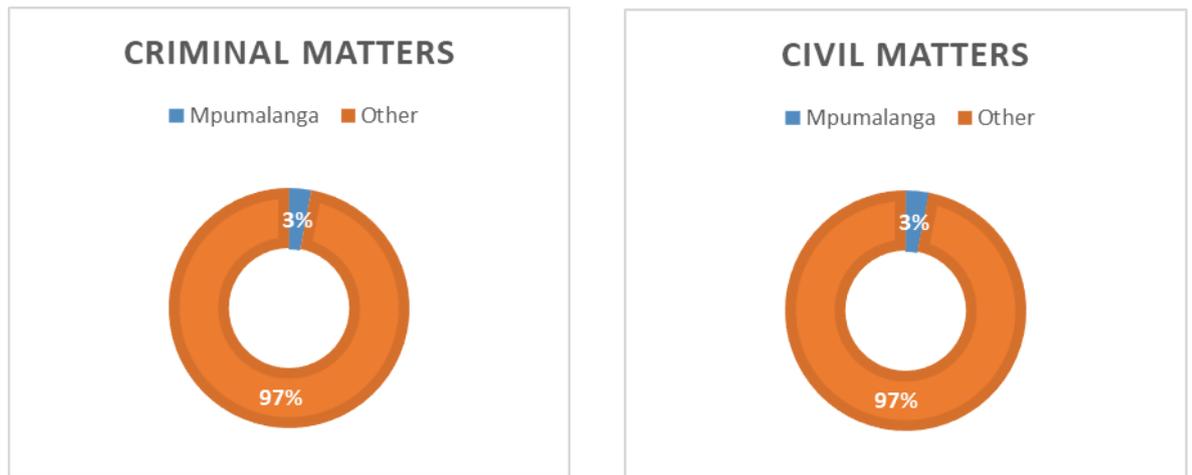
- a. The Mpumalanga Division, Mbombela heard a total of 1 019 civil matters (40% of civil matters heard by the division); of which it finalised 90%. The Mpumalanga Local Division, Middelburg heard 1 549 civil matters (60% of civil matters heard by the division); of which it finalised 91%.



- b. The Mpumalanga Division, Mbombela heard a total of 126 criminal matters (37% of criminal matters heard by the division); of which it finalised 70%. The Mpumalanga Local Division, Middelburg heard 213 criminal matters (63% of criminal matters heard by the division); of which it finalised 79%.



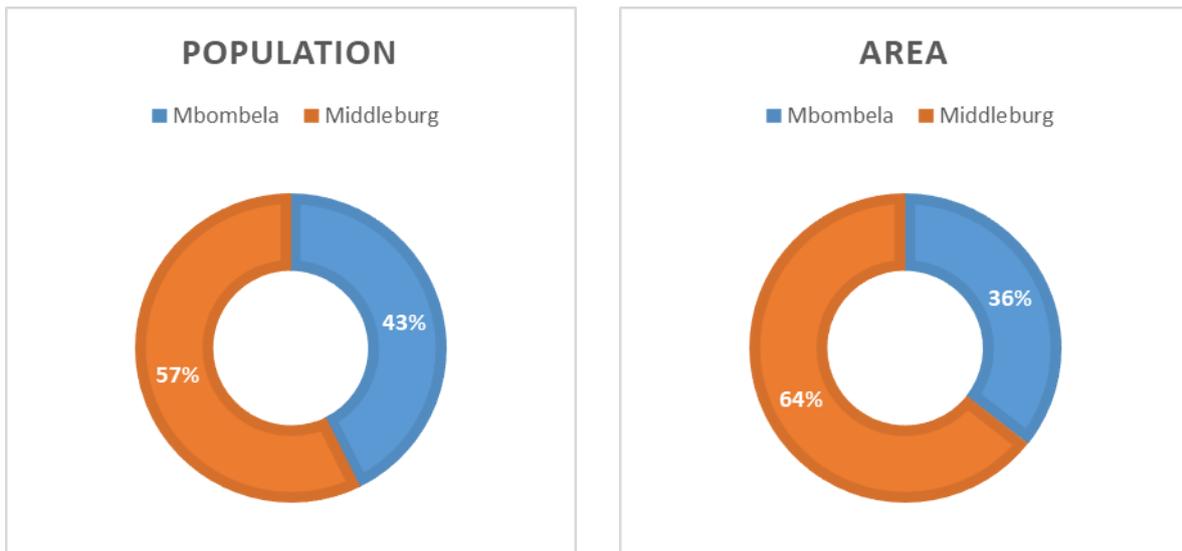
- c. Collectively, the courts heard 2 568 civil matters (3% of all civil matters heard in the High Court) and 338 criminal matters (3% of all criminal matters heard in the High Court).



Submissions received from the Department

[279] The Department proposed that the *status quo* be maintained. The effect of the proposal would be that:

- a. The Mpumalanga Division, Mbombela would have exclusive jurisdiction over approximately 35 765 km² (36% of the area of Mpumalanga) and the Mpumalanga Local Division, Middleburg exercise jurisdiction over approximately 64 730 km² (64% of the area of Mpumalanga).
- b. The Mpumalanga Division, Mbombela would have exclusive jurisdiction over approximately 1 917 389 people (43% of the population of Mpumalanga) and the Mpumalanga Local Division, Middleburg would serve approximately 2 570 534 people (57% of the population of Limpopo).



Submissions received from the Judge President

[280] On 29 July 2022, the Committee met with Judge President Legodi and Deputy Judge President Mphahlele of the Mpumalanga Division together with the Judges President of the Mpumalanga and North West Divisions and the Acting Judge President of the Gauteng Division.

[281] Judge President Legodi raised the shortage of judges on the establishment in the division. He explained that the local seat does not have enough judges for a full bench and this impacts upon its ability to hear appeals. The Committee notes this submission, which will be considered in the second phase of its task. A formal written submission from the Mpumalanga Division has not been received.

Submissions received from the NPA

[282] The NPA does not say whether it supports the submission of the Department. However, it does not submit that any changes are needed to the areas of jurisdiction of the seats of the division.

Submissions received from Legal Aid SA

[283] Legal Aid SA supports the proposal of the Department.

The Committee's Preliminary Recommendations

[284] Having weighed up all the relevant considerations and having heard the Judge President and other stakeholders, the Committee makes the following preliminary recommendations:

- a. The main seat of the Mpumalanga Division of the High Court remains at Mbombela.
- b. The Mpumalanga Division of the High Court, Mbombela exercise jurisdiction over the following magisterial districts: Bushbuckridge (including Mhala sub-district); Chief Albert Luthuli (including Carolina sub-district); Emgwenya sub-district of eMakhazeni district incorporating the adjacent farms; Mbombela (including White River and Nsikazi sub-districts); Nkomazi (including Komatipoort sub-district); Thaba Chweu (including Graskop and Sabie sub-districts) and Umjindi.
- c. The Mpumalanga Local Division of the High Court, Middleburg exercise jurisdiction over the following magisterial districts: Dipaleseng; Dr JS

Moroka (including Mbibana sub-district); eMakhazeni (excluding a portion of the Emgwenya sub-district); eMalahleni (including Ga-Nala and Vosman sub-districts); Dr Pixley Ka Isaka Seme (including Amersfoort and Wakkerstroom sub-districts); Govan Mbeki (including Bethal and Secunda sub-districts); Lekwa; Mkhondo (including Amsterdam sub-district); Msukaligwa (including Breyten sub-district), Steve Tshwete (including Hendrina sub-district) and Thembisile Hani (including KwaMhlanga sub-district) and Victor Khanye.

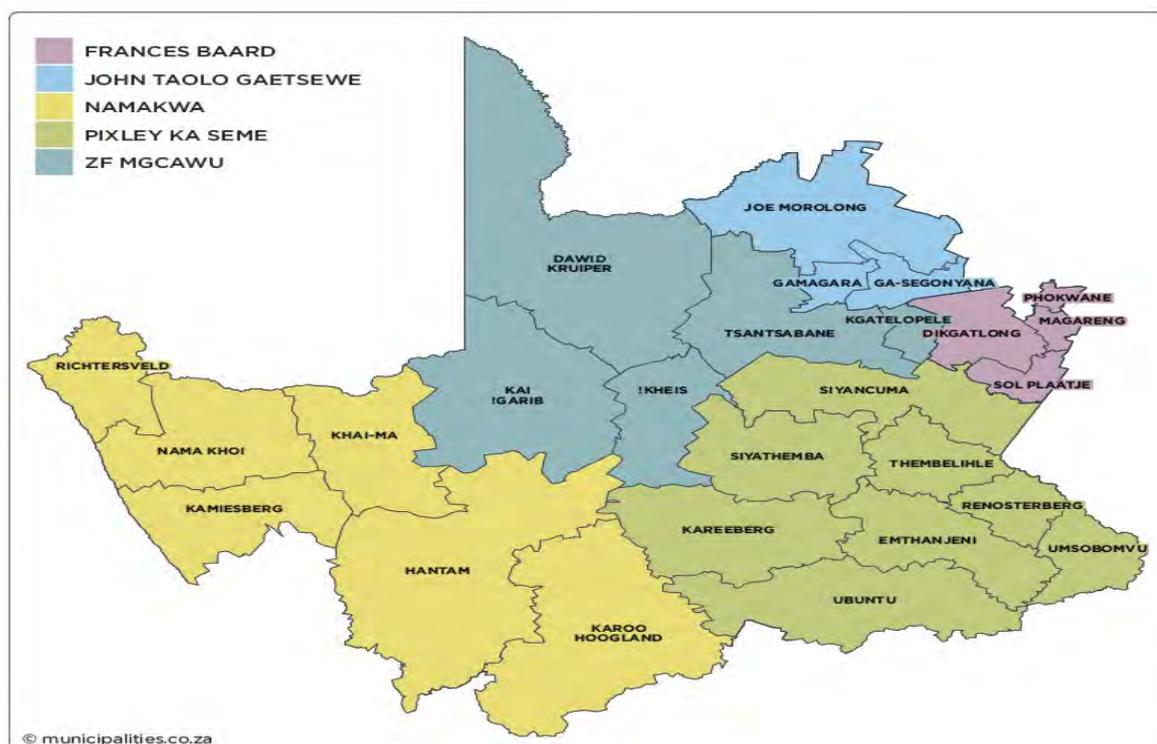
NORTHERN CAPE DIVISION OF THE HIGH COURT

The Northern Cape province

[285] The Northern Cape province is the largest province in South Africa, having a surface area covering 372 889 km², which equates to 30% of the total surface area of the country. The province has an estimated population of 1 303 047, which amounts to 2% of South Africa's total population.

[286] The province has no metropolitan municipality. There are five district municipalities, namely: Francis Baard, John Taolo Gaetsewe, Namaqualand, Pixley ka Seme and ZF Magcawu.

[287] The layout of the district and local municipalities is as follows:



[288] The province's economy is dominated by mining services (21%), followed by government services (17%), and finance (13%).¹⁹²

The history of the Northern Cape Division

Pre-constitutional era

[289] Historically, this court was known as the Supreme Court of Griqualand West. The court served as a local division of the Supreme Court of South Africa and exercised its jurisdiction subject to that of the Cape Provincial Division of the Supreme Court.

¹⁹² According to Stats SA 2020, Q4 report, accessed at:

[http://www.statssa.gov.za/publications/P0441/GDP%202020%20Q4%20\(Media%20presentation\).pdf](http://www.statssa.gov.za/publications/P0441/GDP%202020%20Q4%20(Media%20presentation).pdf) and <https://southafrica-info.com/infographics/animation-economic-sectors-of-south-africas-provinces/>

[290] The area of jurisdiction of the local division was defined by schedule 1 of the Supreme Court Act as consisting of the magisterial districts of Barkly West, Britstown, Carnarvon, De Aar, Gordonia, Hartswater, Hay, Herbert, Hopetown, Kenhardt, Kimberley, Kuruman, Philipstown, Postmasburg, Prieska, Richmond, Taung, Victoria West, Vryburg and Warrenton.

Constitutional era:

[291] The interim Constitution created the province of the Northern Cape.¹⁹³ The Northern Cape Division of the Supreme Court became a High Court.¹⁹⁴ During 2009, the court was renamed as the Northern Cape High Court, and its seat was retained at Kimberley.¹⁹⁵ A constitutional amendment, enacted in 2012, established a single High Court.¹⁹⁶ In 2013, the Northern Cape Division of the High Court was established as a division of the unitary High Court with its main seat at Kimberley.¹⁹⁷

Rationalisation

[292] With effect from August 2003, the magisterial districts of Namaqualand (Springbok), Williston, Sutherland, Calvinia, Fraserburg, Noupoot, Colesberg and Hanover were included in this court's jurisdiction.¹⁹⁸ The magisterial district of

¹⁹³ Interim Constitution, section 124 read with schedule 1, part 1.

¹⁹⁴ Schedule 6, item 4 of the Constitution.

¹⁹⁵ Renaming of High Courts Act.

¹⁹⁶ Section 5 of the Constitution 17th Amendment Act.

¹⁹⁷ Section 6(1)(c) of the Superior Courts Act.

¹⁹⁸ GN R937 published in GG25141 dated 27 June 2003.

Kudumane was added to the territorial jurisdiction of the Northern Cape Division, with effect from August 2013.¹⁹⁹

[293] The magisterial districts of the Northern Cape province have been rationalised to accord with the municipal boundaries. There are currently five magisterial districts in the province namely: Francis Baard, John Taolo Gaetsewe, Namaqualand, Pixley ka Seme and ZF Magcawu.²⁰⁰

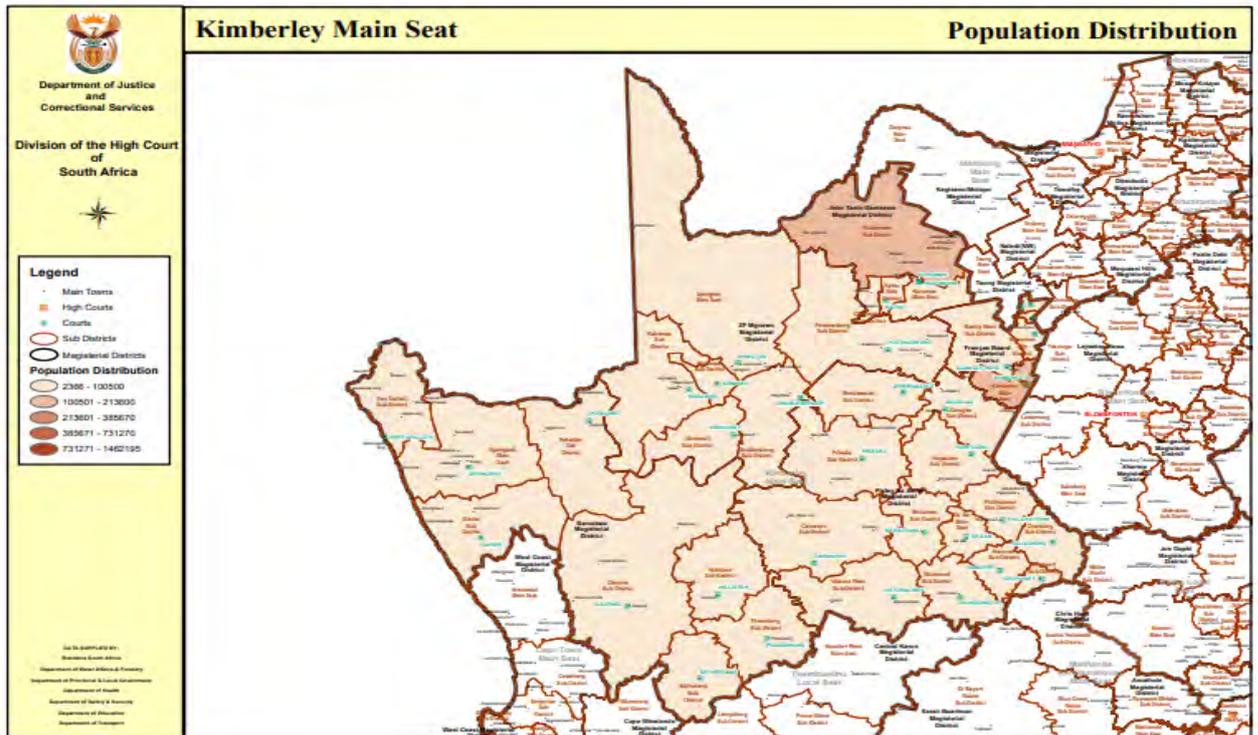
Status quo of the Northern Cape Division

[294] The Northern Cape Division of the High Court has its main seat at Kimberley. There are currently six judges in the division. There are four circuit courts namely, Kgalagadi, Karoo, Namaqualand and Gariep.

[295] The map below depicts the population density and the magisterial districts over which the main seat at Kimberley exercises jurisdiction.

¹⁹⁹ GN 547 published in GG 36718 dated 31 July 2013.

²⁰⁰ The Department sets out the maps of the rationalised magisterial districts at: <https://www.justice.gov.za/maps/maps-nc.html>



The caseload of the Northern Cape Division

[296] Civil and criminal case information for Term 3, 2022²⁰¹ has been provided as follows:

Civil matters 2022	
Opposed motions	42 matters
Unopposed motions	355 matters from 1 July 2022 to 4 August 2022
Appeals (Full Bench, Civil and Criminal) and leave to appeal applications	14 matters
Reviews	3 cases
Civil Trials	50
Criminal matters 2022	

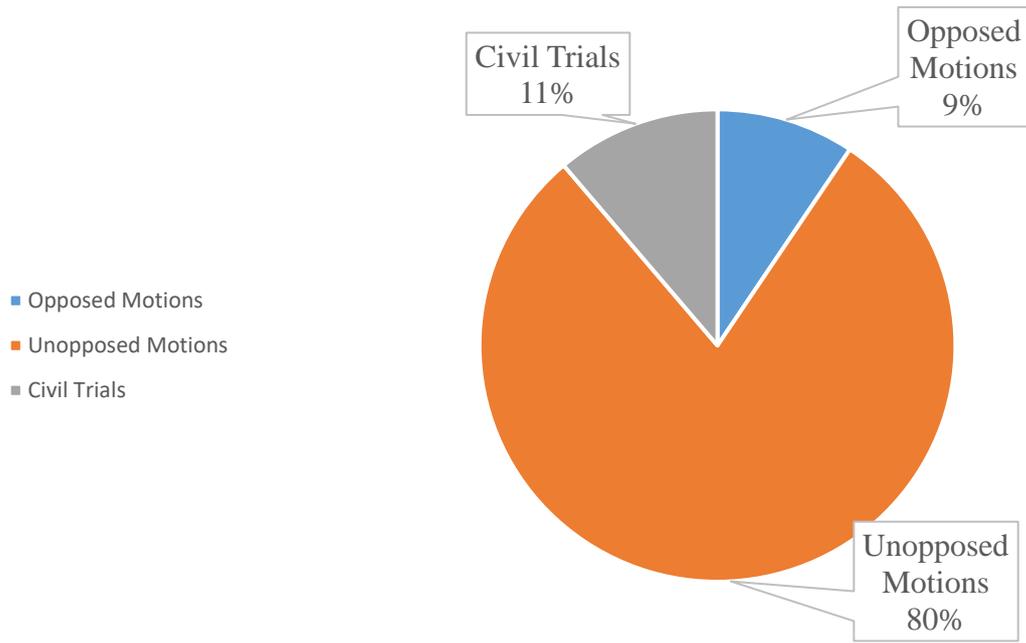
²⁰¹ Term 3 runs for the period 18 July 2022 to 18 September 2022.

Criminal trials at seat of Court (Kimberley)	13 set down for hearing
Criminal trials at circuits	11 set down for hearing

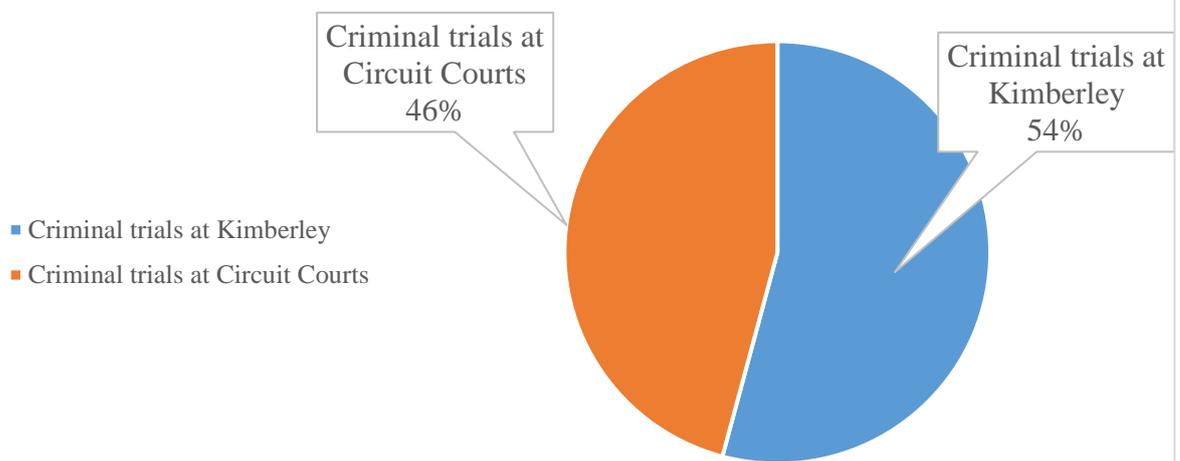
[297] The Registrar has provided statistical information relating to the schedule of sittings for the circuit courts for the period 2018-2022. There are two circuit court sittings per week, sitting from Monday to Friday. The Gariep and Kgalagadi circuit courts are reported to be carrying the bulk of circuit court cases.

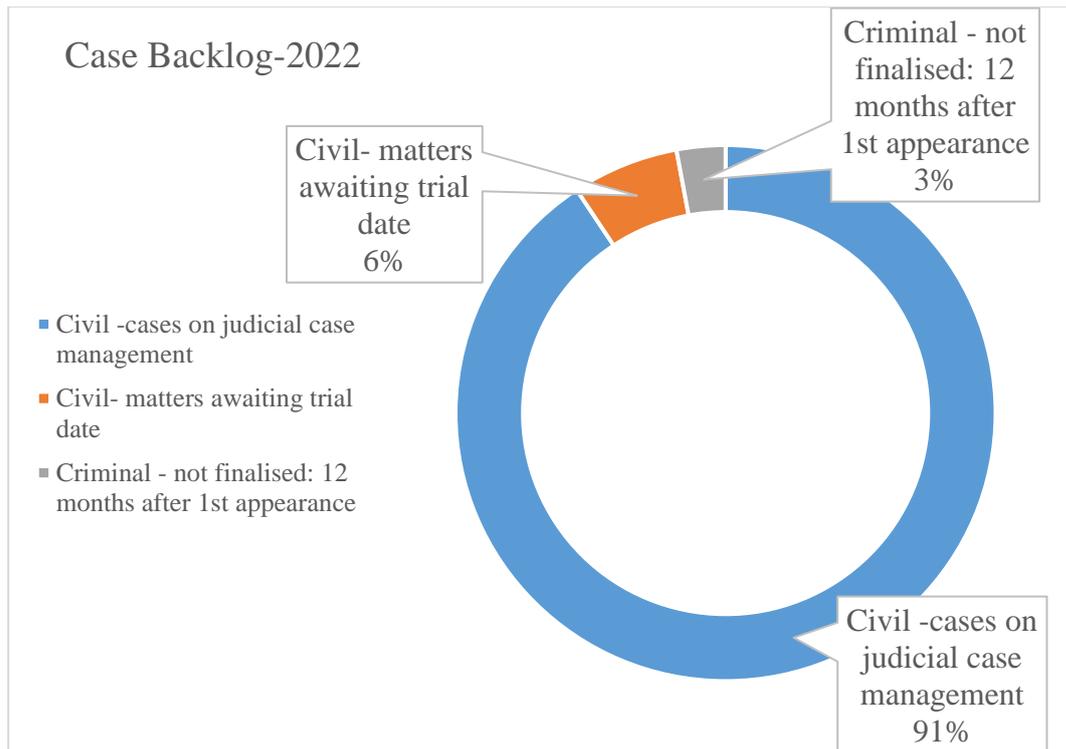
[298] There are 46 civil matters awaiting trial dates, and 653 cases on judicial case management. The backlog refers to all matters on judicial case management for longer than 12 months and all civil trials ripe for trial (certified trial ready) but not allocated a trial date. The current turn-around time for enrolment is five months, as the earliest available date is January 2023. There are 21 criminal cases that are not yet finalised. The yardstick used to measure backlog with criminal matters, is cases that have not been finalised within 12 months from date of first court appearance.

Civil cases 3rd Term, 2022



Criminal matters Term 3, 2022

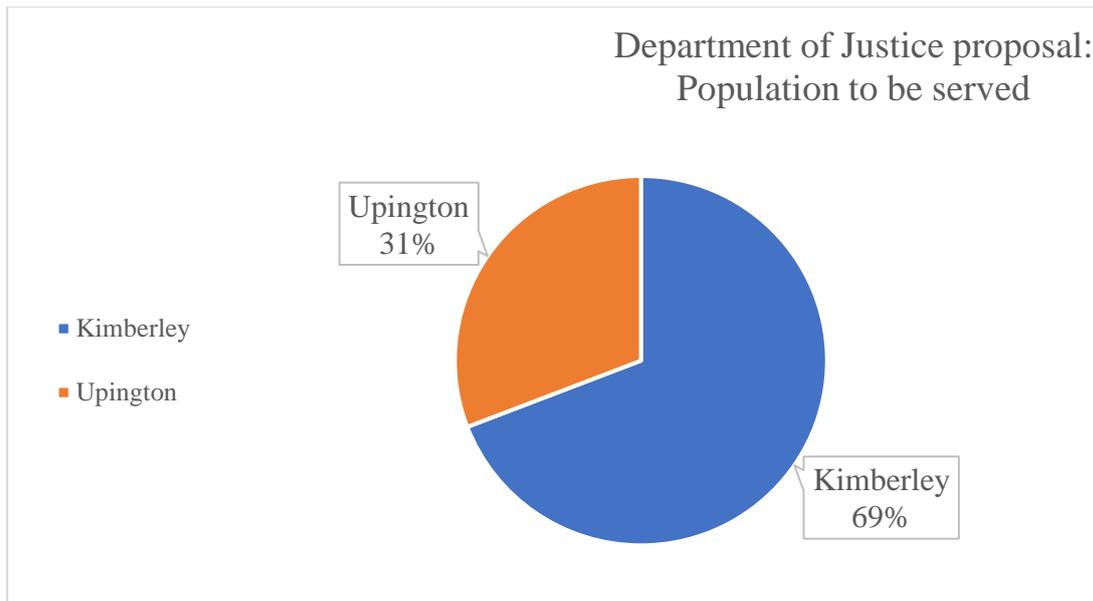




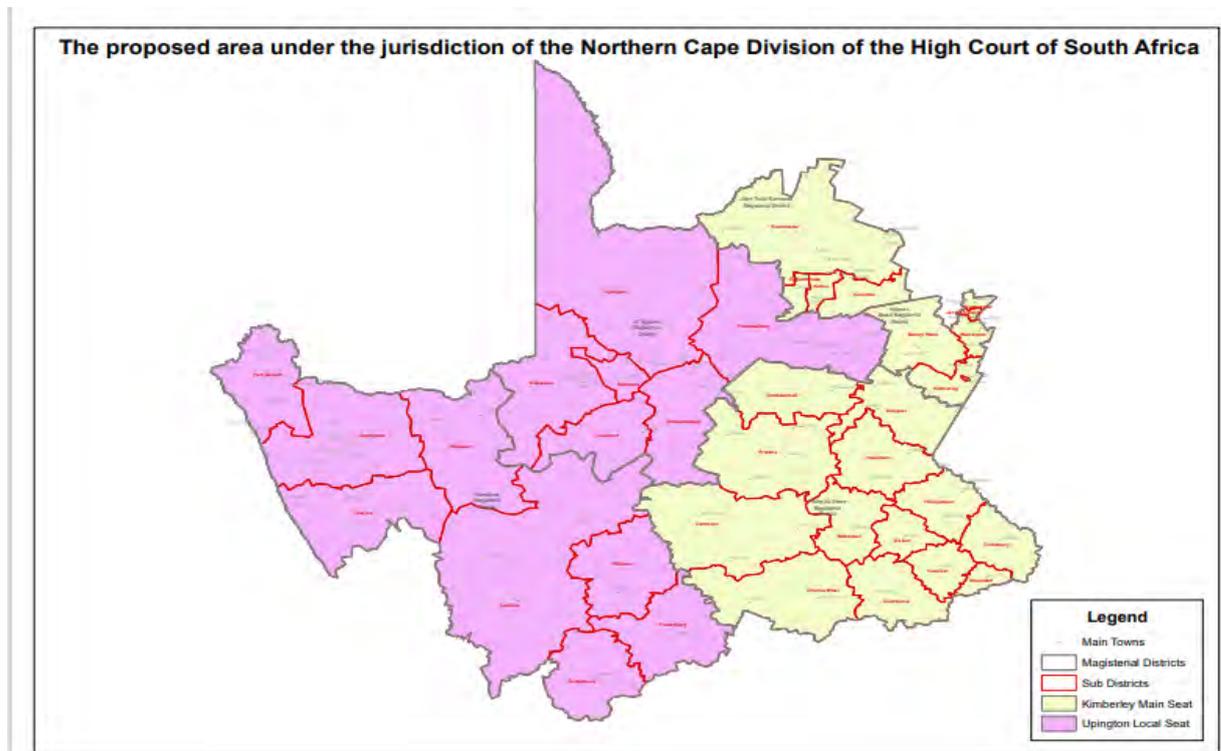
Submissions received from the Department

[299] The Department suggests that a new local seat be established at Upington. The suggestion is that the area of jurisdiction of the new local seat will consist of the ZF Magcawu and the Namaqualand magisterial districts. If the suggestion is accepted, the new local seat will serve approximately 401 860 people in the province which constitutes 30.84% of the provincial population.

[300] The Department further suggests that the Kimberley main seat will exercise jurisdiction over the Francis Baard, the Pixley ka Seme and the John Taolo Gaetsewe magisterial districts.



[301] The areas of jurisdiction is depicted as follows:



[302] In the event a new local seat is created at Upington, it will have the following impact on travelling distances:

Area	Distance to main seat at Kimberley	Distance to proposed new local seat at Upington
Calvinia	647 km (6 h 26 mins)	416 km (4 h 23 mins)
Pofadder	621 km (6 h 3 mins)	228 km (2 h 24 mins)
Port Nolloth	913 km (8 h 58 mins)	520 km (5 h 18 mins)
Springbok	776 km (7 h 24 mins)	383 km (3 h 43 mins)
Upington	410 km (5 h 19 mins)	-

Submissions received from the Judge President

[303] The Judge President of the Northern Cape Division supported the Department's proposal. The Judge President has not provided formal written submissions.

Submissions received from the NPA

[304] The NPA supports the establishment of a new local seat at Upington. It is noted that court facilities, including accommodation and other resources, will have to be provided before the local seat is created.

Submissions received from Legal Aid SA

[305] Legal Aid SA supports the Department's suggestion that a new local seat be created at Upington because this will increase access to justice. Legal Aid SA notes that it currently does not have High Court Unit practitioners to serve the new local seat and that it will have to recruit for the post.

The Committee's Preliminary Recommendations

[306] The recommendation that the Committee is about to make takes into consideration that the establishment of a local seat will reduce the long distances that people have to travel to access high court services at the main seat at Kimberley. Litigants who live in towns to the west of the province currently have to travel a significant distance to access high court services at the main seat in Kimberley. The local seat will reduce the distance and travel time for litigants. In this way, access to justice will be enhanced for people living in the Northern Cape.

[307] Having weighed up all the relevant considerations and having heard the Judge President and other stakeholders, the Committee makes the following preliminary recommendations:

- a. The main seat of the Northern Cape Division remains at Kimberley, having jurisdiction over magisterial districts of Francis Baard, Pixley ka Seme and John Taolo Gaetsewe.
- b. A new local seat should be established at Upington and shall exercise jurisdiction over the ZF Magcawu and Namaqualand magisterial districts.

NORTH WEST DIVISION OF THE HIGH COURT

North West province

[308] North West is one of the provinces of South Africa located in the north of South Africa on the Botswana border, to the west of Gauteng with which it shares a provincial border. It also shares provincial borders with Limpopo, Free State and the

Northern Cape. The province runs through an area of 104 882 km², approximately 9% of the total surface area of South Africa making it the fifth largest province in the country. The North West province is occupied by approximately 7% of the country's population, 4 122 854 people.²⁰²

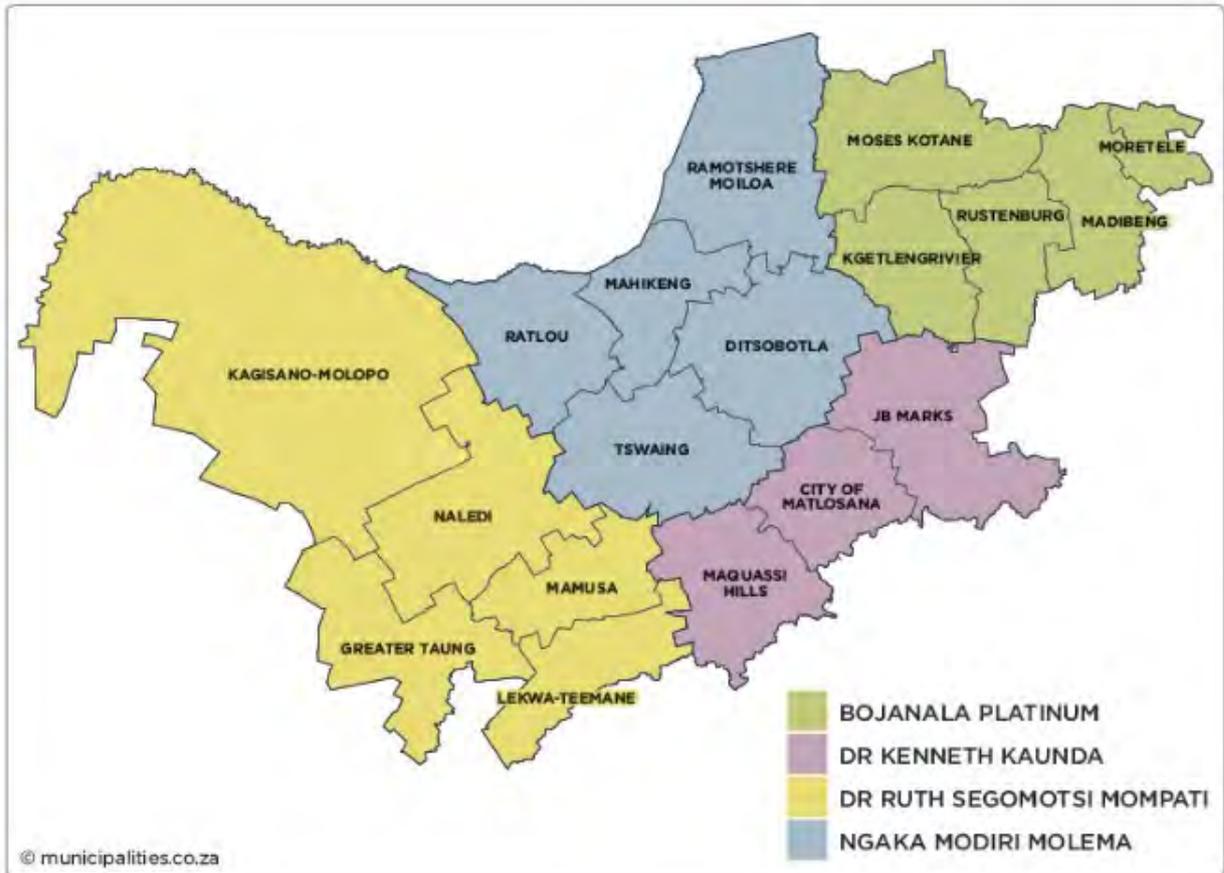
[309] Although agriculture (2.7%), trade (11.8%), government services (13.4%) and finance (13.3%) are dominant drivers behind the economy of the North West province, mining is the biggest driver behind the economy of the North West having contributed over a third of revenue for the provincial economy (33.3%).²⁰³

[310] The North West province is made up of only four district municipalities – Ngaka Modiri Molema, Dr Kenneth Kaunda, Dr Ruth Segomotsi Mompati and Bojanala Platinum.²⁰⁴

²⁰² STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

²⁰³ STATS SA 'Four facts about our provincial economies' (29 March 2019) available at <https://www.statssa.gov.za/?p=12056>.

²⁰⁴ Maps of municipalities by Province are available at <https://municipalities.co.za/>.



The History of the North West Division

Pre-Constitutional Era

[311] The Supreme Court of Bophuthatswana was established to take over the jurisdiction of the independent homeland of Bophuthatswana. The court had its main and only seat in Mahikeng exercising jurisdiction over the Bophuthatswana province, now the North West province.

Constitutional Era

[312] The coming into effect of the interim Constitution led to the Supreme Court of Bophuthatswana becoming a High Court but retained its jurisdiction over the entire

province. In 2003 some areas were excised from the area of jurisdiction of the TPD and included into the area under the jurisdiction of the Bophuthatswana court.²⁰⁵ In 2008, the Bophuthatswana court was changed to the North West High Court, Mahikeng.²⁰⁶

[313] With the establishment a unitary High Court, the North West Division of the High Court, Mahikeng was established.²⁰⁷ The division still exercises jurisdiction over the whole of North West, except Madibeng which is served by the Gauteng Division.

Rationalisation

[314] The rationalisation of magisterial districts in the North West established 18 magisterial districts.²⁰⁸

[315] The areas under the jurisdiction of the North West Division were in 2018 determined by the Minister through a notice in the government gazette. The notice

²⁰⁵ The Minister exercised the power under section 2(1) of the Interim Rationalisation Act to excise the following districts from the area of jurisdiction of the Transvaal Provincial Division and include them in the area of jurisdiction of the Bophuthatswana High Court: Vryburg, Lichtenburg, Coligny, Zeerust, Groot Marico, Swartruggens, Koster, Rustenburg, Detareyville. GN937 published in GG 25141 dated 27 June 2003.

²⁰⁶ Section 1 of the Renaming of the High Courts Act.

²⁰⁷ See section 2 of the Constitution 17th Amendment Act; Section 6 of the Superior Courts Act.

²⁰⁸ The magisterial districts are Ditsobotla, Kagisano-Molopo, Madibeng, Mahikeng, Mamusa, Moretele, Taung, Matlosana, Ventersdorp, Naledi, Tswaing, Koster, Lekwa-Teemane, Maquassi Hills, Moses Kotane, Ramotshere Moiloa, Rustenburg, Tlokwe

indicated that the North West Division has its main seat in Mahikeng and exercises jurisdiction over the province of North West except for Madibeng magisterial district.²⁰⁹

Status Quo of the North West Division

[316] The North West Division of the High Court has its main and only seat in Mahikeng. The division exercises jurisdiction over the entire province except the Madibeng magisterial district, which is served by the Gauteng Division.²¹⁰ The court has seven judges and one vacant post. Currently there are five circuit courts established under the North West Division of the High Court namely Vryburg, Klerksdorp, Mogwase, Moretele and Odi.

[317] Below is a map depicting magisterial districts under the area of jurisdiction of the North West Division.

²⁰⁹ See GN 408 published in GG 41552 dated 29 March 2018. This notice provides that the North Division has jurisdiction over the magisterial districts of Ditsobotla, Kagisano-Molopo, Mahikeng, Mamusa, Moretele, Taung, Matlosana, Ventersdorp, Naledi, Tswaing, Koster, Lekwa-Teemane, Maquassi Hills, Moses Kotane, Ramotshere Moiloa, Rustenburg, Tlokwe.

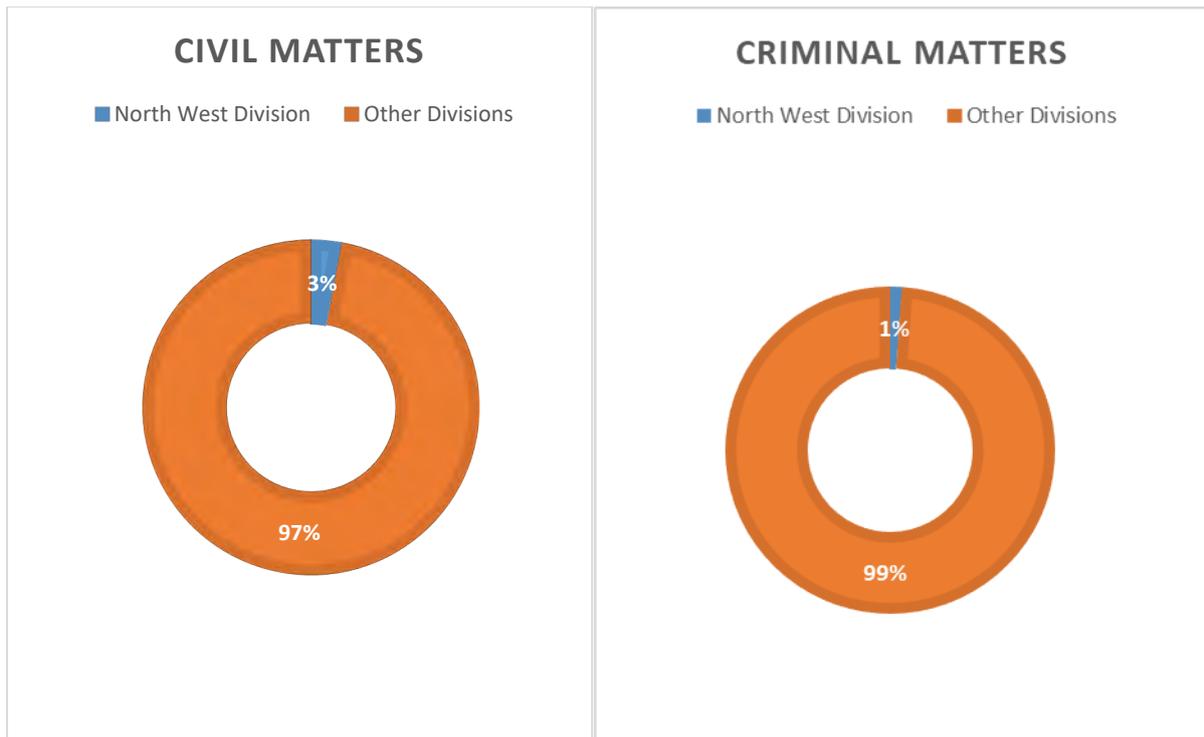
²¹⁰ GN 30 published in GG 39601 dated 16 January 2016. The notice provides that Madibeng magisterial district falls under the Gauteng Division, excluding Ga-Rankuwa.



The Caseload of the North West Division

[318] According to the Judiciary Annual Report 2020/2021 which sets out caseloads of all the divisions, the North West Division court heard – for the relevant period – approximately about 2 474 civil matters and finalised 1 973 (80% of civil matters heard by the division). Of the 131 criminal matters heard by the North West Division for this period, 85 matters were finalised by the court (65% of the total criminal matters heard by the division). To this end, the North West Division accounts for only 3% of civil matters heard by the High Court and only 1% of criminal matters heard by the High Court.²¹¹

²¹¹ See The Judiciary Annual Report 2020/2021 at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.



Anomalies

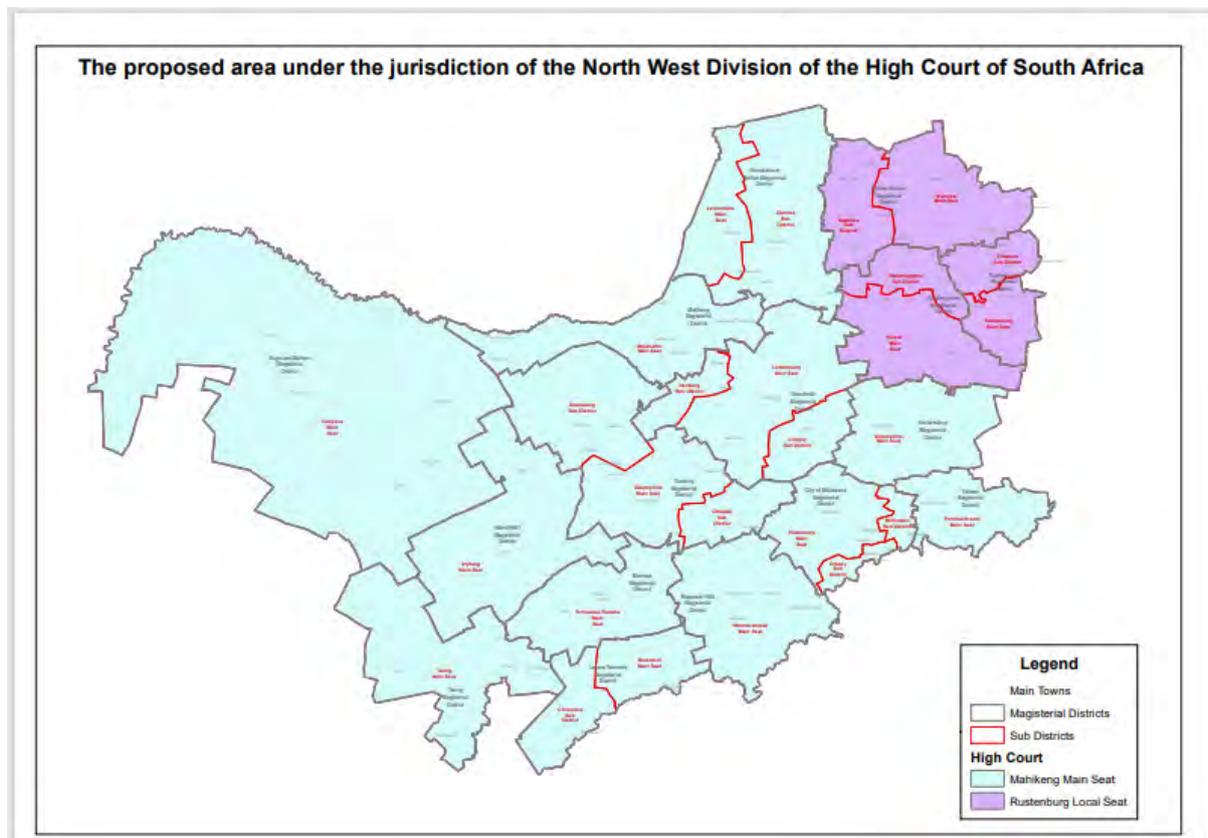
[319] One anomaly identified in relation to the North West Division is that Ga-Rankuwa, which falls within the Madibeng magisterial district in the North West province, currently does not fall under the jurisdiction of the North West Division. Even so, the notice establishing the areas under the jurisdiction of the Gauteng Division although including Madibeng magisterial district, expressly excludes Ga-Rankuwa. It follows that Ga-Rankuwa is excluded from the jurisdiction of both the North West Division and Gauteng Division.²¹²

²¹² GN 408 published in GG 41552 dated 29 March 2018. This notice provides that the North Division has jurisdiction over the magisterial districts of Ditsobotla, Kagisano-Molopo, Mahikeng, Mamusa, Moretele, Taung, Matlosana, Ventersdorp, Naledi, Tswaing, Koster, Lekwa-Teemane, Maquassi Hills, Moses Kotane, Ramotshere Moiloa, Rustenburg, Tlokwe. Madibeng is not included.

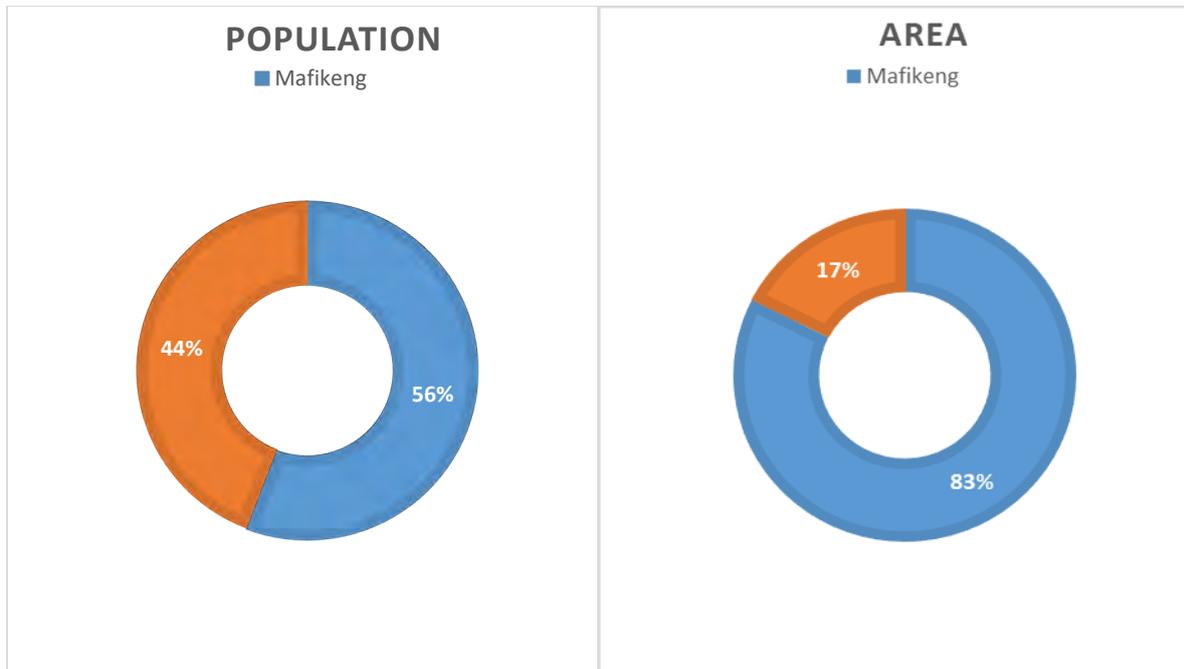
GN 30 published in GG39601 dated 16 January 2016 provides that Madibeng magisterial district falls under the Gauteng Division excluding Ga-Rankuwa.

Submissions received from the Department

[320] The Department proposes that a local seat of the North West Division be established at Rustenburg. According to this proposal, Mahikeng will remain the main seat of the division and will exercise jurisdiction over the magisterial districts of: Ditsobotla, Kagisano Molopo, Lekwa-Teemane, Mahikeng, Mamusa, Maquassi Hills, Matlosana, Naledi, Ramotshere Moiloa, Taung, Tlokwe, Tswaing, Potchefstroom, Venterdorp. The North West Local Division, Rustenburg will exercise jurisdiction over the magisterial districts of: Kgetlengrivier, Madibeng, Moretele, Moses Kotane and Rustenburg. Depicted on the map below is the Department's proposal.



[321] Should the proposal come into effect, the main seat at Mahikeng would serve approximately 2 300 131 people across an area of 86 548 km² while the local seat at Rustenburg will serve approximately 1 822 714 people in an area of 18 333 km².



[322] The establishment of a local seat at Rustenburg indicates that distances travelled by litigants in magisterial districts under Bojanala Platinum such as Moretele, Madibeng and Moses Kotane will significantly be reduced. The distances from these areas to access the court in Mahikeng and a local seat in Rustenburg are compared in the table below.

Magisterial District	North West Division, Mahikeng	North West Local Division, Rustenburg
Madibeng (Brits)	262 km Travel time:	67 km Travel time:

	Approx. 3hr 15 min	Approx. 1hr
Moretele (Temba)	334 km Travel time: Approx. 4hrs	142 km Travel time: Approx. 1hr 52 min
Moses Kotane (Mankwe)	236 km Travel time: Approx. 2hr 55 min	53 km Travel time: Approx. 50 min

Submissions received from the Judge President

[323] The North West Division Judge President, Judge President Hendricks, was consulted on 29 July 2022 together with the Judges President of Limpopo and Mpumalanga Divisions and the Acting Judge President of the Gauteng Division. Following this consultation, the Judge President made written submissions to the Committee in which he expressed views to the effect that: cross-provincial jurisdictions should be avoided for the North West Division; a local seat should be established at Rustenburg; a second local seat should be considered at Klerksdorp; and additional judges' posts should be created.²¹³

Submissions received from the NPA

[324] In its submissions, the NPA supports the establishment of a local seat at Rustenburg. The NPA submits that Moretele should be served by the Gauteng Division

²¹³ A copy of the written submissions is attached as annexure "6" of the appendices chapter.

as the area is much closer to the court in Pretoria than it is to the court in Mahikeng, or than it would be to Rustenburg. Furthermore, the NPA submits that logically Ga-Rankuwa should also be served by the Gauteng Division.

The Committee's Preliminary Recommendations

[325] The Committee accepts that the establishment of a local seat at Rustenburg will substantially reduce the distances that the population of the North West is expected to travel to access the court in Mahikeng.

[326] Having weighed up all the relevant considerations and having heard the Judge President and other stakeholders, the Committee makes the following preliminary recommendations:

- a. The main seat of the North West Division of the High Court shall remain in Mahikeng with jurisdiction over the magisterial districts of Ditsobotla, Kagisano Molopo, Lekwa-Teemane, Mahikeng, Mamusa, Maquassi Hills, Matlosana, Naledi, Ramotshere Moiloa, Taung, Tlokwe, Tswaing and Venterdorp.
- b. A local seat of the North West Division of the High Court will be established at Rustenburg and will exercise jurisdiction over the following magisterial districts: Kgetlengrivier, Moses Kotane and Rustenburg.
- c. Madibeng and Moretele magisterial districts will be served by the Gauteng Division of the High Court, Pretoria in the interim until the local seat at Rustenburg is established.

WESTERN CAPE DIVISION OF THE HIGH COURT

The Western Cape province

[327] Western Cape is a province of South Africa, situated on the south-western coast of the country. The province occupies 11% of the total surface area of South Africa, approximately 129 462 km². The population of the Western Cape is estimated to be approximately 7 113 776 people, 12% of the total population of South Africa.²¹⁴

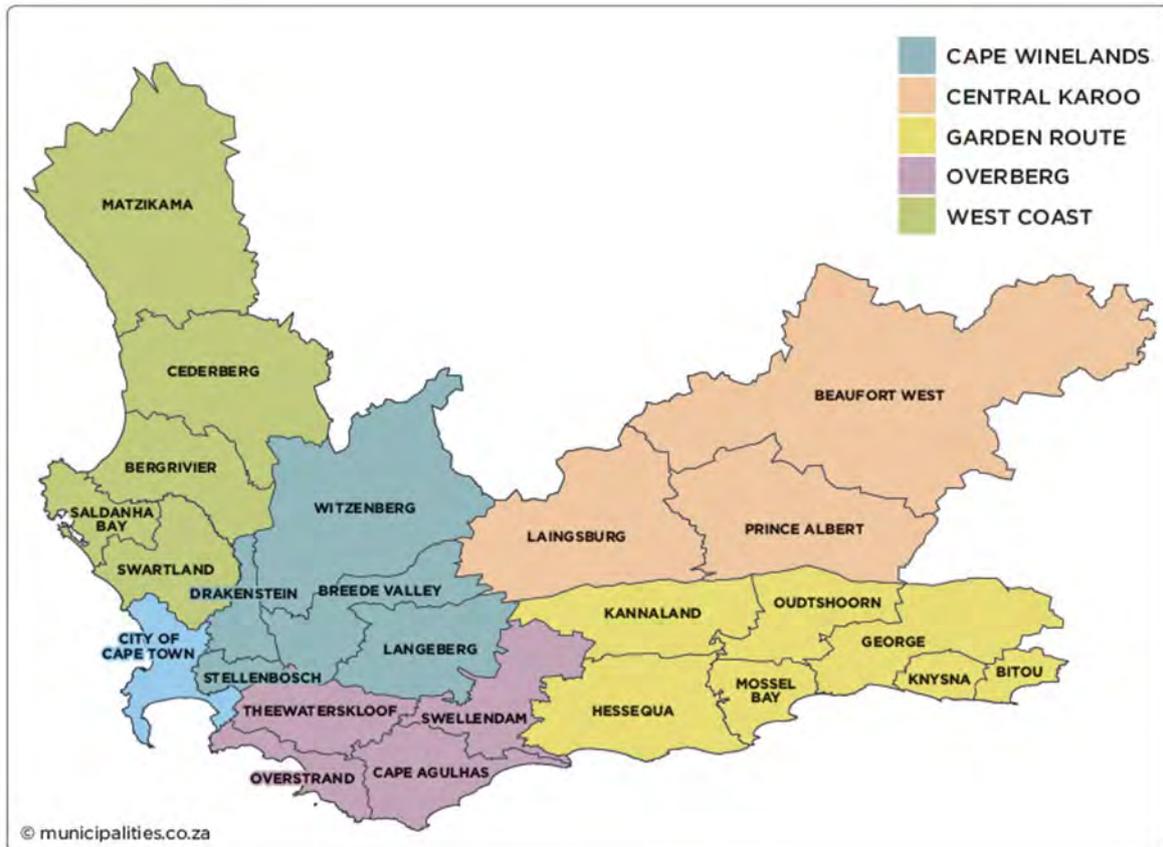
[328] The biggest contributors to the economy of the Western Cape includes agriculture (3.9%), government services (11.5%), trade (17.1%) and manufacturing (15.3).²¹⁵ It is the third largest contributor to the country's economy contributing 14% to the GDP.²¹⁶

[329] The Western Cape province is made up of one metropolitan municipality, the City of Cape Town, and five district municipalities: Cape Winelands, Central Karoo, Overberg, West Coast and Garden Route.

²¹⁴ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

²¹⁵ South Africa Gateway 'The economies of South Africa's nine provinces' (last updated 17 June 2021) available at <https://southafrica-info.com/infographics/animation-economic-sectors-of-south-africas-provinces/>.

²¹⁶ STATS SA 'Four facts about our provincial economies' (29 March 2019) available at <https://www.statssa.gov.za/?p=12056>.



The History of the Western Cape Division

Pre-Constitutional Era

[330] The Western Cape Division previously fell within the Cape province. It was called the Cape of Good Hope Provincial Division of the Supreme Court and had jurisdiction over the Cape province excluding the portions over which the

Eastern Cape²¹⁷ and Northern Cape Divisions of the Supreme Court exercised jurisdiction.²¹⁸

Constitutional Era

[331] With the enactment of the interim Constitution, the Cape of Good Hope Provincial Division of the Supreme Court became a High Court. Its area of the jurisdiction remained unchanged.

[332] In 2003, some areas were excised from the Cape of Good Hope Provincial Division into the Northern Cape and Eastern Cape Divisions including the area of Willowmore, Namaqualand, Williston, Sutherland, Calvinia and Frazerberg.²¹⁹

[333] In 2008, the Cape of Good Hope Provincial Division was renamed the Western Cape High Court, Cape Town.²²⁰

[334] With the establishment of the unitary High Court, the Western Cape Division of the High Court, Cape Town was established.²²¹ The Western Cape Division continues

²¹⁷ Schedule 1 to the Supreme Court Act. These areas were Humansdorp, Steyt•Jerville, Jansenville, Aberdeen, Murraysburg, Graaff-Reinet, Middelburg, Hanover and Colesberg.

²¹⁸ Schedule 1 to the Supreme Court Act. These are Namaqualand, Williston, Sutherland, Calvinia, Fraserburg, Noupoot, Colesberg and Hanover.

²¹⁹ GN 937 published in GG 25141 dated 27 June 2003.

²²⁰ Section 1 of the Renaming of the High Courts Act.

²²¹ Section 2 of the Constitution 17th Amendment; Section 6 of the Superior Courts Act.

to exercise jurisdiction over the entire Western Cape province, except for those certain areas specifically excised from the Western Cape province.

Rationalisation

[335] Magisterial districts in the Western Cape had not been rationalised until March 2022, when the Minister caused a notice to be published in the government gazette creating magisterial districts.²²² The rationalisation of magisterial districts in the Western Cape established one metropolitan municipality and five magisterial districts.²²³

[336] The areas under the jurisdiction of the Western Cape Division have not yet been rationalised. No notice has been issued establishing the areas under the jurisdiction of the Western Cape Division. Effectively, the area of jurisdiction of the Western Cape Division remains as it was under the schedule 1 of the Supreme Court Act.²²⁴

Status Quo of the Western Cape Division

[337] The Western Cape Division has only the main seat in Cape Town. It has jurisdiction over the entire Western Cape province except certain areas specifically

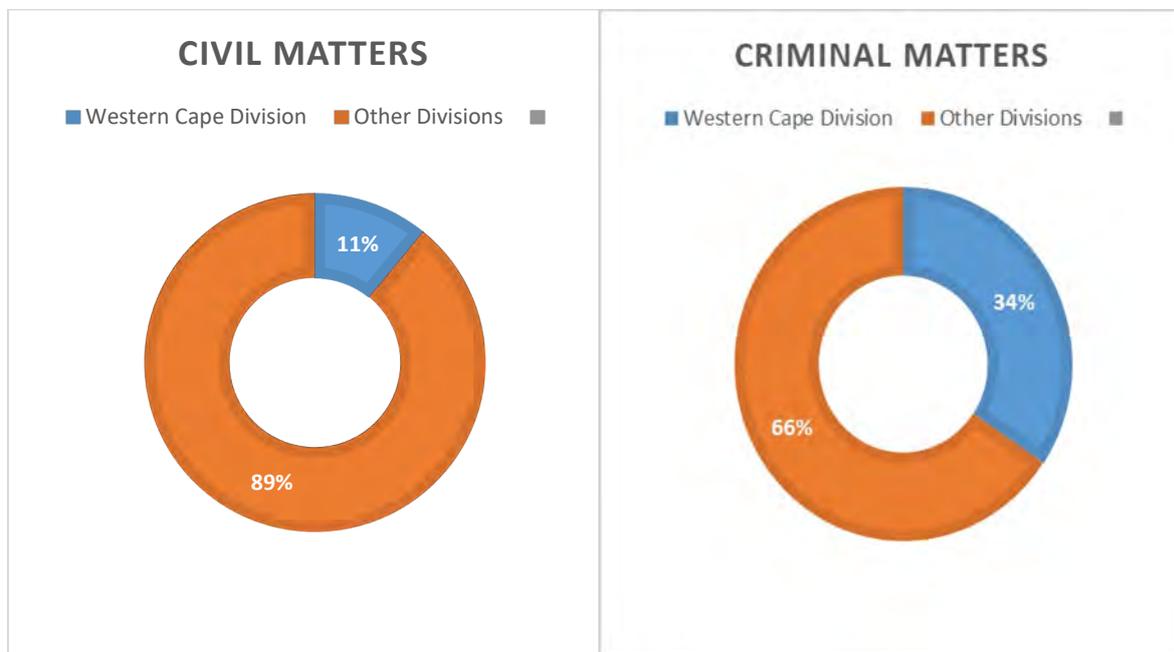
²²² GN 932 published in GG 46132 dated 30 March 2022.

²²³ The metropolitan municipality is the City of Cape Town and the magisterial districts are Cape Winelands, Central Karoo, Overberg, West Coast and Garden Route.

²²⁴ See section 51 of the Superior Courts Act.

The Caseload of the Western Cape Division

[340] The Judiciary Annual Report 2020/2021 which informs us of the number of matters heard and finalised by the divisions, indicates that for the relevant period: the Western Cape Division heard 10 187 civil matters (11% of civil matters heard by the High Court) and finalised 7 501 of those matters; and heard 5 985 criminal matters (34% of criminal matters heard by the High Court) and finalised 5 630 of those.²²⁵



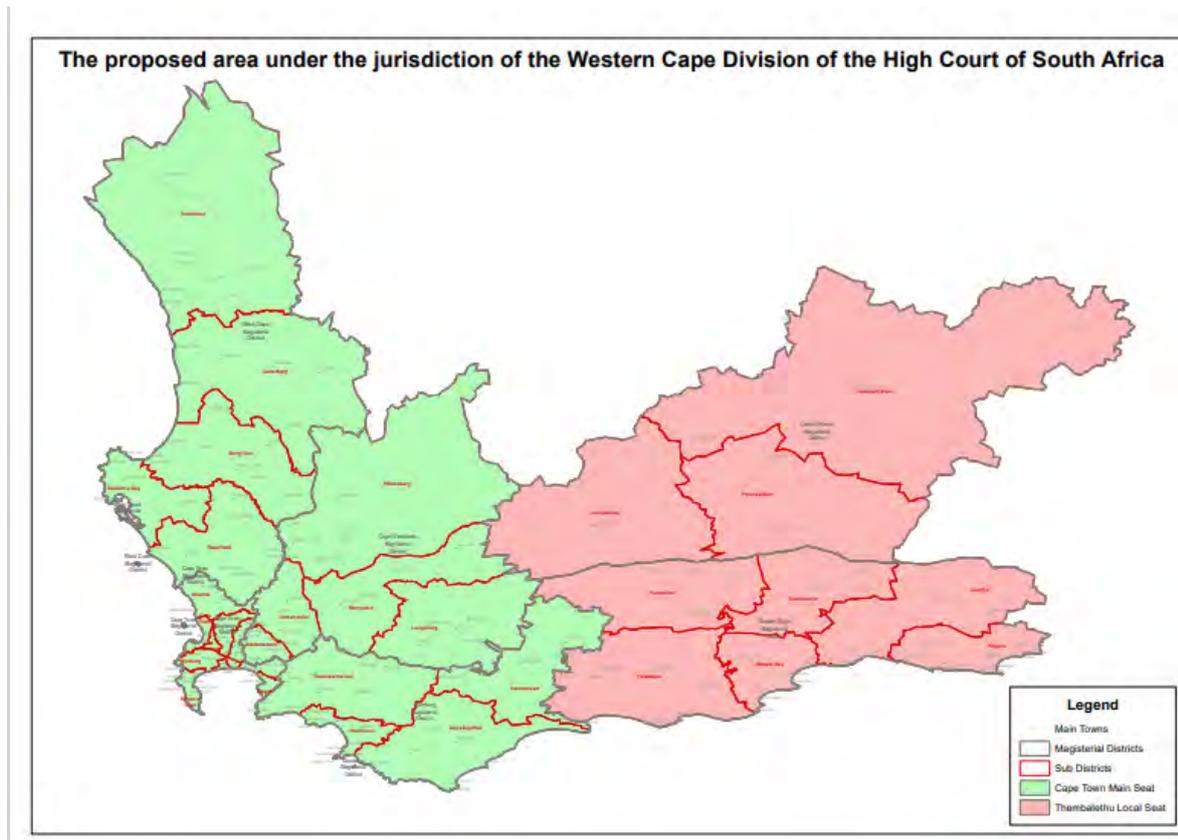
Submissions received from the Department

[341] The Department has made two proposals in relation to the areas under the jurisdiction of the Western Cape Division. In terms of the first proposal, which is that a local seat be established at Thembaletu, the main seat at Cape Town will have

²²⁵ The Judiciary Annual Report available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.

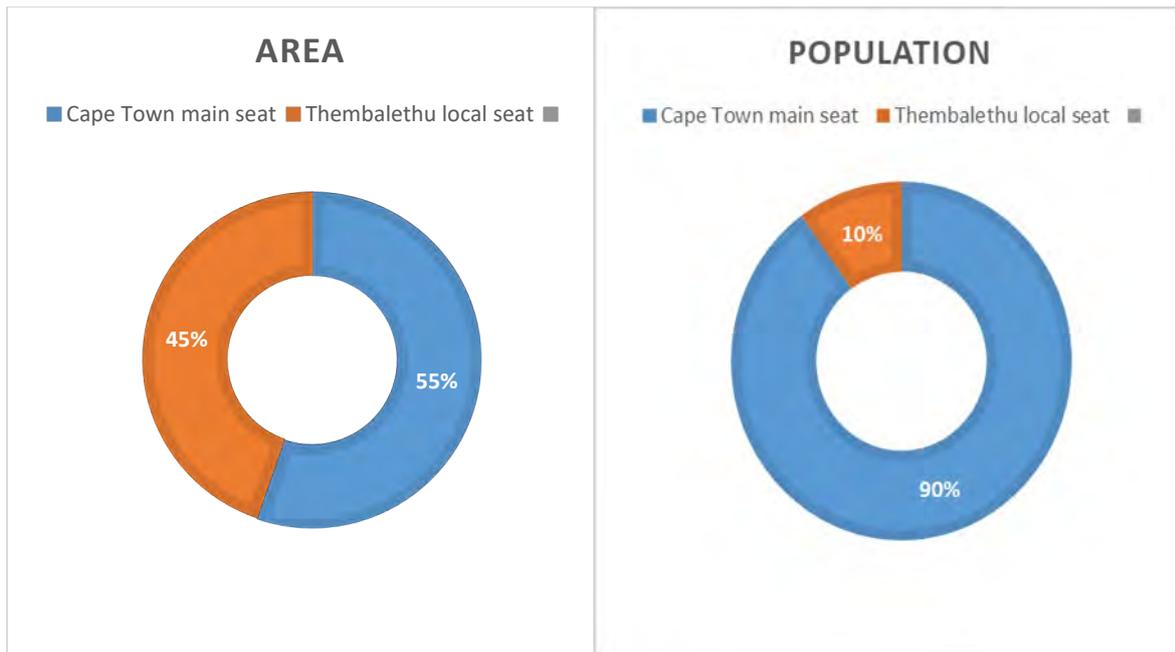
exclusive jurisdiction over City of Cape Town, the Cape Winelands, Overberg and the West Coast while the local seat at Thembalethu will exercise jurisdiction over Garden Route and Central Karoo.

[342] The following map depicts the Department's first proposal.



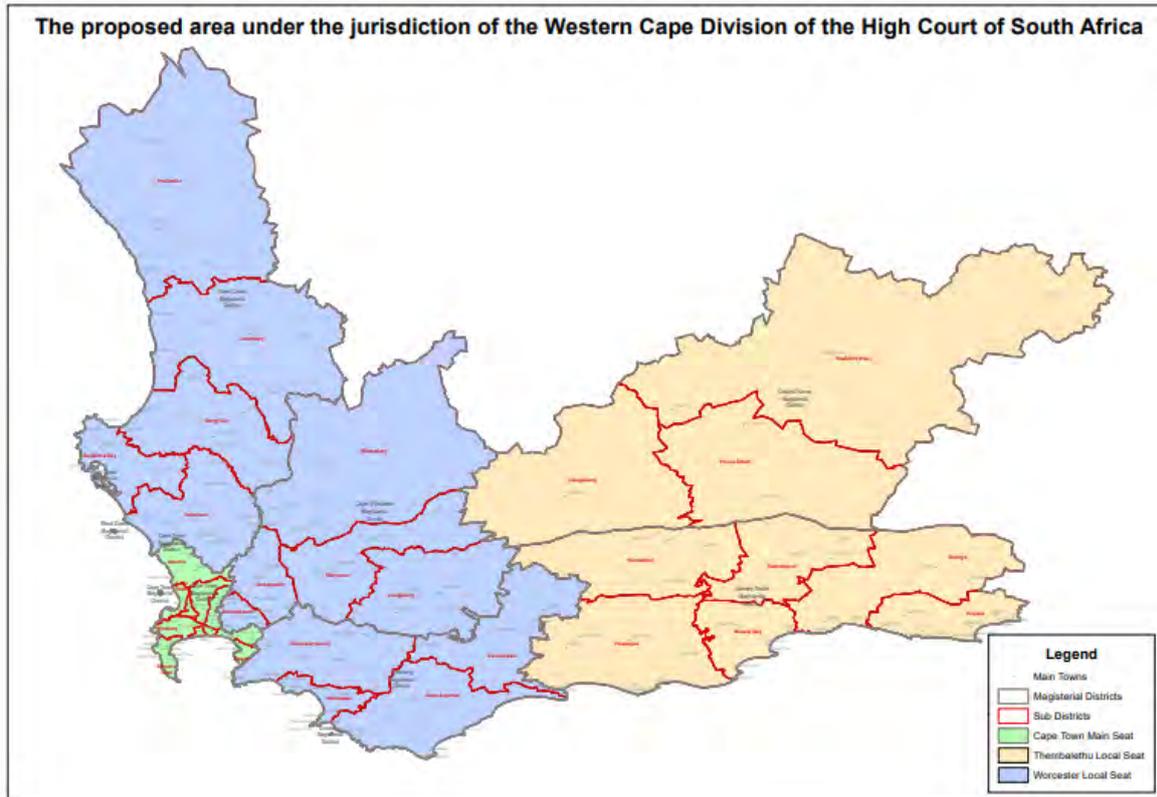
[343] Should the proposal come into effect, the main seat at Cape Town will cover an area of 67 277 km², 55% of the province's surface area and the local seat at Thembalethu will cover an area of 54 444 km², 45% of the province's surface area.

[344] Furthermore, the main seat will serve approximately 6 400 975 people, 90% of the province's population. The local seat at Thembalethu will serve approximately 706 398 people, 10% of the province's population.



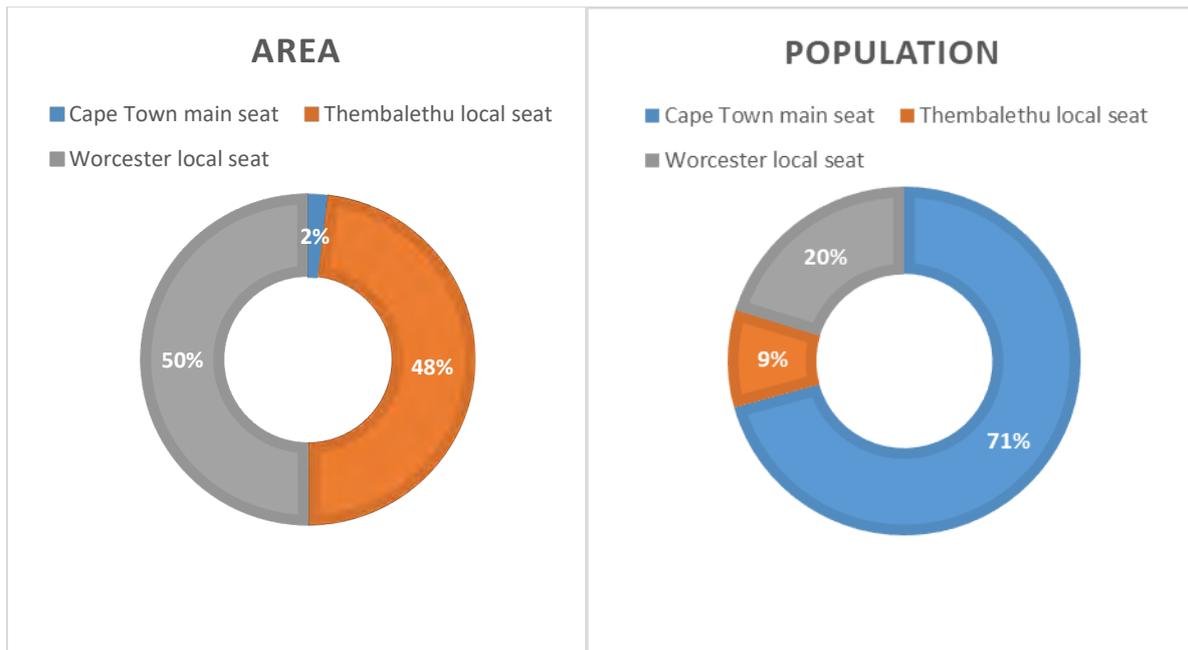
[345] Under the second proposal – that a second local seat be considered at Worcester – the main seat at Cape Town will exercise jurisdiction over the City of Cape Town, the local seat at Thembalethu will exercise jurisdiction over Garden Route and Central Karoo, and the local seat at Worcester will exercise jurisdiction over Cape Winelands, Overberg and West Coast.

[346] The following map depicts the Department's second proposal.



[347] According to the second proposal, the main seat at Cape Town would cover an area of 2 446 km² (2%), the local seat at Thembaletu would cover approximately 62 185 km² (48%) and the local seat at Worcester would cover an area of 64 831 km² (50%).

[348] In terms of population, the main seat at Cape Town would serve 5 031 073 people (71%), the local seat at Thembaletu would serve approximately 645 277 people (9%) and the local seat at Worcester would serve 1 437 426 people (20%).



Submissions received from the Judge President

[349] Judge President Hlophe expressed his views during our consultation on 16 September 2022 and made written submissions to the Committee. The Judge President explained that owing to the amount of work at Thembalethu, a local seat is justified at Thembalethu. In the same breath, the Judge President states that they have already opened a court in Thembalethu and have started the process of setting up an administrative component of the court. The Judge President did not support the establishment of a local seat at Worcester. This is so because, in his view, Worcester is closer to Cape Town and judges at the main seat serve the area on circuit.²²⁶

²²⁶ A copy of the written submissions is attached as annexure “7” of the appendices chapter.

[350] The Judge President further said that the impact of Covid-19 and technology is an important factor in determining the areas of jurisdiction of courts. This is so, he said, because increasingly court sittings are held remotely due to technology. Whilst this is certainly so, the Committee does not consider it necessary to make a preliminary finding on the proposed matter and would be ready to await any submissions that it may receive on the impact of Covid-19 and technology on the delimitation of areas of jurisdiction of courts.

Submissions received from the NPA

[351] The NPA has also made written submissions to the Committee. The NPA does not support the establishment of local seats either at Thembalethu and Worcester particularly because of low caseloads. The NPA submits that Worcester as a circuit court currently generates low caseloads and that caseloads remain low in the circuit courts serving Thembalethu, Mossel Bay and Knysna. The NPA concludes that the establishment of local seats at Worcester and Thembalethu is not justified.

The Committee's Preliminary Recommendations

[352] The Committee considers the fact that the establishment of a local seat at Thembalethu will bring access to justice closer to the population served by the division. This is in light of the high population currently served by the division, the percentage of both civil and criminal matters heard by the division and the distances travelled by litigants to access the one and only seat at Cape Town. The Committee was also informed that the amount of work in the circuit court currently operating in

Themba lethu is quite substantial. There is already court infrastructure available at Themba lethu. The implementation of this recommendation therefore seems achievable within reasonable time frames. The establishment of a local seat will also reduce the caseload of the main seat which currently serves the entire province.

[353] The Committee considers that the establishment of a second local seat at Worcester is not justified. First, Worcester is relatively closer to Cape Town. Second, judges from the main seat in Cape Town already frequent Worcester on circuit. And third, the establishment of a local seat in Themba lethu will reduce travelling distances for litigants to access the main seat and as such, a local seat in Worcester would not be of any real effect.

[354] Having weighed up all the relevant considerations and having heard the Judge President and other stakeholders, the Committee makes the following preliminary recommendations:

- a. The main seat of the Western Cape Division of the High Court will remain at Cape Town and will exercise jurisdiction over the City of Cape Town metropolitan municipality and the magisterial districts of Cape Winelands, Overberg and the West Coast.
- b. A local seat of the Western Cape Division of the High Court will be established at Themba lethu and will exercise jurisdiction over the magisterial districts of Garden Route and Central Karoo.

- c. The Murraysburg area continue to be served by the Eastern Cape Division of the High Court, Grahamstown, until a local seat is established at Themba lethu.
- d. The Committee does not recommend the establishment of a local seat at Worcester.

ADDITIONAL OBSERVATIONS AND PRELIMINARY RECOMMENDATIONS

Introduction

[355] In accordance with its terms of reference, the Committee has made recommendations as to the geographical boundaries of the areas of jurisdiction of the various seats of the High Court. The Committee also considers it necessary and appropriate to fulfil its mandate to improve access to courts in South Africa to make observations regarding possible legislative developments that will better facilitate access to justice.

[356] In conducting its work, the Committee has made observations regarding certain rules that may be barriers to access to justice. The Committee discusses the following rules in this Chapter with a view to inviting comments about the appropriateness of these considerations and their impact on meaningful access to justice. The first would be the common law rule that requires a plaintiff to follow the defendant; second, the rule that permits an applicant or plaintiff to institute proceedings in the High Court,

which could be heard by the Magistrates Court; and the third relates to question around concurrency of jurisdiction. Subject to the responses that may be received by stakeholders and members of the public the Committee may formulate more definitive recommendations to the Department.

Rule that the plaintiff must follow the defendant

[357] The basic common law principle in respect of money claims is expressed by the Latin phrase: *actor sequitur forum rei*, meaning that a plaintiff must follow the defendant to his or her place of domicile or residence, and institute litigation proceedings against him or her there.²²⁷ In other words, the defendant must reside or be domiciled within the court's area of jurisdiction. Many cases heard before our courts are premised or founded on this common law principle which requires a plaintiff to follow the defendant.

[358] Either domicile or residence is sufficient to constitute a particular court as possessing the necessary powers to hear a matter. To this end, while "domicile" will be established if there is "physical presence" and an "intention to remain indefinitely",²²⁸

²²⁷ *Sciacero & Co v Central SA Railways* 1910 TS 119 at 121; *Thermo Radiant Oven Sales (Pty) Ltd v Nelspruit Bakeries (Pty) Ltd* 1969 (2) SA 295 (A) at 305; and *Longman Distillers Ltd v Drop Inn Group of Liquor Supermarkets (Pty) Ltd* 1990 (2) SA 906 (A) at 912

²²⁸ *Chinatex Oriental Trading Co v Erskine* 1998 (4) SA 1087 (C) at 1093 and 1094.

“residence”, as defined by the courts, means a home, a person’s place of abode, the place where he or she generally sleeps after the work of the day is done.²²⁹

[359] Concerns have been expressed regarding this common law principle. The crux of the concern is that requiring the plaintiff to follow the defendant hinders access to justice. All too frequently plaintiffs are required to litigate against well-resourced defendants who reside in urban centres. Plaintiffs who reside far from urban centres are more often than not unable to afford the increased costs associated with litigating at a distance, including the costs of correspondent attorneys and travelling long distances to court.

[360] The general rule that the plaintiff must follow the defendant is recognised in many jurisdictions across the world and South Africa is no exception. It may be contended that the principle that the plaintiff must follow the defendant serves the primary purpose of protecting defendants. It may be further said that it is based on the law’s conservative spirit which gives priority to him or her who defends the *status quo* and not to him or her who seeks to change the *status quo*.²³⁰ It thus places the burden

²²⁹ *Beedle & Co v Bowley* (1895) 12 SC 401 at 403. See also *Hogsett v Buys* 1913 CPD 200 at 205; and *Ex Parte Minister of Native Affairs* 1941 AD 53 at 59.

²³⁰ University of California “The King’s College Law Journal” Vol 8-9 (California, 1997) 32; Sarcevic P and Volken P *Volume 5 of Bonomi, Andrea; Volken, Paul; The Swiss Institute of Comparative Law: Yearbook of Private International Law* (Walter de Gruyter, 2009) 394.

on the plaintiff to seek to change the *status quo* at a court exercising territorial jurisdiction over the defendant's domicile or residence.²³¹

[361] The question here is whether the common law principle requiring the plaintiff to follow the defendant impedes the right of access to justice. And if so, whether that impediment is justified.

The High Court's concurrent jurisdiction with the Magistrates' Courts

[362] The High Court has concurrent jurisdiction with the Magistrates' Courts. Since it is the applicant or the plaintiff who chooses a court of competent jurisdiction in which to institute proceedings,²³² the applicant or plaintiff may elect to institute proceedings in either the division of the High Court or the Magistrates' Court with jurisdiction.

[363] The High Court hearing matters over which the Magistrates' Court have concurrent jurisdiction raises two concerns. First, the roll of the High Court may be unnecessarily congested by matters that could have been heard in the Magistrates' Courts. Second, defendants may be required to travel long distances and at significant expense to defend a matter in the High Court when they could have more conveniently attended a magistrate's court. The right of access to courts may be undermined where

²³¹ Ibid.

²³² See *Moosa v Moosa* 2014 JDR 2194 (GP) at para [19].

a defendant is unable to defend a matter because the court in which the proceedings have been instituted is too far away.

[364] Some stakeholders have raised these concerns and contended that matters falling within the jurisdiction of the Magistrates' Courts must be heard only in the Magistrates' Courts (perhaps with provision made for matters falling within the jurisdiction of the Magistrates' Courts to be heard in the High Court in exceptional circumstances and with leave of the High Court). Subject to the submissions that may reach the Committee from stakeholders, the Committee may make recommendations on how a choice whether to institute proceedings in the Magistrates' Court or the High Court could be supported by legislative provisions. A legislative amendment to this effect may ensure that proceedings are generally instituted in the forum that is more accessible to the ordinary defendant, while enabling proceedings to be instituted in the High Court where exceptional circumstances exist.

Concurrent jurisdiction

[365] The third question is whether the existing arrangements of concurrent jurisdiction within the division increase or decrease access to the courts and therefore to justice. A few Judges President and other stakeholders have raised questions related to concurrent jurisdiction of the main seat with the local seat – both as a court of first instance and as a court of appeal.

[366] The first of these considerations was whether, in cases where a provincial division also has a local division, the provincial division ought to exercise appellate jurisdiction concurrently with the local division. The argument here seems to be that where a local division has appellate jurisdiction over matters arising from Magistrates' Courts appeals ought to be heard in the local division. In that way, it is argued, residents would not be compelled to have their appeals heard at the main seat of a provincial division. The question that arises is whether these considerations would increase access to justice.

[367] The second consideration was whether the main seat ought to continue to have concurrent jurisdiction over the magisterial districts falling within the area of jurisdiction of a local seat. Some Judges President have expressed the view that local seats within a division ought to exercise exclusive jurisdiction over the magisterial districts falling within their area of jurisdiction. The motivation for this is that defendants residing within the area of jurisdiction of a local seat will not be sued at the main seat – thereby reducing the inconveniences related to long distance travelling and costs.

[368] It seems to us, as a Committee, that as we tackle the difficult question as to how to facilitate access to justice, we ought to properly invite recommendations from stakeholders who might care to compose a response to this interim report. Whilst we have drawn attention to considerations on access to justice that have emerged from our interaction with stakeholders, the Committee realises that there may well be other considerations that stakeholders or members of the public may wish to draw to our

attention. All these additional considerations will be welcome and deliberated on by the Committee in preparation of the final report. The touchstone of all this is a conscientious effort to achieve a court system that continually seeks to achieve and enhance access to courts and access to justice.

EXECUTIVE SUMMARY

[1] The Committee on the Rationalisation of Areas under the Jurisdiction of the Divisions of the High Court and Judicial Establishments (“**the Committee**”) is established under the Constitution. The Committee’s objective is to rationalise the areas under the jurisdiction of the divisions of the High Court and the judicial establishments of all courts as an imperative to enhance access to justice.

[2] The purpose of this interim report is to enable legal professional bodies, members of the legal profession, members of the public, and other interested parties to make written submissions on the Committee’s preliminary recommendations. The submissions received on the interim report will be taken into account in preparing the final report on phase 1, which will be submitted to the Minister.

[3] In preparing this interim report, the Committee consulted with key stakeholders, who were identified mainly because of their interest in the delivery of access to justice. The stakeholders included the Chief Justice of the Republic, the Judges President of the nine divisions of the High Court, the Department of Justice, the National Prosecuting Authority, Legal Aid SA and the Magistrates Commission.

[4] The Committee’s timetable and written submissions from the Judges President are included in the appendices chapter. Other written submissions from stakeholders are available on request from the Department.

[5] Here are our preliminary recommendations in relation to the areas of jurisdiction of the nine divisions of the High Court.

EASTERN CAPE DIVISION OF THE HIGH COURT

[6] The Committee recommends that:

- a. The Eastern Cape Division, Makhanda will exercise jurisdiction over the following areas:
 - i. A portion of the Sarah Baartman district municipality: consisting of the areas of Makhanda, Alicedale, Somerset East, Cookhouse, Pearston, Graaf-Reinet, Aberdeen, Jansenville, Klipplaat, Steytlerville, Willowmoore, Port Alfred, Alexandria, Kenton on Sea, Kinkelbos, and Petersen, excluding the towns of Kirkwood and Addo. The following area from the Sarah Baartman district to be excluded: the Kouga sub-district which consists of the Kouga and Koukamma local municipalities. The latter local municipalities are constituted by the following areas: Humansdorp, Hankey, Patensie, Stormsrivier, Joubertina, and Kareedouw.
 - ii. A portion of the Amathole district municipality consisting of Raymond Mhlaba sub-district, which includes the areas of Adelaide, Bedford, Fort Beaufort, Seymour and Balfour.
 - iii. A portion of the Chris Hani district municipality consisting of the Inxuba Yethemba sub-district, which includes the areas of Cradock and Middelburg (Murraysburg in the Western Cape to be excluded).

- b. The Eastern Cape Local Division, Bhisho will exercise jurisdiction over the following areas:
- i. A portion of the Amathole district consisting of Nqushwa, Great Kei and the Amahlathi sub-districts. The Nqushwa sub-district includes the area of Peddie. The Great Kei sub-district includes the areas of Komga and Kei Mouth. The Amahlathi sub-district includes the areas of Stutterheim, Cathcart and Kieskammahoek.
 - ii. The entire Buffalo City magisterial district which includes the areas of East London, Zwelitsha, Dimbaza, King William's Town and Mdantsane.
 - iii. The Chris Hani Magisterial District consisting of Komani (seat of the district), which includes Hofmeyr, Molteno, Ntabethemba, Sterkstroom, Tarkastad, Ezibeleni, and Whittlesea.
 - iv. A portion of the Emalahleni sub-district which includes the areas of Cacadu (Lady Frere), and Dordrecht, excluding the town of Indwe.
 - v. The Sakhisizwe sub-district excluding the towns Cala and Khowa (formerly Elliot)
 - vi. A portion of the Joe Gqabi magisterial district consisting of Sterkspruit, and Lady Grey and the areas of Walter Sisulu sub-district, which includes Aliwal North and Venterstad.
 - vii. A portion of the Amathole district municipality consisting of the towns of Alice and Middledrift.

- viii A portion of the Intsika Yethu sub-district, excluding the towns of Tsomo and Cofimvaba.
- c. The Eastern Cape Local Division, Gqeberha will exercise jurisdiction over following areas:
- i. The entire Nelson Mandela Bay magisterial district which includes the areas of Port Elizabeth, Gelvandale, Motherwell, New Brighton, Kariega (Uitenhage) and KwaNobuhle; and
 - ii. A portion of the Sarah Baartman magisterial district consisting of a portion of the Sunday's River Valley sub-district towns of Kirkwood and Addo; and the Kouga sub-district, which includes the areas of Humansdorp, Hankey, Patensie, Stormsrivier, Joubertina and Kareedouw.
- d. The Eastern Cape Local Division, Mthatha will exercise jurisdiction over the following areas:
- i. The entire Alfred Nzo magisterial district, which consists of KwaBhaca (Mount Frere), MaXesibini (Mount Ayliff), the Matatiele sub-district, which includes the areas of Matatiele and Maluti, the Winnie Madikizela Mandela sub-district, which includes the areas of Bizana and Mzamba, and the Ntabankulu sub-district, which includes the areas of Ntabankulu and Cweraland;

- ii. A portion of the Amathole magisterial district consisting of Mnquma (Butterworth) and Centane. The Mbashe sub-district, which includes the areas of Dutywa, Xhora (Elliotdale) and Willowvale.
 - iii. A portion of the Chris Hanu magisterial district consisting of the Engcobo sub-district, which includes the areas of Ngcobo and Dalasile.
 - iv. A portion of the Joe Gqabi magisterial district consisting of Barkley East, the Elundini sub-district, which includes the areas of Mount Fletcher, Nqanqarhu (Maclear) and Ugie.
 - v. The entire OR Tambo magisterial district, which includes the areas of Mthatha, Bityi, Mqanduli, Kwaaiman, Lusikisiki, Flagstaff, Mtontsasa, Libode, Ngqeleni, Qumbu, Tina Falls, Tsolo and Port St. Johns.
 - vi. A portion of the Intsika Yethu sub-district consisting of the towns of Tsomo and Cofimvaba.
 - vii. A portion of the Sakhisizwe sub-district consisting of the towns of Khowa (formerly Elliot) and Cala.
 - viii. A portion of the Emalahleni sub-district consisting of the town of Indwe.
- e. The 11 towns referred to as the “White Corridor” be removed from the area of jurisdiction of the Eastern Cape Division, Makhanda and be allocated between the Eastern Cape Local Division, Bhisho and the Eastern Cape Local Division, Mthatha.

- f. The towns of Matatiele and Maluti be removed from the jurisdiction of the KwaZulu-Natal Division, Pietermaritzburg and be included in the jurisdiction of the Eastern Cape Local Division, Mthatha. Matatiele and Maluti fall within the provincial boundary of the Eastern Cape.
- g. The towns of Tsomo and Cofimvaba should be included in the area of jurisdiction of Eastern Cape Local Division, Mthatha.
- h. The towns of Cathcart, East London, King Williamstown, Komga and Komani (previously Queenstown) must be removed from the jurisdiction of the Eastern Cape Local Division, Mthatha and must be included into the jurisdiction of the Eastern Cape Local Division, Bhisho.
- i. The towns of Barkley East, Elliot, Indwe, Maclear and Ugie must be removed from the area of jurisdiction of the Eastern Cape Division, Makhanda and must be included into the area of jurisdiction of the Eastern Cape Local Division, Mthatha.
- j. The towns of Kirkwood and Addo must be included in the area of jurisdiction of the Eastern Cape Local Division, Gqeberha.
- k. The towns of Alice and Middeldrift must be included in the area of jurisdiction of the Eastern Cape Local Division, Bhisho.
- l. The town of Cala must be removed from the area of jurisdiction of the Eastern Cape Local Division, Bhisho and included in the area of jurisdiction of the Eastern Cape Local Division, Mthatha.

- m. We recommend that the main seat of the Eastern Cape Division must be moved to Bhisho. Bhisho is the provincial capital of the Eastern Cape. Ordinarily the main seat of a provincial division of the High Court is located at the capital of the province. It follows that in the Eastern Cape too, the same situation should prevail.

FREE STATE DIVISION OF THE HIGH COURT

[7] The Committee recommends that:

- a. The main seat of the Free State Division of the High Court will remain at Bloemfontein. The main seat will exercise jurisdiction over the magisterial districts of Mangaung, Lejweleputswa and Xhariep.
- b. A new local seat be established at Welkom, which shall exercise jurisdiction over the magisterial districts of Fezile Dabi and Thabo Mofutsanyana

GAUTENG DIVISION OF THE HIGH COURT

[8] The Committee recommends that:

- a. The main seat of the Gauteng Division of the High Court will remain in Pretoria.
- b. The Gauteng Division of the High Court, Pretoria will exercise jurisdiction over the following magisterial districts: Tshwane Central, Tshwane North and Tshwane East.
- c. The Gauteng Division of the High Court, Pretoria continue to exercise jurisdiction over the Madibeng magisterial district including the sub-district of Ga-Rankuwa until a new local seat is established at Rustenburg in the North West province.

- d. The Gauteng Division of the High Court, Pretoria will exercise jurisdiction over Moretele magisterial district, which falls within the Bojanala Platinum district in the North West province, until a new local seat is established at Rustenburg.
- e. The Gauteng Local Division of the High Court, Johannesburg will exercise jurisdiction over the following magisterial districts: Johannesburg Central, Johannesburg North, Johannesburg West, Merafong, Mogale City and West Rand.
- f. A new local seat to be established at Palm Ridge, which will exercise jurisdiction over the following magisterial districts: Ekurhuleni Central, Ekurhuleni East, Ekurhuleni North, Ekurhuleni South East, Emfuleni, Lesedi and Midvaal.

KWAZULU-NATAL DIVISION OF THE HIGH COURT

[9] The Committee recommends that:

- a. The main seat of the KwaZulu-Natal Division of the High Court remains at Pietermaritzburg.
- b. The KwaZulu-Natal Division of the High Court, Pietermaritzburg will exercise jurisdiction over the magisterial districts of Amajuba, Harry Gwala, uMgungundlovu, and uThukela.
- c. The KwaZulu-Natal Local Division of the High Court, Durban will exercise jurisdiction over the eThekweni metropolitan municipality and the magisterial districts of iLembe and Ugu.

- d. A second local seat of the KwaZulu-Natal Division of the High Court be established at Richards Bay, which will exercise jurisdiction over the magisterial districts of King Cetshwayo, uMkhanyakude, uMzinyathi and Zululand.
- e. Matatiele (including Maluti) be removed from areas under the jurisdiction of the KwaZulu-Natal Division of the High Court and be included into the area under the jurisdiction of the Eastern Cape Division of the High Court, Mthatha.

LIMPOPO DIVISION OF THE HIGH COURT

[10] The Committee recommends that:

- a. The main seat of the Limpopo Division of the High Court, Polokwane remains at Polokwane.
- b. The Limpopo Division of the High Court, Polokwane will exercise jurisdiction over the following magisterial districts: Phalaborwa, Blouberg, Elias Motsoaledi, Letaba, Lepelle-Nkumpi, Makhuduthamaga, Mogalakwena, Molemole, Mookgophong, Polokwane, Tubatse and Tzaneen, Bela-Bela, Lephalale, Modimolle, and Thabazimbi.
- c. The Limpopo Local Division of the High Court, Thohoyandou will exercise jurisdiction over the following magisterial districts: Giyani, Makhado (and Dzanani, Hlanganani, Tshilwavhusiku and Tshitale sub-districts), Malamulele (and Tiyani and Vuwani sub-districts), Mutale, Musina and Thulamela.

- d. The Limpopo Local Division of the High Court, Lephalale be disestablished and that the magisterial districts falling within its area of jurisdiction be included within the area of jurisdiction of the main seat.

MPUMALANGA DIVISION OF THE HIGH COURT

[11] The Committee recommends that:

- a. The main seat of the Mpumalanga Division of the High Court remains at Mbombela.
- b. The Mpumalanga Division of the High Court, Mbombela exercise jurisdiction over the following magisterial districts: Bushbuckridge (including Mhala sub-district); Chief Albert Luthuli (including Carolina sub-district); Emgwenya sub-district of eMakhazeni district incorporating the adjacent farms; Mbombela (including White River and Nsikazi sub-districts); Nkomazi (including Komatipoort sub-district); Thaba Chweu (including Graskop and Sabie sub-districts) and Umjindi.
- c. The Mpumalanga Local Division of the High Court, Middleburg exercise jurisdiction over the following magisterial districts: Dipaleseng; Dr JS Moroka (including Mbibana sub-district); eMakhazeni (excluding a portion of the Emgwenya sub-district); eMalahleni (including Ga-Nala and Vosman sub-districts); Dr Pixley Ka Isaka Seme (including Amersfoort and Wakkerstroom sub-districts); Govan Mbeki (including Bethal and Secunda sub-districts); Lekwa; Mkhondo (including Amsterdam sub-district); Msukaligwa (including Breyten sub-district), Steve Tshwete (including

Hendrina sub-district) and Thembisile Hani (including KwaMhlanga sub-district) and Victor Khanye.

NORTHERN CAPE DIVISION OF THE HIGH COURT

[12] The Committee recommends that:

- a. The main seat of the Northern Cape Division remains at Kimberley, having jurisdiction over magisterial districts of Francis Baard, Pixley ka Seme and John Taolo Gaetsewe.
- b. A new local seat should be established at Upington and shall exercise jurisdiction over the ZF Magcawu and Namaqualand magisterial districts.

NORTH WEST DIVISION OF THE HIGH COURT

[13] The Committee recommends that:

- a. The main seat of the North West Division of the High Court shall remain in Mahikeng with jurisdiction over the magisterial districts of Ditsobotla, Kagisano Molopo, Lekwa-Teemane, Mahikeng, Mamusa, Maquassi Hills, Matlosana, Naledi, Ramotshere Moiloa, Taung, Tlokwe, Tswaing and Venterdorp.
- b. A local seat of the North West Division of the High Court will be established at Rustenburg and will exercise jurisdiction over the following magisterial districts: Kgetlengrivier, Moses Kotane and Rustenburg.
- c. Madibeng and Moretele magisterial districts will be served by the Gauteng Division of the High Court, Pretoria in the interim until the local seat at Rustenburg is established.

WESTERN CAPE DIVISION OF THE HIGH COURT

[14] The Committee recommends that:

- a. The main seat of the Western Cape Division of the High Court will remain at Cape Town and will exercise jurisdiction over the City of Cape Town metropolitan municipality and the magisterial districts of Cape Winelands, Overberg and the West Coast.
- b. A local seat of the Western Cape Division of the High Court will be established at Thembalethu and will exercise jurisdiction over the magisterial districts of Garden Route and Central Karoo.
- c. The Murraysburg area continue to be served by the Eastern Cape Division of the High Court, Grahamstown, until a local seat is established at Thembalethu.
- d. The Committee does not recommend the establishment of a local seat at Worcester.

[15] In the end, we recognise that certain elements of access to justice do not relate to geographical issues, but relate to the kinds of jurisdiction that currently exist and may be beneficially altered to bring about change.

[16] We invite members of the public and members of the legal profession and other interested parties to provide such response as they might wish to provide. Having received the responses, we will deliberate and take them into consideration in preparing our final report.

DIKGANG MOSENEKE

JUSTICE DIKGANG MOSENEKE

CHAIRPERSON: RATIONALISATION COMMITTEE

**DULY AUTHORISED TO SIGN FOR AND ON BEHALF OF THE
RATIONALISATION COMMITTEE**

APPENDICES CHAPTER

"Annexure 1"**PHASE 1: THE RATIONALISATION OF THE AREAS UNDER JURISDICTION OF THE DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA**

Item	Activity	Completion date
1.1	Meeting between the Chairperson, Members of the Committee with the National Prosecuting (NPA) to introduce the work of the Committee and the determination of an appropriate date for submission by NPA	15 June 2022
1.2	Meeting between the Chairperson and members of the Committee with the Chief Justice to introduce the work of the Committee and the determination of an appropriate date for submission by OCJ	17 June 2022
1.3	Joint Consultation with the Judges President of Gauteng, Limpopo Mpumalanga and North West Divisions of the High Court as they share boundaries and there is no major impact on the 2 divisions (One meeting in Tshwane)	29 July 2022
1.4	Presentation of the revised road-map and time-frames to the Minister	5 August 2022
1.5	Joint consultation with the Judges President of the Eastern Cape and KwaZulu-Natal Judges President of the Divisions of the High Court	12 August 2022



Phase 1: Continued

Date	Activity	Completion date
1.6	Joint Consultation with the Judges President of the Northern Cape and Free State Divisions of the High Court	26 August 2022
1.7	Consultation with the Judge President of the Western Cape Division of the High Court	16 September 2022
1.8	Consultation with the Legal Aid South Africa (LASA) on of the proposed Areas under Jurisdiction of the Divisions of the High Court of South Africa	16 September 2022
1.9	Consultation with the Magistrates Commission on the proposed Areas under Jurisdiction of the Divisions of the High Court of South Africa	27 September 2022
1.10	Consultation with the NPA on the proposed Areas under Jurisdiction of the Divisions of the High Court of South Africa	29 September 2022



PHASE 1: Continued

Item	Activity	Completion date
1.11	Consolidation the interim report based on the consultations with the Judges Presidents on the proposed Areas of Areas under Jurisdiction of the 9 Divisions of the High Court of South Africa taking in consideration inputs from the Judges President of the Divisions	30 September 2022
1.12	Invite inputs from the professional bodies on the proposed areas of jurisdiction of the Divisions of the High Court	10 October 2022
1.13	Draft a Notice for publication in the Government Gazette, inviting comments from the public on the proposed Rationalisation of the Areas under Jurisdiction of the 9 Divisions of the High Court of South Africa	15 October 2022
1.14	Publication of the Notice in Government Gazette	30 October 2022
1.15	Analysis and of inputs submitted and the consolidation of comments in the final report taking into consideration inputs from the public	15 November 2022
1.16	Submission of the Phase 1 report to the Minister	1 December 2022
1.17	Presentation by the Minister of the Phase 1 report to the Judicial Service Commission	9 December 2022

PHASE 2: RATIONALISATION OF THE JUDICIAL ESTABLISHMENTS OF THE DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA

Item	Activity	Completion date
2.1	Collate information/ data on the case loads on the 9 Divisions of the High Court of South Africa	4 November 2022
2.2	Conduct analysis of the case loads and determine the viable rationalisation of the judicial establishments taking into consideration the final areas under jurisdiction of the Divisions (We might consider involving CSIR to conduct scientific analysis for the committee)	16 January 2023
2.3	Consultation with the Eastern Cape Judge President on the proposed rationalisation of judicial establishment in respect of the Eastern Cape Division	23 January 2023
2.4	Consultation with the Free State Judge President on the proposed rationalisation of the judicial establishment in respect of the Free State Division	28 January 2023
2.5	Consultation with the Gauteng Judge President on the proposed rationalisation of the judicial establishment in respect of the Gauteng Division	31 January 2023
2.6	Consultation with the KwaZulu-Natal Judge President on the proposed rationalisation of the judicial establishment in respect of the KwaZulu-Natal Division	3 February 2023

Phase 2: Continued

Item	Activity	Completion date
2.7	Consultation with the Limpopo Judge President on the proposed rationalisation of the judicial establishment in respect of the Limpopo Division	8 February 2023
2.8	Consultation with the Mpumalanga Judge President on the proposed rationalisation of the judicial establishment in respect of the Mpumalanga Division	13 February 2023
2.9	Consultation with the Northern Cape Judge President on the proposed rationalisation of the judicial establishment in respect of the Northern Cape Division	16 February 2023
2.10	Consultation with the North West Judge President on the proposed rationalisation of judicial establishment in respect of the North West Division	21 February 2023
2.11	Consultation with the Western Cape Judge President on the proposed rationalisation of the judicial establishment in respect of the Western Cape Division	28 February 2023
2.12	Consider and analyse all the inputs from the Judges President and consolidate into a final report	17 March 2013

Phase 2: Continued		
Item	Activity	Completion date
2.13	Presentation and submission of the final report on the rationalisation of the judicial establishments of the Divisions of the High Court to the Minister	29 March 2023
2.14	Presentation of the report on the Rationalisation of the Judicial Establishments of the Divisions of the High Court of South Africa to the Judicial Service Commission (JSC) by the Minister	April JSC siting

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JUDGE PRESIDENT'S CHAMBERS
HIGH COURT, PRIVATE BAG X1011
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6140

**REPUBLIC OF SOUTH AFRICA
HIGH COURT OF SOUTH AFRICA, EASTERN CAPE DIVISION,
MAKHANDA**

**REPRESENTATIONS ON THE PROPOSED JURISDICTIONAL AREAS
OF THE HIGH COURT OF SOUTH AFRICA, EASTERN CAPE DIVISION**

Introduction

1. The objective of the rationalisation process is to establish a judicial system that is suited to the requirements of the Constitution, as mandated by section 6(3)(a) of the Superior Courts Act 10 of 2013(the Act).
2. Section 6(3)(a) to (c) provides that –
 - (a) the Minister must, after consultation with the JSC, by notice in the *Gazette*, determine the area under the jurisdiction of a Division, and may in the same manner withdraw or amend such a notice;
 - (b) the area under the jurisdiction of a Division may comprise any part of one or more provinces; and
 - (c) the Minister may determine the area under the jurisdiction of a local seat.

3. The submission by the Department of Justice and Constitutional Development (the Department) sets out to first rationalise the magisterial districts within the jurisdiction of various Divisions of the High Court, and thereafter to determine the area of jurisdiction of the seats within the Division with reference to the newly established magisterial districts.

Makhanda (the main seat)

4. The proposed area for this seat is spread over a wide area consisting mainly of what may be described as rural and farming communities. Considering the population according to the statistics provided by the Department in its submissions, the proposed areas should not result in an increased workload in so far as criminal cases are concerned. On the contrary, according to the statistics provided by the Director of Public Prosecutions (the DPP), the number of criminal cases may be reduced substantially. The allocation of those areas falling within what the Department refers to as the “White Corridor” to the Bhisho Court, may further result in a reduction of the number of civil matters serving before the Makhanda Court. There is no doubt that the workload of Makhanda which is currently not that huge will be reduced remarkably. Resultantly, there will be a need to transfer two judges from Makhanda to the Bhisho High Court, especially if one has regard to the fact that the territorial jurisdiction of the Bhisho High Court and the workload will increase remarkably. This is so regardless of the fact that the main seat of the Division has concurrent jurisdiction over matters falling within the jurisdiction of all local seats.

Gqeberha (local seat)

5. No obvious problems are anticipated by the proposed changes to the jurisdictional area of this seat. The proposed changes will -
 - (a) be conducive to the residents of the areas concerned having convenient access to a seat of the High Court; and
 - (b) not result in an increased work volume that may require increased Court personnel or changes to the existing Court infrastructure and facilities.

Bhisho (local seat)

6. Subject to what is stated elsewhere in this memorandum, the proposed jurisdictional area of the Bhisho Court will dramatically increase the size of the area which will be served by this Court. A rough calculation of the population in the proposed area is nearly 40% of the entire population of the Province. This figure should, however, be seen against the fact that, save for the Buffalo City Metropolitan Municipality, the population is spread over a wide area of rural and farming communities, and the Eastern Cape has a negative population growth. It should, nevertheless, safely be anticipated that the proposed changes will result in the following:
 - (a) There is bound to be a dramatic increase in the number of criminal matters the seat will be required to deal with. This fact is confirmed by the statistics provided by the DPP showing that of the 29 criminal cases enrolled for hearing to date in Makhanda for the current year, 22 would under the new dispensation have had to be heard in the Bhisho Court. At present, Bhisho has two criminal Courts and it will now also be required

to deal with criminal matters that were previously dealt with by the East London Circuit Court emanating from the Buffalo City Metropolitan area.

- (b) An increase of civil work with the addition of the Buffalo City Metropolitan area that was previously dealt with by the East London Circuit Court is bound to take place. Presently, there is a civil Court sitting in Bhisho and East London respectively on a weekly basis. It is unlikely that one civil Court sitting in Bhisho would be able to effectively deal with what is presently being dealt with by two Courts on a weekly basis. It will also require an additional Court to deal with motion Court matters on a weekly basis as opposed to a bi-weekly dispensation.
 - (c) If, moving forward, criminal and civil matters are to be heard at the Bhisho Court, the present number of Court rooms and the facilities available at those premises will be completely inadequate. The proposed structural changes to the available infrastructure, which have been in the pipeline for many years, will now have to be expedited by the Department in order to give effect to the proposed rationalisation. This should, however, not pose an immediate obstacle to the proposed new jurisdictional area for this seat.
7. A concern has been raised that the right of access of litigants from the Buffalo City Metropolitan area will be diminished in having to travel to the Bhisho Court if it is placed within the jurisdictional area of that Court. However, it is evident that the Buffalo City Metropolitan area covers a wide area that includes places such as Bhisho, Berlin, King William's Town and Dimbaza. The only persons likely to fall in the category in the concern raised are the residents of East London itself. They will be required to travel 55 kilometres to Bhisho, which fades in comparison to litigants who have to travel for hundreds of

kilometres from areas such as Sterkspruit, Middelburg and other further outlying areas.

8. Another concern raised in this regard is that there may be additional costs in court personnel having to travel from East London to Bhisho, on a daily basis. However, the position at present is that all the judges who are stationed in Bhisho chose to reside in East London. The same position applies to some of the court staff stationed at the Bhisho court.

Mthatha (local seat)

9. This seat carries a heavy workload. The districts and areas proposed to constitute the jurisdictional area of this seat are unlikely to decrease the workload. The result is that the existing need for the creation of additional posts, to add to the complement of judges stationed at this seat, remains a matter that requires urgent attention.

Kokstad

10. It could be contended that Kokstad straddles Mount Ayliff and Matatiele which are both served by the Mthatha High Court. The question may then be asked why Kokstad should be served by Pietermaritzburg, instead of Mthatha. Regard being had to section 6(3)(b) of the Act, Kokstad could still be served by the Mthatha High Court even though it falls under the KZN province. From an access perspective, Kokstad residents may not lose out because the distance from Kokstad to Mthatha and Pietermaritzburg is 194kms and 193kms, respectively. One must readily concede that the administrative challenges

associated with a court whose geographic area falls under another province are too ghastly to contemplate.

Elliot

11. No practical reason could be discerned for allotting Elliot to the Bhisho High Court. The distance from Elliot to Bhisho is 254kms, whilst Mthatha is 142kms away from Elliot. From the access perspective, the situation should be remedied. It is recommended that Elliot be allotted to the jurisdictional area of the Mthatha High Court.

Tsomo and Cofimvaba

12. Tsomo is 148kms to Bhisho and 134kms to Mthatha. Cofimvaba is 193kms to Bhisho and 150kms to Mthatha. From the access perspective, the differences are negligible. The question to be posed and answered is – why is it being recommended that these districts be served by Bhisho, and not Mthatha in terms of the current dispensation?

Conclusion

13. Without derogating from the above, the recommendations embodied herein are made bearing in mind that the Judge President is empowered to compile a single Court roll for the Division; and s/he may assign judges of the Division within the Division as he deems fit (section 4 of the Act). In addition, the Judge President has the power to establish circuit courts as contemplated in section 7 of the Act.

S M MBENENGE

**JUDGE PRESIDENT
EASTERN CAPE DIVISION**

11 AUGUST 2022

REPORT ON THE RATIONALISATION OF AREAS UNDER JURISDICTION AND JUDICIAL ESTABLISHMENTS OF THE FREE STATE DIVISION OF THE HIGH COURT OF SOUTH AFRICA

1. Introduction

The purpose of this report is to provide motivation for the creation of a local division for areas under jurisdiction and judicial establishments of the Free State Division of the High Court of South Africa.

2. Background

The committee on the Rationalisation of Areas and Judicial Establishments of the Division of the High Court of South Africa was established to assist the Department of Justice and Constitutional Development to develop transformative solutions and address systemic barriers which inadvertently impede access to justice.

Access to justice in South Africa is severely curtailed by the lingering effects of apartheid judicial and spatial planning. The proximity of police stations, legal aid and other state functionaries to the seat of the Free State Division of the High Court, has a bearing on the accessibility of the justice system.

The previous rationalisation process ensured that there is a High Court in each province. In order to ensure that every Division of the High Court is able to fully service the population, the Department of Justice and Constitutional Development intends to assess a number of factors, this includes measuring the population ratio against the number of judicial posts in a division.

During February 2015, the Municipal Demarcation Board issued Circular 2 of 2015, in terms of which there would be a re-determination of Municipal Boundaries in the country. The Free State Province currently has 5 Magisterial Districts created and established¹.

3. Magisterial Districts of the Free State Division of the High Court

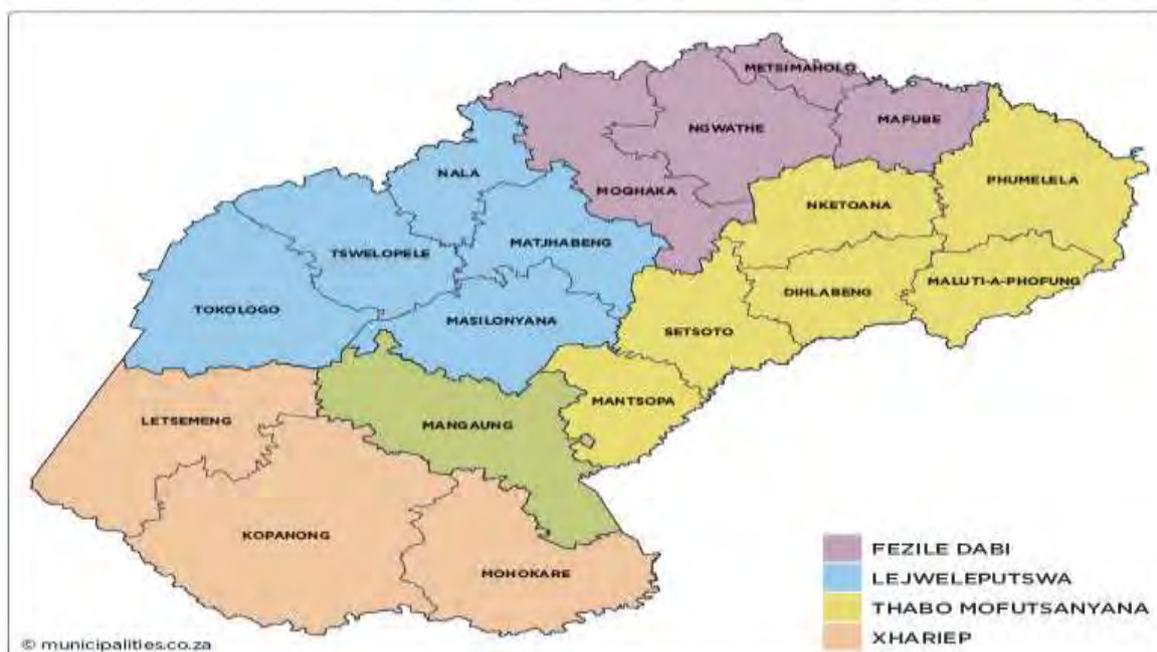
The Magisterial Districts over which the Free State Division has jurisdiction are the following:

1. **Fezile Dabi Magisterial District** with the Main Seat in **Kroonstad** and Sub Districts: Mafube; Metsimaholo; Ngwathe; Parys
2. **Lejweleputswa Magisterial District** the Main Seat in **Welkom** and Sub Districts: Hennenman; Masilonyana; Nala; Odendaalsrus; Tokologo; Tswelopele; Virginia
3. **Mangaung Magisterial District** with the Main Seat in **Bloemfontein** and Sub Districts: Botshabelo; Thaba Nchu
4. **Thabo Mofutsanyane Magisterial District** with the Main Seat in **Phuthaditjhaba** and Sub Districts: Dihlabeng; Maluti- a –Phofung; Mantsopa; Nketoana; Phumelela; Setsoto;

¹ See GG 46132, GN 929 of 30 March 2022

5. **Xhariep Magisterial District** with the Main Seat in **Edenburg** and Sub Districts: Letsemeng; Mohokare.

Please refer to the map below depicting the magisterial districts of the Free State Division of the High Court.



4. Circuit Courts of the Free State Division of the High Court

Circuit Courts are part of the High Court and they serve far flung and rural areas. Circuit Courts are established by the Judge President of a Division by way of a notice in the Government Gazette. Circuit Courts adjudicate criminal or civil matters. 20 Circuit Courts are currently established in the Free State Division of the High Court.

The main seat for the Free State Division of the High Court is in Bloemfontein, with circuit courts sitting at the following places:

- 4.1 Bethlehem
- 4.2 Bethulie
- 4.3 Botshabelo
- 4.4 Ficksburg
- 4.5 Harrismith
- 4.6 Kroonstad
- 4.7 Ladybrand

- 4.8 Parys
- 4.9 Sasolburg
- 4.10 Virginia
- 4.11 Welkom
- 4.12 Phuthaditjhaba
- 4.13 Bothaville
- 4.14 Vrede
- 4.15 Koffiefontein
- 4.16 Odendaalsrus
- 4.17 Fouriesburg
- 4.18 Heilbron
- 4.19 Smithfield
- 4.20 Clocolan

5. Frequency and Schedule of the Circuit Courts

The Judge President of the Free State Division of the High Court determines the times and places for the sittings of the Circuit Courts to hear the matters.

Please note the following statistical information relating to the schedule of sittings of the Circuit Courts for the period of 2018 -2022:

Period of 2018 to 2019, Circuit Courts sat as follows²:

Term 1 of 2018			
Circuit Court	Case information	Date heard	No of days
Bethlehem	S v Moletsane	29/01/2018-02/02/2018	5 (1 Week)
Phuthaditjhaba	S v Mokoena	29/01/2018-23/02/2018	20 (4 Weeks)
Harrismith	S v Fillipe & 5 Others	29/01/2018-30/03/2018	45 (9 Weeks)
Kroonstad	S v Mtomkelo Benjamin Radebe & 1 Other	05/02/2018-16/02/2018	10 (2 Weeks)
Welkom	S v Mokati	19/02/2018-23/02/2022	5 (1 Week)

² See term roll for 2018 to 2019

Welkom	S v Dakuna	26/02/2018-02/03/2022	5 (1 Week)
Sasolburg	S v Mosia	26/02/2018-09/03/2018	10 (2 Weeks)
Ladybrand	S v Motalingoane	05/03/2018-16/03/2018	10 (2 Weeks)
Phuthaditjhaba	S v Nkgooa	12/03/2018-16/03/2018	5 (1 Week)
Botshabelo	S v Ndinisa	19/03/2018-23/03/2018	5 (1 Week)
Smithfield	S v Jansen	26/03/2018-30/03/2018	5 (1 Week)
Term 2 of 2018			
Circuit Court	Case information	Date heard	No of days
Phuthaditjhaba	S v Motaung	16/04/2018-20/04/2018	5 (1 Week)
Ladybrand	S v Maserooa & 6 Others	16/04/2018-20/04/2018	5 (1 Week)
Bethlehem	S v Mokoena & 1 Other	16/04/2018-27/04/2018	10 (2 Weeks)
Kroonstad	S v Nhlagulela & 12 Others	23/04/2018-04/05/2018	10 (2 Weeks)
Parys	S v Van der Westhuizen & 4 Others	30/04/2018-18/05/2018	15 (3 Weeks)
Virginia	S v Mongana & 1 Other	30/04/2018-11/05/2018	10 (2 Weeks)
Ladybrand	S v Letsie	14/05/2018-25/05/2018	10 (2 Weeks)
Virginia	S v Mfeqane	14/05/2018-25/05/2018	10 (2 Weeks)
Ficksburg	S v Malumisi	21/05/2018-01/06/2018	10 (2 Weeks)
Bethlehem	S v Mosia	28/05/2018-01/06/2018	5 (1 Week)
Parys	S v Van der Westhuizen & 4 Others	04/06/2018-08/06/2018	5 (1 Week)
Bethulie	S v Rouls & 1 Other	04/06/2018-08/06/2018	5 (1 Week)
Virginia	S v Maponya & 6 Others	04/06/2018-29/06/2018	20 (4 Weeks)
Bethlehem	S v Mosikili & 1 Other	11/06/2018-29/06/2018	10 (2 Weeks)
Term 3 of 2018			

Circuit Court	Case information	Date heard	No of days
Kroonstad	S v Bondamakara & 5 Others	30/07/2018-17/08/2018	15 (3 Weeks)
Ficksburg	S v Khafu	30/07/2018-10/08/2018	10 (2 Weeks)
Ficksburg	S v Malumisi	13/08/2018-17/08/2018	5 (1 Week)
Parys	S v Moletsane	30/07/2018-17/08/2018	15 (3 Weeks)
Bethlehem	S v Mokoena	20/08/2018-24/08/2018	5 (1 Week)
Phuthaditjhaba	S v Rasella & 1 Other	20/08/2018-24/08/2018	5 (1 Week)
Kroonstad	S v Mohoboko & 1 Other	20/08/2018-07/09/2018	15 (3 Weeks)
Harrismith	S v Mokhomotsi	20/08/2018-31/08/2018	10 (2 Weeks)
Bethlehem	S v Motaung	27/08/2018-07/09/2018	10 (2 Weeks)
Ficksburg	S v Malumisi	10/09/2018-14/09/2018	5 (1 Week)
Bethlehem	S v Mosia	10/09/2018-14/09/2018	5 (1 Week)
Term 4 of 2018			
Circuit Court	Case information	Date heard	No of days
Phuthaditjhaba	S v Mofokeng & 2 Others	08/10/2018-26/10/2018	15 (3 Weeks)
Virginia	S v Makgetla	08/10/2018-12/10/2018	5 (1 Week)
Ficksburg	S v Malumisi	08/10/2018-12/10/2018	5 (1 Week)
Virginia	S v Maponya & 6 Other	15/10/2018-26/10/2018	10 (2 Weeks)
Sasolburg	S v Kock	29/10/2018-02/10/ 2018	5 (1 Week)
Bethulie	S v Rouls	05/11/2018-16/11/2018	10 (2 Weeks)
Kroonstad	S v Bondamakara & 6 Others	05/11/2018-23/11/2018	15 (3 Weeks)
Bethlehem	S v Sebatana	19/11/2018-30/11/2018	10 (2 Weeks)
Virginia	S v Phohleli	03/12/2018-07/12/2018	5 (1 Week)

Term 1 of 2019			
Circuit Court	Case information	Date heard	No of days
Parys	S v Van der Westhuizen & 5 Others	28/01/2019-15/02/2019	15 (3 Weeks)
Bethlehem	S v Moloji	28/01/2019-02/02/2019	5 (1 Week)
Kroonstad	S v Sebetoane	04/02/2019-08/02/2019	5 (1 Week)
Phuthaditjhaba	S v Nthinya	11/02/2019-15/02/2019	5 (1 Week)
Phuthaditjhaba	S v Molefi & 1 Other	18/02/2019-01/03/2019	10 (2 Weeks)
Kroonstad	S v Maponya & 6 Others	18/02/2019-22/02/2019	5 (1 Week)
Virginia	S v Mohlabane & 7 Others	18/02/2019-15/03/2019	20 (4 Weeks)
Parys	S v Vd Westhuizen & 5 Others	04/03/2019-15/03/2019	10 (2 Weeks)
Phuthaditjhaba	S v Nthinya	04/03/2019-08/03/2019	5 (1 Week)
Sasolburg	S v Mpinga	11/03/2019-15/03/2019	5 (1 Week)
Virginia	S v Matsemela & 3 Others	18/03/2019-29/03/2019	10 (2 Weeks)
Sasolburg	S v Kock	25/03/2019-29/03/2019	5 (1 Week)
Term 2 of 2019			
Circuit Court	Case information	Date heard	No of days
Ficksburg	S v Nkobolo,	15/04/2019-18/04/2019	5 (1 Week)
Virginia	S v Maponya & 6 Others,	15/04/2019-18/04/2019	5 (1 Week)
Virginia	S v Sonnenberg	23/04/2019-10/05/2019	15 (3 Weeks)
Phuthaditjhaba	S v Pitso & 2 Others	23/04/2019-03/05/2019	10 (2 Weeks)
Sasolburg	S v Ranketsi	06/05/2019-17/05/2019	10 (2 Weeks)
Kroonstad	S v Loggenberg	13/05/2019-31/05/2019	15 (3 Weeks)
Virginia	S v Sonnenberg	13/05/2019-17/05/2019	5 (1 Week)
Phuthaditjhaba	S v Motaung	20/05/2019-31/05/2019	10 (2 Weeks)

Parys	S v vd Westhuizen + 5 Others	27/05/2019-31/05/2019	5 (1 Week)
Phuthaditjhaba	S v Mofokeng + 2 Others	03/06/2019-21/06/2019	15 (3 Weeks)
Sasolburg	S v Kock	24/06/2019-28/06/2019	5 (1 Week)
Term 3 of 2019			
Circuit Court	Case information	Date heard	No of days
Virginia	S v Mohlabane & 7 Others	29/07/2019-16/08/2019	15 (3 Weeks)
Bethlehem	S v Tsotetsi	29/07/2019-02/08/2019	5 (1 Week)
Phuthaditjhaba	S v Mfengguza	20/07/2019-09/08/2019	10 (2 Weeks)
Bethlehem	S v Cupido & 1 Other	05/08/2019-16/08/2019	10 (2 Weeks)
Virginia	S v Kwitsi	19/08/2019-23/08/2019	5 (1 Week)
Bethlehem	S v Machisa & 1 Other	19/08/2019-30/08/2019	10 (2 Weeks)
Ficksburg	S v Fusi	19/08/2019-30/08/2019	10 (2 Weeks)
Virginia	S v Maranti & 1 Other	26/08/2019-06/09/2019	10 (2 Weeks)
Harrismith	S v Nortje	26/08/2019-06/09/2019	10 (2 Weeks)
Phuthaditjhaba	S v Sepola	02/09/2019-13/09/2019	10 (2 Weeks)
Sasolburg	S v Mokoena & 1 Other	02/09/2019-13/09/2019	10 (2 Weeks)
Parys	S v Cronje & 2 Others	09/09/2019-13/09/2019	5 (1 Week)
Bethlehem	S v Mofokeng	09/09/2019-20/09/2019	10 (2 Weeks)
Sasolburg	S v Mnguni	16/09/2019-20/09/2019	5 (Week)
Term 4 of 2019			
Circuit Court	Case information	Date heard	No of days
Kroonstad	S v Mohlabane & 7 Others	07/10/2019-11/10/2019	5 (1 Week)
Virginia	S v Mosia & 2 Others	07/10/2019-18/10/2019	10 (2 Weeks)
Parys	S v vd Westhuizen & 5 Others	14/10/2019-18/10/2019	10 (2 Weeks)
Kroonstad	S v CAP Loggenberg	14/10/2019-15/11/2019	20 (4 Weeks)

Virginia	S v Nkhabo	21/10/2019-25/10/2019	5 (1 Week)
Sasolburg	S v Mnguni	21/10/2019-25/10/2019	5 (1 Week)
Virginia	S v Jacobs	28/10/2019-08/11/2019	10 (2 Weeks)
Phuthaditjhaba	S v Sesing & 6 Others	21/10/2019-15/11/2019	20 (4 Weeks)
Ficksburg	S v Masiza & 15	28/10/2019-15/11/2019	15 (3 Weeks)
Sasolburg	S v Mokoena	28/10/2019-08/11/2019	10 (2 Weeks)
Parys	S v Mokhobo	11/11/2019-22/11/2019	10 (2 Weeks)
Bethlehem	S v Mokena	18/11/2019-13/12/2019	20 (4 Weeks)
Virginia	S v TJ Matselema & 3 Others	18/11/2019-29/11/2019	10 (2 Weeks)
Harrismith	S v Mofokeng & 4 Others	18/11/2019-29/11/2019	10 (2 Weeks)
Kroonstad	S v Mokoena & 1 Other	18/11/2019-29/11/2019	10 (2 Weeks)
Sasolburg	S v Mnguni	24/11/2019-29/11/2019	5 (1 Week)
Harrismith	S v Nortje	02/12/2019-06/12/2019	5 (1 Week)
Ficksburg	S v Masiza & 15 Others	02/12/2019-13/12/2019	10 (2 Weeks)

During the period of 2020 to 2021, Circuit Courts sat as follows³:

Term 1 of 2020			
Circuit Court	Case information	Date heard	No of days
Harrismith	S v Mofokeng & 4 Others	27/01/2020-07/02/2020	10 (2 Weeks)
Parys	S v Cronje & 2 Others	27/01//2020-07/02/2020	10 (2 Weeks)
Ficksburg	S v Blankwe & Others	27/01//2020-14/02/2020	15 (3 Weeks)
Virginia	S v Mashopane	27/01//2020-14/02/2020	15 (3 Weeks)
Bethlehem	S v Mokena	03/02/2020-14/02/2020	10 (2 Weeks)
Parys	S v Matsipa	10/02/2020-14/02/2020	5 (1 Week)

³ See term roll for 2020 to 2021

Bethulie	S v Zenzo	17/02//2020-06/03/2020	15 (3 Weeks)
Harrismith	S v Sesing & 5 Others	17/02/2020-28/02/2020	10 (2 Weeks)
Kroonstad	S v CAP Loggenberg	24/02/2020-28/02/2020	5 (1 Week)
Parys	S v Maphoto & 1 Other	02/03//2020-06/03/2020	5 (1 Week)
Bethlehem	S v Tsupa & 1	02/03//2020-06/03/2020	5 (1 Week)
Virginia	S v Rule	02/03/2020-13/03/2020	10 (2 Weeks)
Harrismith	S v Sesing & 5 Others	09/03/2020-20/03/2020	10 (2 Weeks)
Parys	S v G vd Westhuizen	16/03/2020-20/03/2020	5 (1 Week)
Phuthaditjhaba	S v Nhlapo & 1 Other	09/03/2020-20/03/2020	10 (2 Weeks)
Virginia	S v Seloane & 9 Others	16/03/2020-20/03/2020	5 (1 Week)
Bethlehem	S v Mokena	09/03/2020-20/03/2020	10 (2 Weeks)
Bethlehem	S v Tsupa & 1 Other	23/03/2020-27/03/2020	5 (1 Week)
Virginia	S v Phohleli , S v TJ Matselema & 3	23/03/2020-27/03/2020	5 (1 Week)
FICKSBURG	S v Masiza & 15	23/03/2020-27/03/2020	5 (1 Week)
Term 2 of 2020			
Circuit Court	Case information	Date heard	No of days
Covid 19 Pandemic	N/A	N/A	N/A
Term 3 of 2020			
Circuit Court	Case information	Date heard	No of days
Harrismith/Bloemfontein (Covid19)	S v Mofokeng & 4 Others	27/07/2020-14/08/2020	15 (3 Weeks)
Sasolburg	S v Ghorholo	27/07/2020-07/08/2020	10 (2 Weeks)
Virginia	S v Mgxulwa	27/07/2020-31/07/2020	5 (1 Week)
Ficksburg	S v AE Phalatsi & 3 Others (COVID19)	27/07/2020-14/08/2020	15 (3 Weeks)

Virginia	S v Molapokatse	03/09/2020-07/08/2020	5 (1 Week)
Phuthaditjhaba	S v Nhlapo & 1 Other	10/08//2020-21/08/2020	10 (2 Weeks)
Virginia	S v Ernest Pule Chamisso	10/08//2020-21/08/2020	10 (2 Weeks)
Ladybrand	S v Mokena P Nhlapo	10/08//2020-28/08/2020	15 (3 Weeks)
Harrismith	S v Monoajoala	17/08/2020-28/08/2020	10 (2 Weeks)
Parys	S v Vd Westhuizen	24/08//2020-28/08/2020	5 (1 Week)
Virginia	S v Mokhethi	24/08//2020-28/08/2020	5 (1 Week)
Ficksburg	S v Masiza	17/08/2020-18/09/2020	25 (5 Weeks)
Virginia	S v Tseki & 2 Others	31/08/2020-11/09/2020	10 (2 Weeks)
Parys	S v Cronje & 2 Others	07/09/2020-18/09/2020	10 (2 Weeks)
Ladybrand	S v Mokena	07/09/2020-11/09/2020	5 (1 Week)
Virginia	S v Phohleli	14/09/2020-18/09/2020	5 (1 Week)
Term 4 of 2020			
Circuit Court	Case information	Date heard	No of days
Virginia	S v Seloane & 9 Others	05/10//2020-30/10/2020	20 (4 Weeks)
Parys	S v Sefume & 2 Others	05/10//2020-16/10/2020	10 (2 Weeks)
Phuthaditjhaba	S v TJ Nhlapo & 1 Other	05/10/2020-09/10/2020	5 (1 Week)
Bethlehem	S v Tsupa & 1 Others	05/10/2020-16/10/2020	10 (2 Weeks)
Sasolburg	S v Moyo & 2 Others	05/10/2020-16/10/2020	10 (2 Weeks)
Virginia	S v Mosia & 2 Others	19/10/2020-23/10/2020	10 (2 Weeks)
Ficksburg	S v Masiza & 15 Others	26/20/2020-30/10/2020	5 (1 Week)
Virgina	S v Rune	02/11//2020-20/11/2020	15 (3 Weeks)
Sasolburg	S v Dakile & 2 Others	02/11/2020-13/11/2020	10 (2 Weeks)
Harrismith	S v Mofokeng & 4	09/11//2020-27/11/2020	15 (3 Weeks)
Phuthaditjhaba	S v TJ Nhlapo & 1 Other	09/11/2020-13/11/2020	5 (1 Week)

Ficksburg	S v Masiza & 15 Others	23/11/2020-11/12/2020	15 (3 Weeks)
Bethlehem	S v Tsupa & 1 Other	23/11/2020-11/12/2020	15 (3 Weeks)
Sasolburg	S v Mokheseng	23/11/2020-27/11/2020	5 (1 Week)

Term 1 of 2021			
Circuit Court	Case information	Date heard	No of days
Phuthaditjhaba Moved to Bethlehem	S v Moleleki	18/01/2021-29/01/2021	10 (2 Weeks)
Ficksburg	S v AE Phalatsi & 3 Others	18/01/2021-05/02/2021	15 (3 Weeks)
Kroonstad	S v Motaung	18/01/2021-22/01/2021	5 (1 Week)
Virginia	S v Tseki & 2 Others	18/01/2021-05/02/2021	15 (3 Weeks)
Parys	S v Sefume & 2 Others	18/01/2021-22/01/2021	5 (1 Week)
Ladybrand	S v Mokena	01/02/2021-19/02/2021	15 (3 Weeks)
Parys	S v Cronje & 2 Other	01/02/2021-05/02/2021	5 (1 Week)
Virginia	S v Van Wyk	22/02/2021-12/03/2021	15 (3 Weeks)
Ficksburg	S v Masiza & 15 Others	01/03/2021-19/03/2021	15 (3 Weeks)
Kroonstad	S v Rune	08/03/2021-12/03/2021	5 (1 Week)
Phuthaditjhaba	S v TJ Nhlapo & 1 Other	15/03/2021-26/03/2021	10 (2 Weeks)
Ficksburg	S v Masiza & 15	22/03/2021-26/03/2021	5 (1 Week)
Term 2 of 2021			
Circuit Court	Case information	Date heard	No of days
Ficksburg	S v Masiza & 15 Others	12/04//2021-16/04/2021	5 (1 Week)
Sasolburg	S v Mafa & 2 Others	12/04//2021-16/04/2021	5 (1 Week)
Ladybrand	S v Mokena	12/04//2021-	5 (1 Week)

		16/04/2021	
Virginia	S v Rune	19/04/2021-30/04/2021	10 (2 Weeks)
Welkom	S v NE Mfene & 2 Others	19/04/2021-30/04/2021	10 (2 Weeks)
Sasolburg	S v Mafa & 2 Others	26/04/2021-30/04/2021	5 (1 Week)
Harrismith	S v KP Setoromo & 4 Others	26/04//2021-21/05/2021	20 (4 Weeks)
Virginia	S v Nconco & 7 Others	03/05/2021-14/05/2021	10 (2 Weeks)
Parys	S v Van der Westhuizen & 4	03/05/2021-07/05/2021	5 (1 Week)
Welkom	S v Sani	10/05/2021-14/05/2021	5 (1 Week)
Bethlehem	S v Monoajoala	10/05//2021-21/05/2021	10 (2 Weeks)
Ladybrand	S v Mokena	10/05/2021-21/05/2021	10 (2 Weeks)
Parys	S v Cronje & 2 Others	17/05/2021-21/05/2021	5 (1 Week)
Welkom	S v NE Mfene & 2 Others	24/05/2021-28/05/2021	5 (1 Week)
Phuthaditjhaba	S v TS Mokoena	31/05/2021-11/06/2021	10 (2 Weeks)
Harrismith	S v KP Setoromo & 4 Others	07/06/2021-11/06/2021	5 (1 Week)
Bethlehem	S v Molefi Molise & 4	24/08/2021-18/06/2021	20 (4 Weeks)
Term 3 of 2021			
Circuit Court	Case information	Date heard	No of days
Kroonstad	S v TS Mobigile & 1 Other	19/07/2021-23/07/2021	5 (1 Week)
Welkom	S v T Phohleli	19/07/2021-23/07/2021	5 (1 Week)
Sasolburg	S v L Motsoeneng	26/07/2021-06/08/2021	10 (2 Weeks)
Bethlehem	S v ZM Mlangeni	26/07/2021-30/07/2021	5 (1 Week)
Harrismith	S v MM Mokoena & 6 Others	19/07/2021-20/08/2021	30 (6 Weeks)
Welkom	S v Rune	26/07/2021-27/08/2021	25 (5 Weeks)
Virginia	S v M Tseki & 2 Others	02/08/2021-06/08/2021	5 (1 Week)
Bethlehem	S v JM Mokoena	02/08/2021-13/08/2021	10 (2 Weeks)

Phuthaditjhaba	S v B Buthelezi	02/08/2021-06/08/2021	5 (1 Week)
Ladybrand	S v Mokena	09/08/2021-13/08/2021	5 (1 Week)
Virginia	S v JM Lekhetho & 3 Others	09/08/2021-20/08/2021	10 (2 Weeks)
Bethulie	S v T Mokoena & 2 Other	16/08/2021-20/08/2021	5 (1 Week)
Bethlehem	S v MW Mofokeng	16/08/2021-20/08/2021	5 (1 Week)
Ficksburg	S v AE Phalatsi & 3 Others	23/08/2021-03/09/2021	10 (2 Weeks)
Ladybrand	S v Mokena	30/08/2021-03/09/2021	5 (1 Week)
Bethlehem	S v MV Motsitsi	30/08/2021-03/09/2021	5 (1 Week)
Parys	S v Van der Westhuizen & 4	06/09/2021-10/09/2021	5 (1 Week)
Virginia	S v M Mohapi	06/09/2021-19/09/2021	10 (2 Weeks)
Bethlehem	S v BS Radebe	06/09/2021-10/09/2021	5 (1 Week)
Ficksburg	S v Masiza & 15	13/09/2021-17/09/2021	5 (1 Week)
Ladybrand	S v Mokena	13/09/2021-17/09/2021	5 (1 Week)
Welkom	S v TM Tsiukwe	13/09/2021-17/09/2021	5 (1 Week)
Term 4 of 2021			
Circuit Court	Case information	Date heard	No of days
Harrismith	S v MM Mokoena & 6 Others	04/10/2021-22/10/2021	15 (3 Week)
Sasolburg	S v LS Motsoeneng	04/10/2021-08/10/2021	5 (1 Week)
Bethlehem	S v ZM Mlangeni	04/10/2021-08/10/2021	5 (1 Week)
Virginia	S v Rune	04/10/2021-08/10/2021	5 (1 Week)
Bethlehem	S v MW Mofokeng	11/10/2021-15/10/2021	5 (1 Week)
Kroonstad	S v Mofokeng	18/10/2021-22/10/2021	5 (1 Week)
Ladybrand	S v Mokena	11/10/2021-22/10/2021	10 (2 Weeks)
Virginia	S v M Tseki & 2 Others	11/10/2021-22/10/2021	10 (2 Weeks)
Welkom	S v NE Mfene & 2 Others	18/10/2021-29/10/2021	10 (2 Weeks)
Sasolburg	S v M Mneno	25/10/2021-	5 (1 Week)

		29/10/2021	
Harrismith	S v KP Maleka	25/10/2021-29/10/2021	5 (1 Week)
Parys	S v Manhique & 3 Others	01/11/2021-12/11/2021	10 (2 Weeks)
Virginia	S v JM Lekhetho & 3 Others	01/11/2021-05/11/2021	5 (1 Week)
Ficksburg	S v Masiza & 15 Others	08/11/2021-26/11/2021	15 (3 Weeks)
Ladybrand	S v Moreki	08/11/2021-12/11/2021	5 (1 Week)
Harrismith	S v KP Maleka	08/11/2021-12/11/2021	5 (1 Week)
Ladybrand	S v AE Phalatsi & 3 Others	15/11/2021-19/11/2021	5 (1 Week)
Bethlehem	S v Matlaletsa & 1 Other	15/11/2021-26/11/2021	10 (2 Weeks)
Ladybrand	S v MS Menyatso	22/11/2021-26/11/2021	5 (1 Week)
Virginia	S v Rune	22/11/2021-03/12/2021	10 (2 Weeks)
Welkom	S v Benedict Tshediso Rantsheuora	22/11/2021-03/12/2021	10 (2 Weeks)
Clocolan	S v Mokena	15/11/2021-19/11/2021	5 (1 Week)
Clocolan	S v Mokena	22/11/2021-26/11/2021	5 (1 Week)
Harrismith	S v KP Maleka	22/11/2021-26/11/2021	5 (1 Week)

During the period of 2022 to date Circuit Courts sat as follows⁴:

Term 1 of 2022			
Circuit Court	Case information	Date heard	No of days
Bethlehem	S v T Motloung	17/01/2022-21/01/2022	5 (1 Week)
Virginia	S vJM Lekhetho & 3	17/01/2022-28/01/2022	10 (2 Weeks)
Ladybrand	S v AE Phalatsi & 3	17/01/2022-21/01/2022	10 (2 Weeks)
Vrede	S v Ngwenya	24/01/2022-28/01/2022	5 (1 Week)
Welkom	S v Taemane Nomo	24/01/2022-28/01/2022	5 (1 Week)

⁴ See term roll for 2022

Harrismith	S v Setoromo & 4	31/01/2022-25/03/2022	40 (8 Weeks)
Bethlehem	S v R Mokoena	31/01/2022-11/02/2022	10 (2 Weeks)
Virginia	S v TF Molifi	31/01/2022-11/02/2022	10 (2 Weeks)
Bethlehem	S v ME Mosia	14/02/2022-18/02/2022	5 (1 Week)
Sasolburg	S v Z Miya	14/02/2022-18/02/2022	5 (1 Week)
Virginia	S v ML Modise & 1	14/02/2022-25/02/2022	10 (2 Weeks)
Parys	S v TA Ranketsi	21/02/2022-25/02/2022	5 (1 Week)
Ladybrand	S v MP Nhlapo	21/02/2022-25/02/2022	5 (1 Week)
Bethlehem	S v KP Maleka	28/02/2022-04/03/2022	5 (1 Week)
Vrede	S v Ngwenya	28/02/2022-04/03/2022	5 (1 Week)
Bethlehem	S v A Fourie	07/03/2022-18/03/2022	10 (2 Weeks)
Ficksburg	S v ME Nkikane	07/03/2022-11/03/2022	5 (1 Week)
Parys	S v S Manhique & 3 Others	07/03/2022-18/03/2022	10 (2 Weeks)
Phuthaditjhaba	S v MJ Motloung	14/03/2022-18/03/2022	5 (1 Week)
Ficksburg	S v MI Magagula	14/03/2022-25/03/2022	10 (2 Weeks)
Ladybrand	S v AE Phalatsi & 3 Others	21/03/2022-25/03/2022	5 (1 Week)
Term 2 of 2022			
Circuit Court	Case information	Date heard	No of days
Ficksburg	S v AE Phalatsi & 3 Others	11/04/2022-22/04/2022	10 (2 Weeks)
Harrismith	S v O Mofokeng & 4	11/04/2022-22/04/2022	10 (2 Weeks)
Welkom	S v ML Modise & 1	02/05/2022-13/05/2022	10 (2 Weeks)
Bethlehem	S v A Fourie	02/05/2022-06/05/2022	5 (1 Week)
Sasolburg	S v Kellyy Sephton & 1 Other	02/05/2022-13/05/2022	10 (2 Weeks)
Ficksburg	S v MI Magagula	09/05/2022-13/05/2022	10 (2 Weeks)
Welkom	S v NE Mfene & 2 Others	16/05/2022-27/05/2022	10 (2 Weeks)

Harrismith	S v MM Mokoena & 6 Others	02/05/2022-17/06/2022	35 (7 Weeks)
Virginia	S v Rune	16/05/2022-27/05/2022	10 (2 Weeks)
Phuthaditjhaba	S v Bonolo Komako	23/05/2022-27/05/2022	5 (1 Week)
Bethlehem	S v Moscow Yika	30/05/2022-03/06/2022	5 (1 Week)
Vrede	S v Ngwenya	06/06/2022-10/06/2022	5 (1 Week)
Bethlehem	S v Letete Z Mofokeng	06/06/2022-17/06/2022	10 (2 Weeks)
Welkom	S v Bango	06/06/2022-17/06/2022	10 (2 Weeks)
Bethlehem	S v Kgotso Mofokeng	13/06/2022-17/06/2022	5 (1 Week)

Term 3 of 2022

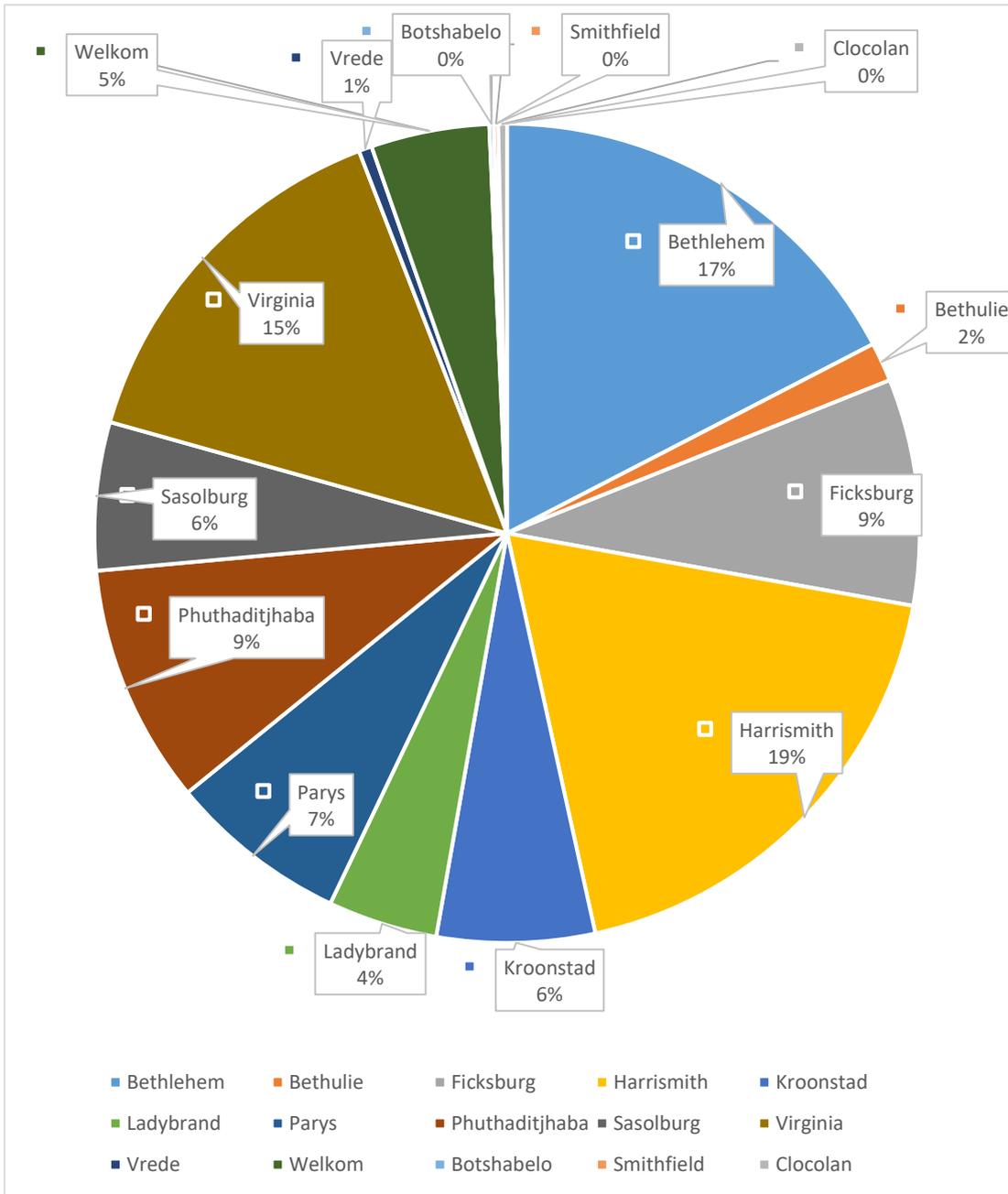
Circuit Court	Case information	Date heard	No of days
Kroonstad	S v Ernest M Sejake & 1	18/07/2022-29/07/2022	10 (2 Weeks)
Ficksburg	S v Masiza & 15	18/07/2022-29/07/2022	10 (2 Weeks)
Parys / Kroonstad	S v S Manhique & 3	01/08/2022-19/08/2022	15 (3 Weeks)
Bethlehem	S v Malindi	01/08/2022-12/08/2022	10 (2 Weeks)
Ficksburg	S v Motume	01/08/2022-12/08/2022	10 (2 Weeks)
Bethulie	S v Tsotoang	08/08/2022-12/08/2022	5 (1 Week)
Sasolburg	S v Mokoena	15/08/2022-19/08/2022	5 (1 Week)
Phuthadithjaba/Bethlehem	S v Petrus	15/08/2022-19/08/2022	5 (1 Week)
Welkom	S v LM Kgitsane	22/08/2022-02/09/2022	10 (1 Weeks)
Sasolburg	S v Thabo Hendrik Mokoena	22/08/2022-26/08/2022	5 (1 Week)
Ficksburg	S v Masiza & 15 Others	22/08/2022-02/09/2022	10 (2 Weeks)
Bethlehem	S v AE Phalatsi & 3 Others	29/08/2022-02/08/2022	5 (1 Week)
Welkom	S v J Nconco & 6 Others	05/09/2022-16/09/2022	10 (2 Weeks)
Sasolburg	S v Tsotetsi	05/09/2022-	5 (1 Week)

		09/09/2022	
Virginia	S v Tsolo	05/09/2022-09/09/2022	5 (1 Week)
Sasolburg	S v Sejake	12/09/2022-16/09/2022	5 (1 Week)
Phuthaditjhaba	S v Kgotso Mofokeng	12/09/2022-16/09/2022	5 (1 Week)
Harrismith	S v Tshabalala	05/09/2022-16/09/2022	10 (2 Weeks)

In summary, from a period of 2018 to 2022, Circuit Courts sat as follows⁵:

Bethlehem	-	101 weeks
Bethulie	-	9 weeks
Ficksburg	-	52 weeks
Harrismith	-	109 weeks
Kroonstad	-	36 weeks
Ladybrand	-	25 weeks
Parys	-	41 weeks
Phuthaditjhaba	-	55 weeks
Sasolburg	-	34 weeks
Virginia	-	86 weeks
Vrede	-	3 weeks
Welkom	-	27 weeks
Botshabelo	-	1 Week
Smithfield	-	1 week
Clocolan	-	2 weeks

⁵ See term roll for 2018 to 2022



Please note that no Circuit Courts sat during the aforesaid period at the following Magistrate's Court:

Bothaville, Fouriesburg, Heilbron, Koffiefontein, Odendaalsrus.

As illustrated on the aforementioned graph, most circuit courts emanate from areas such as Harrismith, Bethlehem and Virginia.

6. The caseloads for criminal and civil matters⁶

6.1 Criminal Trials

Criminal matters for 2018 to 2019		
	Enrolled	Finalized
Criminal Other	840	793
Criminal Trial	90	68
Total	930	861

Criminal matters for 2019 to 2020		
	Enrolled	Finalized
Criminal Other	577	552
Criminal Trial	90	64
Criminal -Pre Trial finalized	6	6
Total	673	622

Criminal matters for 2020 to 2021		
	Enrolled	Finalized
Pre-trial Finalized	5	5
Criminal Other	328	321
Criminal Trial	73	52
Total	406	378

Criminal matters for 2021 to 2022		
	Enrolled	Finalized
Criminal Other	904	894
Criminal Trial	96	72
Total	1000	966

Criminal matters for 2022 to 2023		
	Enrolled	Finalized
Criminal Trial	51	27
Criminal Other	239	222
Finalized Pre-Trial	26	26
Total	316	275

⁶ See statistical tools for 2018 to 2022

6.2 Civil matters

Civil matters for 2018 to 2019		
Proceedings	Enrolled	Finalized
Pre-Trial Finalized	23	23
Civil Trial	3947	3344
Grand Total	3970	3367

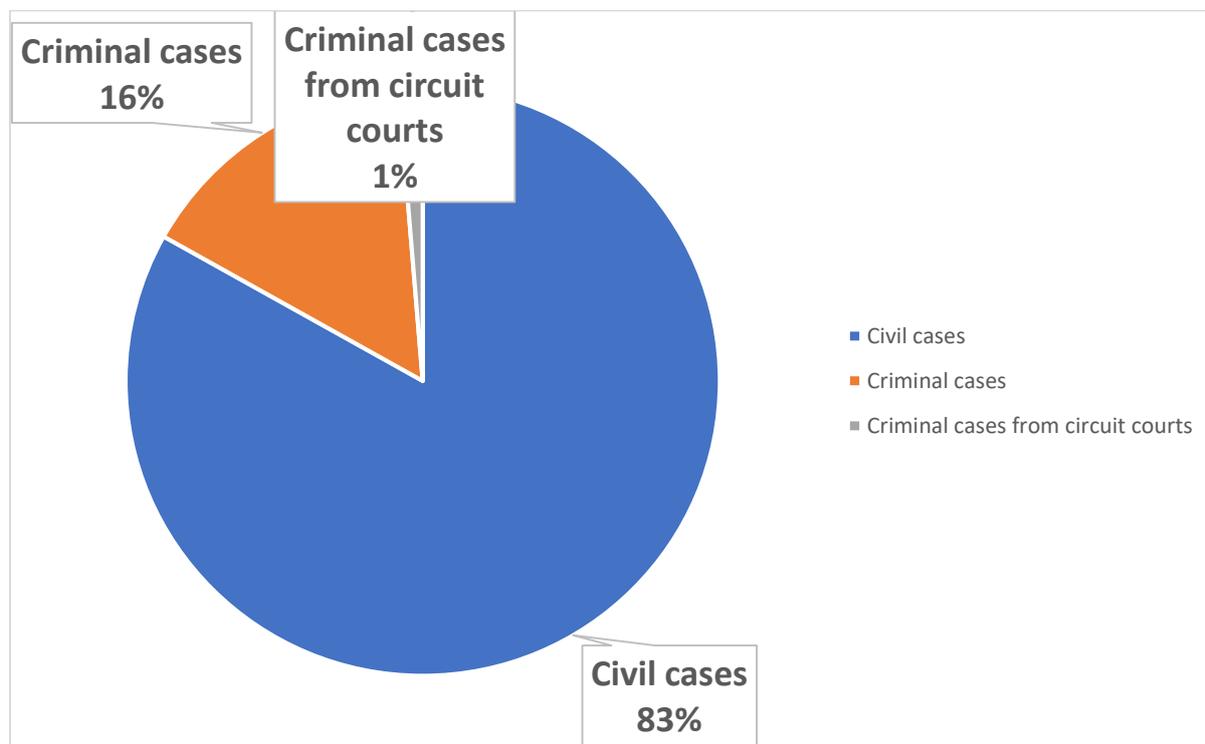
Civil matters for 2019 to 2020		
Proceedings	Enrolled	Finalized
Pre-Trial Finalized	17	17
Civil Trial	3939	3450
Grand Total	3956	3467

Civil matters for 2020 to 2021		
Proceedings	Enrolled	Finalized
Pre-Trial Finalized	28	28
Civil Trial	3465	3101
Grand Total	3493	3129

Civil matters for 2021 to 2022		
Proceedings	Enrolled	Finalized
Pre-Trial Finalized	20	20
Civil Trial	4960	4537
Grand Total	4980	4557

Civil matters for 2022 to 2023 (Term 1)		
Proceedings	Enrolled	Finalized
Pre-Trial Finalized	202	202
Civil Trial	1175	1643
Grand Total	1377	1845

Caseloads for criminal and civil matters



7. Backlog with enrolling and or finalising cases

7.1 Civil matters

(NB: Refers to all matters on Judicial Case Management for longer than 12 months and all civil trials ripe for trial (certified trial ready) but not allocated trial date. Current turnaround time for enrolment is 1 month as earliest available date is October 2022)

Quarter 2 (July -August 2022)			
	Enrolled	Finalized	Not finalised
Matters on judicial management	1367	909	458

7.2 Criminal matters

(NB: Refers to number of cases which are on the roll for more than 12 months from date of first appearance)

Quarter 2 (July - August 2022)			
	Enrolled	Finalized	Backlog
Criminal	25	11	14

8. Number of Judges serving in the Free State Division of the High Court

The following 16 Judges are currently serving in the Free State Division:

8.1 Judge President:

- Musi, JP

8.2 Deputy Judge President:

- Mbhele, DJP

8.3 Judges:

- Van Zyl, J
- Daffue, J
- Lekale, J (On leave)
- Naidoo, J
- Reinders, J
- Opperman, J
- Molitsoane, J
- Chesiwe, J
- Mhlambi, J
- Loubser, J
- Van Rhyn, J
- Mathebula, J
- Daniso, J
- (Vacant)

9. Factors to be considered by the committee impacting the Free State High Court's need for establishment of a local seat of the High Court at Bethlehem or Welkom.

9.1 Distance

The creation of a local seat at Welkom will have the following impact on distances:⁷

Area	Distance to Bloemfontein (Current main seat)	Distance to Welkom (proposed local seat)
Vrede (Thabo Mofutsanyana Magisterial District)	393 kms (4h 4mins)	287 kms (3 h1mins)
Sasolburg (Fezile Dabi Magisterial District)	332 kms (3h 31 mins)	190.5 kms (1 h55mins)
Harrismith (Thabo Mofutsanyana Magisterial District)	337 kms (3 h31 mins)	264 kms (3 h)

⁷ Information obtained from Google (Accessed on 13/09/2022).

Bethlehem (Thabo Mofutsanyana Magisterial District)	249 kms (2 h34mins)	175 kms (2 h2mins)
Phuthaditjhaba (Thabo Mofutsanyana Magisterial District)	327 kms (3 h35mins)	253 kms (3 h4mins)

The creation of the local seat at Bethlehem will have the following impact on distances:

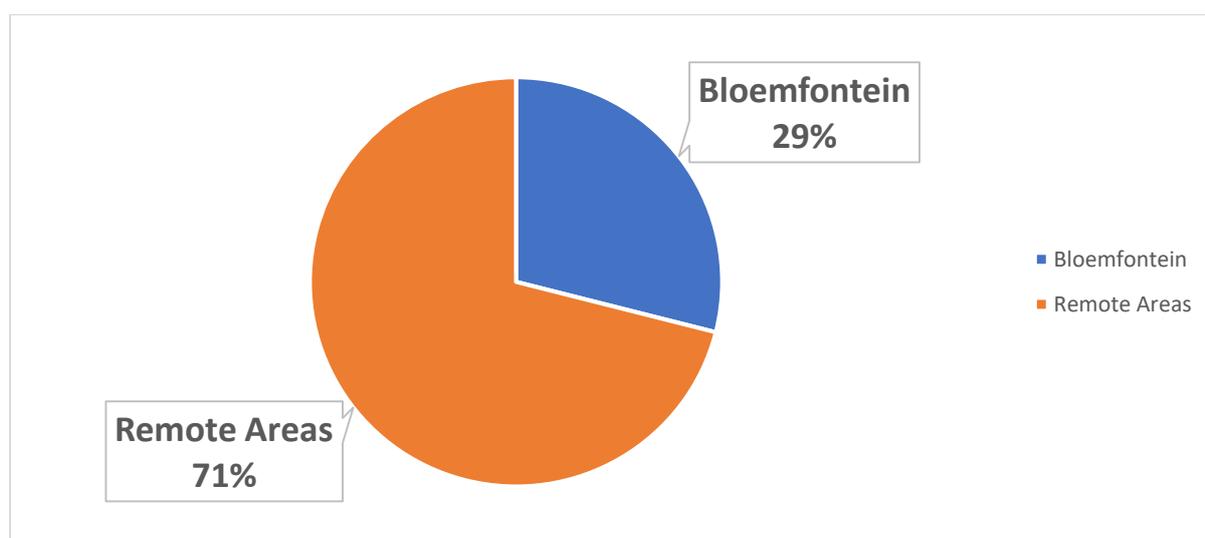
Area	Distance to Bloemfontein (Current main seat)	Distance to Bethlehem (proposed local seat)
Vrede (Thabo Mofutsanyana Magisterial District)	393 kms (4h 4mins)	148,2kms (1 h41mins)
Sasolburg (Fezile Dabi Magisterial District)	332 kms (3h 31mins)	194,7 kms (2 h22mins)
Harrismith (Thabo Mofutsanyana Magisterial District)	337 kms (3 h31mins)	91,9 kms (1 h15)
Welkom (Thabo Mofutsanyana Magisterial District)	152,4 kms (1 h 35mins)	175,4 kms (2 h9mins)
Phuthaditjhaba (Thabo Mofutsanyana Magisterial District)	327 kms (3 h35 mins)	82,3 kms (1 h11mins)

9.2 Capacity of the Circuit Courts to deal with complex cases

Circuit Courts are currently being held at various Magistrate's Court and most of which are not well resourced to deal with high profile matters due to security and infrastructure challenges such as water, roads and other municipal services. For example, areas such as Phuthaditjhaba and Parys have serious challenges with water and electricity supply.

9.3 Civil matters emanating from remote areas of the Free State Province

The Free State Division of the High Court currently has 4 454 civil matters filed and issued for 2022. Due to time constraints and in order not to burden the Committee with too much details, the division only managed to sample 1000 files in order to illustrate the number of civil matters that are brought by litigants residing at far-flung areas of the Province. We found that out of 732 matters sampled on the floor, 520 matters emanated from remote areas of the Province and only 212 matters came from Bloemfontein area. As illustrated on the graph below, the bulk of civil matters in our division emanates from far-flung arrears of the province.



9.4 The proximity of the police and other state functionaries to the main or local seat

The proximity of the police and other state functionaries to the main seat and is quite significant and has an adverse impact on the smooth running of circuit courts due to late arrival of prisoners which often result in lost court hours. The Department of Correctional Services often has to travel long distances to transport prisoners from remote areas in the Free State to the main seat in Bloemfontein.

The distances travelled by the residents of the Free State Province in order to interact with the justice system is excessive. For example, it takes 4 hours and 49 minutes for a person to travel from Memel to Bloemfontein over a distance of 453,6kms.

9.5 Population size

The Free State Province is the third largest province in South Africa It covers an area of 129 825km² and has a population of 2,8 Million of the national population. It is a rural province of farmland, mountains, goldfields and widely dispersed towns. The economy is dominated by agriculture, mining and manufacturing.

The main seat of the Free State Division of the High Court is in Bloemfontein and has 16 Judges currently serving a population of 2,8 million people of the Province.

10. Proposal

It is therefore proposed that a local seat of the Free State Division of the High Court be established at Bethlehem alternatively Welkom. It is further proposed that such local division be cloaked with appellate status for its areas of jurisdiction.

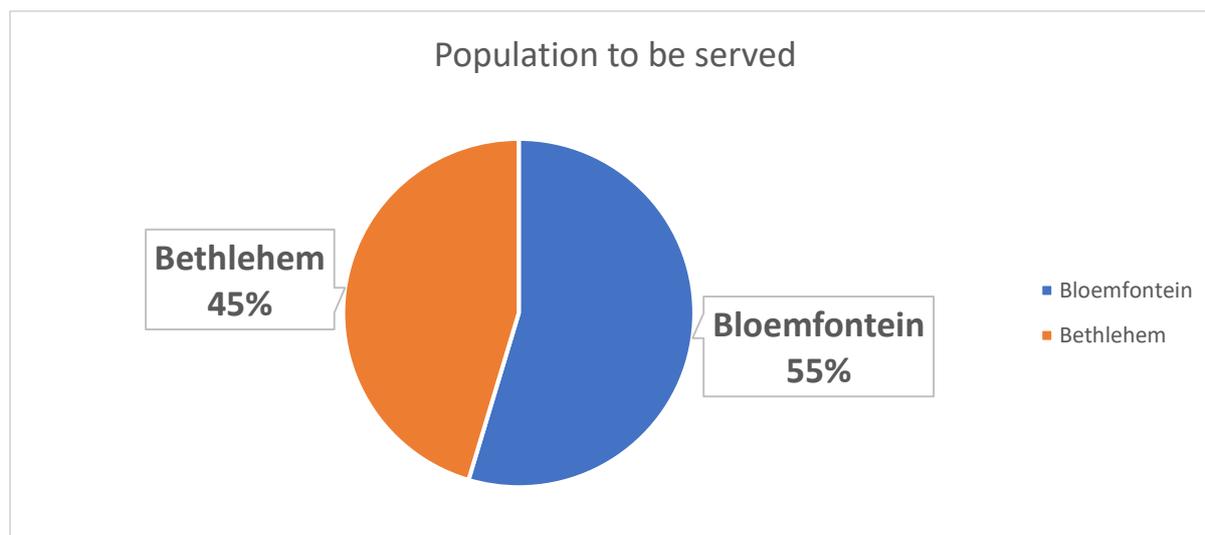
10.1 Proposal A (First option)

The main seat in Bloemfontein will have jurisdiction over the following magisterial districts:

- Mangaung Magisterial District with a population of 747,431
- Lejweleputswa Magisterial District with a population of 627,626
- Xhariep Magisterial District with a population of 146,259

The proposed new seat in Bethlehem will have jurisdiction over the following magisterial districts:

- Fezile Dabi Magisterial District with a population of 527,788
- Thabo Mofutsanyana Magisterial District with a population of 736,238



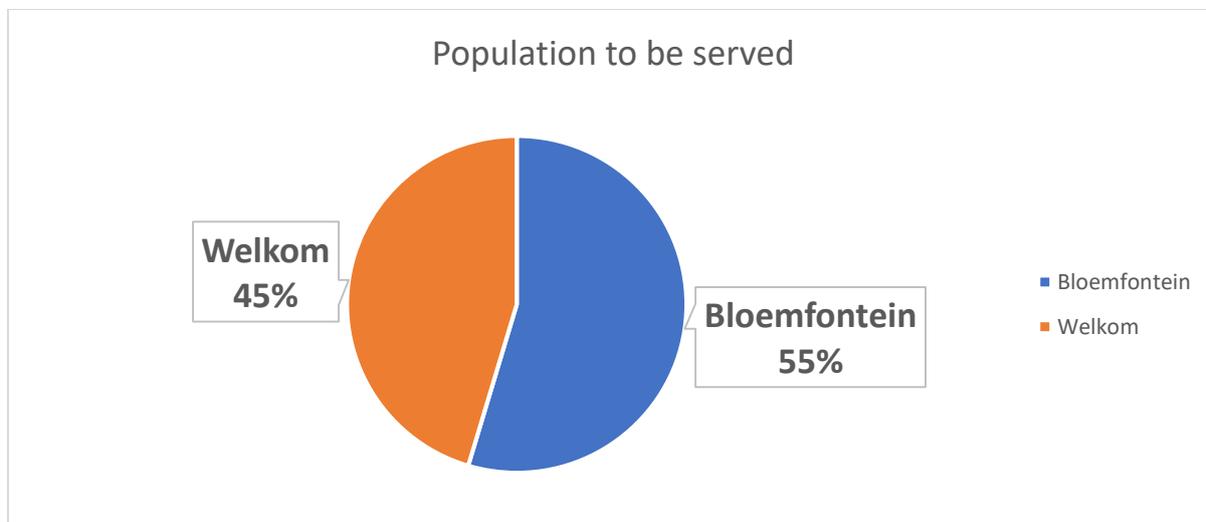
10.2 Proposal B (Second option)

The main seat in Bloemfontein will have jurisdiction over the following magisterial districts:

- Mangaung Magisterial District with a population of 747,431
- Lejweleputswa Magisterial District with a population of 627,626
- Xhariep Magisterial District with a population of 146, 259

The proposed new seat in Welkom will have jurisdiction over the following magisterial districts:

- Fezile Dabi Magisterial District with a population of 527,788
- Thabo Mofutsanyana Magisterial District with a population of 736,238



The report is submitted on behalf of the Free State Division of the High Court signed by:

Acting Judge President : _____

Signature: _____

Date: _____

And

Acting Chief Registrar: _____

Signature: _____

Date: _____

High Court
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Fax:033 – 342 0468

Email: IMadondo@judiciary.org.za



Judges' Chambers
High Court
Private Bag X 9014
PIETERMARITZBURG
3200

KWAZULU-NATAL HIGH COURT:
PIETERMARITZBURG

REPUBLIC OF SOUTH AFRICA

THE HONOURABLE ACTING JUDGE PRESIDENT MR JUSTICE M I MADONDO

26 October 2022

Secretary: Rationalisation Committee

Makena Moagi

Department of Justice & Correctional Services

Republic of South Africa

Dear Sir/Madam

**Re: WRITTEN SUBMISSION ON THE RATIONALISATION OF THE AREAS UNDER
JURISDICTION OF THE DIISIONS OF THE HIGH COURT**

KZN PRESENTATION

Following the meeting of 12 August 2022 held at Pretoria and the compilation of the summary of the submissions by the Department of Justice and Correctional Services relating to KwaZulu-Natal Division plus Matatiele and Maluti areas, politically falling under the Province of the Eastern Cape, the KwaZulu- Natal, in this regard, submits as set out below:

Pietermaritzburg High Court – judges, courts and chambers

Pietermaritzburg High Court has 16 judges, the JP and DJP inclusive. It is correct that Pietermaritzburg High Court has 10 courts but incorrect that it has two circuit courts, namely Margate and Madadeni. The correct position is that it has three circuit courts, that is,

Madadeni, Mtubatuba and Scottsburg. The ten courts consists of four criminal courts and six civil courts. The Pietermaritzburg High Court has presently thirteen chambers.

Required

Courts

The Pietermaritzburg High court needs three additional courts, one for crime and two for civil matters. Two additional circuit courts, namely Dukuza/Bergville/Ladysmith and Vryheid. The first three names of areas have been given in order to allow an opportunity to determine the most suitable one. These areas had been used as circuit courts interchangeably but due to budgetary constraints, their operation was suspended.

Judges

At least three judges are required in Pietermaritzburg if not four since one judge stationed in Pietermaritzburg is seconded to the Land Claims Court. This will help even to cover circuit courts adequately.

Chambers

Three additional chambers are required.

Durban

Courts

Durban High Court presently has eleven courts comprising four criminal courts and seven civil courts. Durban High Court is currently under construction and the total number of courts in the new building will increase to seventeen as follows: seven criminal courts, seven civil courts, one civil appeal court, one sexual offences court and one quality court. Construction and renovation of the Durban High Court is expected to be completed in November 2025. Presently, the High Court is occupying the Durban Magistrates' Court premises as the decanting site.

Judges

There are eighteen judges on the establishment of the Durban High Court.

Chambers

There are 19 chambers and in the new building, their number will increase to twenty-three.

Required

Four additional judges are required in Durban.

Jurisdiction

In addition to Pietermaritzburg as the main seat and Durban as Local Division, we fully support the establishment of the proposed Ulundi/Richards Bay Local Division. The residents of the remote areas like Mhlabuyalingana and Pongola are destitute in terms of legal service delivery and are thereby effectively denied access to justice.

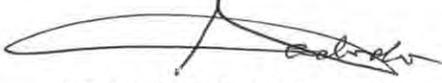
Proposed Ulundi/Richards Bay Local Division

This local division should have an appellate jurisdiction. At least five judges be stationed there, namely a deputy judge president, two senior judges and two junior judges. This will enable them to constitute a full court to deal with appeals, when the circumstances so demand. However, we submit that in putting areas under the jurisdiction of the proposed local division regard should be had to the distance between the area concerned and the seat of the division. For instance, the areas such as Msinga and uMvoti should, in our submission, fall under Pietermaritzburg, as they are closer to Pietermaritzburg than Ulundi/Richards Bay. From Msinga to Ulundi is about three hours and to Richards Bay, four hours. Whereas to Pietermaritzburg is one hour thirty-five minutes. From uMvoti to Pietermaritzburg is one hour whereas to Ulundi is four hours. Moreover, transport to Pietermaritzburg is readily available and reasonably cheap.

Matatiele and Maluti areas

Whereas these areas politically fall under the jurisdiction of the Eastern Cape Division, their residents receive legal services from Pietermaritzburg because of the fact that Pietermaritzburg serves as their work site or station and the commercial hub, where they perform all their commercial activities. Further, from Matatiele to Bisho is far as compared to travelling from Matatiele to Pietermaritzburg, this impedes access to legal services. We, therefore, do not have an objection to the residents of these areas being legally serviced in KwaZulu-Natal division.

I hope that you will find this to be in order.



Mjabuliseni Isaac Madondo
Acting Judge President
KwaZulu-Natal Division



OFFICE OF THE JUDGE PRESIDENT
MR JUSTICE E.M MAKGOBA

HIGH COURT OF SOUTH AFRICA, LIMPOPO DIVISION, POLOKWANE

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19 July 2022

SUBMISSION BY JUDGE PRESIDENT E M MAKGOBA OF THE LIMPOPO DIVISION OF THE HIGH COURT OF SOUTH AFRICA TO THE COMMISSION ON THE RATIONALISATION OF AREAS UNDER JURISDICTION AND JUDICIAL ESTABLISHMENTS OF DIVISIONS OF THE HIGH COURT.

1. PROCLAMATION OF THE LIMPOPO DIVISION OF THE HIGH COURT OF SOUTH AFRICA

1.1. The Limpopo Division of the High Court of South Africa was proclaimed in terms of Government Notice No. 30 in Government Gazette 39601 dated 15 January 2016.

In terms of Section 6 (1)(c) of the Superior Courts Act 10 of 2013 the seat of the Limpopo Division of the High Court of South Africa is Polokwane.

1.2. In terms of Section 6 (3) of the Superior Courts Act, 2013 the following provisions are made:

1.2.1. Limpopo Division, Polokwane;

1.2.2. Limpopo Local Division, Thohoyandou;

1.2.3. Limpopo Local Division, Lephalale.

2. AREAS OF JURISDICTION

The defined areas under the jurisdiction of the Seat of the Division and the two Local Seats are as follows:

2.1. LIMPOPO DIVISION, POLOKWANE

The Polokwane Main Seat has jurisdiction over the following magisterial districts:

- 2.1.1. Phalaborwa (including Namakgale and Lulekani sub-districts);
- 2.1.2. Elias Motsoaledi (including Moutse sub-district);
- 2.1.3. Makhuduthamaga (including Sekhukhune sub-district);
- 2.1.4. Mogalakwena (including Mokopane sub-district);
- 2.1.5. Polokwane (including Mankweng and Seshego sub-districts);
- 2.1.6. Tzaneen (including Lenyenye and Tzaneen sub-district);
- 2.1.7. Tubatse;
- 2.1.8. Mookgopong;
- 2.1.9. Molemole;
- 2.1.10. Letaba;
- 2.1.11. Lepelle-Nkumpi;
- 2.1.12. Blouberg.

2.2. LIMPOPO LOCAL DIVISION, THOHOYANDOU

The Magisterial Districts of:

- 2.2.1. Giyani;
- 2.2.2. Mutale;
- 2.2.3. Thulamela;

- 2.2.5. Makhado (including Dzanani, Hlanganani, Tshilwavusiku and Tshitale sub-districts);
- 2.2.6. Malamulele (including Tiyani and Vuwani sub-districts).

2.3. LIMPOPO LOCAL DIVISION, LEPHALALE

The Magisterial Districts of:

- 2.3.1. Bela-Bela;
- 2.3.2. Modimolle;
- 2.3.3. Thabazimbi (including Northam sub-district);
- 2.3.4. Lephalale (including Phalala sub-district).

- 3. It needs to be mentioned that ever since its proclamation as a Local Seat, Lephalale Local Division never functioned as a fully fledged local division of the High Court. This is due to the fact that no Court infrastructure was ever put up. The High Court was supposed to operate at the local Magistrate Court building. However, the Magistrate Court itself does not have enough courtrooms to accommodate the High Court.
Ultimately the High Court had to function as a Circuit Court served by the Main Seat in Polokwane.
- 4. Given the small population (about 400 000 people) in the defined area of jurisdiction of the Lephalale Local Division, it may not be feasible to retain the area as a Local Division. The area may be served on circuit by the Polokwane Main Seat, (as it is at the moment).

5. CIRCUIT COURTS

The Limpopo Division of the High Court does not have, and did not establish a fixed number of Circuit Courts. The Circuit Courts are held as and when required and depending on the nature and duration of a particular case. This entails only Criminal cases.

As and when required, Circuit Courts are held at the following district magistrate Courts:

- 5.1. Lephalale;
- 5.2. Phalaborwa; and
- 5.3. Sekhukhune.

A shortage of Judges in the Limpopo Division has a negative impact on the establishment and holding of Circuit Courts.

6. JUDICIAL ESTABLISHMENT

The judicial establishment of the Limpopo Division of the High Court of South Africa consists of 9 (nine) Judges.

6 (six) Judges are stationed at the Main Seat in Polokwane and 3 (three) are at the Local Seat in Thohoyandou.

Given the size of the population of Limpopo Province (approximately 5.9 million) and the caseloads in the High Court it is clear that the judicial establishment of the Limpopo Division is not sufficient to serve the area of jurisdiction of these Courts.

7. CASE LOAD AND BACKLOG CASES

See Attached Report.

Submitted by:

**E M MAKGOBA
JUDGE PRESIDENT
LIMPOPO DIVISION OF THE
HIGH COURT OF SOUTH AFRICA**

DATE: 19 JULY 2022



LIMPOPO DIVISION CASE LOAD REPORT

2

CASE LOAD: LIMPOPO DIVISION, POLOKWANE

YEAR	CRIMINAL CASES	CIVIL CASES	APPEALS	PETITION	REVIEWS
2015	92	2653	95	55	306
2016	78	6123	159	29	230
2017	93	8480	185	28	205
2018	104	7706	141	26	141
2019	126	8874	65	18	114
2020	85	7960	87	13	598
2021	75	9458	130	16	662
2022	110 (As of 19/07/2022)	7836 (As of 19/07/2022)	34 (As of 19/07/2022)	07 (As of 19/07/2022)	647 (As of 19/07/2022)
TOTAL	763	59 090	896	192	2 903

CASE LOAD: LIMPOPO LOCAL DIVISION, THOHOYANDOU

YEAR	CRIMINAL CASES	CIVIL CASES	APPEALS	PETITION	REVIEWS
2015	37	1002	29	4	90
2016	33	1418	32	22	127
2017	116	1382	34	11	136
2018	76	1623	43	12	109
2019	41	1823	32	10	134
2020	28	1668	33	06	79
2021	21	1759	22	02	63
2022	16 (As of 19/07/2022)	1324 (As of 19/07/2022)	13 (As of 19/07/2022)	03 (As of 19/07/2022)	27 (As of 19/07/2022)
TOTAL	368	11 999	238	70	765

CRIMINAL BACKLOG CASES

Limpopo Division of the High Court, Polokwane

1. CC209/2015, S v Rameez Patel
2. CC97/2019, S v Boitumelo Daniel Aphane & 04 Others
3. CC74/2019, S v Moeti Simon Ramela & 02 Others
4. CC23/2020, S v Collen hlongwane & 6 Others
5. CC25/2020, S v Kabelo Masemola & 02 Others
6. CC06/2020, S v Madidimalo Richard Ramogale & Another
7. CC38/2020, S v Sizwe Shabangu & 05 Others
8. CC56/2020, S v Christina van der Merve
9. CC80/2020, S v Conride Mashaba & 05 Others
10. CC21/2021, S v Philborn Mathebula & 03 Others
11. CC06/2021, S v Kgodimathule Dan Tjie and Kagiso Maroga
12. CC11/2021, S v Joshua Mhlongo & 01 Another
13. CC03/2021, S v Themba Samuel Shabalala & 03 Others

Limpopo Local Division of the High Court, Thohoyandou

1. CC21/2017, S v Themba Patrick Muchavi & Another
2. CC16/2018, S v Makaringe Collin & 2 Others
3. CC03/2019, S v Ronny Mtarini Mkhari
4. CC05/2019, S v Tshisudzungwane Khumbelo Buku and Another
5. CC39/2019, S v Nyaweleni Randima & 3 Others
6. CC39/2017, S v Mudalahothe Nyandonno & Another
7. CC06/2019, S v Vutivi Saul Chauke & 3 Others
8. CC12/2019, S v Victor Nkuna & Another
9. CC14/2019, S v Hangwelani Mulovhedzi & Another
10. CC11/2019, S v Thikhathali Thiathu
11. CC16/2019, S v Mashahe Lloyd
12. CC10/2019, S v Mzamani Doctor Chabalala
13. CC20/2019, S v Monareng Karabo Samuel

- (4)
14. CC32/2019, S v Maluleke Solly Solomon
 15. CC04/2020, S v Vhurumu Ndidzulafni Given
 16. CC02/2020, S v Mbonzhe Norman
 17. CC01/2020, S v Tshisikhawe Ndivhuwo
 18. CC30/2019, S v Shadrack Hasani Baloyi & Another
 19. CC22/2019, S v Chauke Lucas Perkiwar
 20. CC11/2020, S v Oliver Humbulani Hlengani
 21. CC27/2019, S v Sandile Douglas Mavundla
 22. CC23/2020, S v Micheal Nukeri
 23. CC22/2020, S v Simethi Tshildzi Walter & Another
 24. CC02/2021, S v Sedzani Godfrey Munyai & 2 Others
 25. CC01/2021, S v Muthukhi Peter
 26. CC04/2021, S v Baloyi Ntsako Happy Morries
 27. CC07/2021, S v Tawanga Spar Whitney
 28. CC05/2021, S v Ephraim Chabaro Sivhanda Magwari & 8 Others

Total Criminal Backlog Matters: 41

CIVIL BACKLOG CASES

Limpopo Division of the High Court, Polokwane, Total: 3 590

Limpopo Local Division of the High Court, Thohoyandou, Total: 1 565



OFFICE OF THE HONOURABLE JUDGE PRESIDENT MR JUSTICE R D HENDRICKS
NORTH WEST DIVISION OF THE HIGH COURT OF SOUTH AFRICA
Tel: 010 494 7742 / 7750

Date: 23 September 2022

The Chairman of the
Rationalisation Committee,
Deputy Chief Justice Moseneke

Re: Proposals on rationalisation of the High Court: North West High Court, Mahikeng.

I once again would like to express my sincere gratitude to you and your Committee for the invitation extended to give my inputs and views on the rationalisation of the High Court in the North West Province, following the meeting held on 29th July 2022. In addition to the oral submissions I made, I wish to add:

- Firstly, that I am of the considered view that the jurisdictional areas of the High Court, North West Division, should be confined to and coincide with the provincial boundaries of the North West Province.

Cross-provincial jurisdictions should be avoided, as far as practically possible, **but without hampering access to justice.**

- Second, that I am in favour of the establishment of a Local Division or seat in **Rustenburg** to serve the entire Bojanala Platinum District Municipality and areas closer to Rustenburg [i.e. Madibeng (Brits)] and furthest away from Mahikeng and Klerksdorp (Matlosana). Municipalities included are Moses Kotane, Rustenburg, Kgetlengrivier, Madibeng **but excluding Odi and Moretele.**
- Third, that another Local Division or seat be established in **Klerksdorp** (Matlosana) to serve the areas of Matlosana (Klerksdorp), JB Marks (Potchefstroom and Ventersdorp) and surroundings which are closer to Klerksdorp and furthest away from Rustenburg and Mahikeng. Municipalities included are JB Marks, Matlosana, Maquassi Hills, Mamusa, Lekwa-Teemane and Greater Taung. This will enhance access to justice and bring justice closer to the people.
- Fourth, the Main Seat at **Mahikeng** will serve and include the Municipalities of Ramotshere Moiloa, Mahikeng, Ditsobotla, Ratlou, Tswaing, Naledi and Kagisano-Molopo, which are vast areas. The Main Seat to retain its compliment of **seven (7) judges** and the seat of a Circuit Court at Vryburg. Other circuit courts can be established to further enhance access to justice.
- Fifth, that due to the establishment of the aforementioned Local Divisions or seats **additional** posts be created for judges in the respective Local Divisions as well as for the support staff. Without

being prescriptive, I am of the view that between three (3) to five (5) judges posts be created for the said Local Divisions or seats, with the necessary additional support staff to serve the said Local Divisions or seats.

- I am mindful that the establishment of Local Divisions or seats may well be long term planning with distant future implementation. However, the creation of the additional posts for judges need not be put in abeyance, since there are eleven (11) chambers at the Main Seat in Mahikeng. **Four (4)** additional judges can **immediately** be accommodated. This will not only alleviate the workload on the current compliment of seven (7) judges that serves the North West Province, but will enhance service delivery and access to justice in that the additional judges can do duty and serve the people at the circuit courts, whilst the others can remain and work at the Main seat. Civil matters can also be done at circuit courts whilst awaiting the establishment of the Local Divisions or seats.

In conclusion, if further inputs and/or clarification is required, please do not hesitate to contact me. I sincerely apologise for responding so belatedly.

Kind regards and well wishes to the Committee with its task.

A handwritten signature in black ink, appearing to read 'R D Hendricks', written over a horizontal line. The signature is stylized and cursive.

R D Hendricks

Judge President of the High Court,
North West Division, Mahikeng



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

Western Cape High Court, Cape Town

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Honourable Mr. Judge President

JM HLOPHE

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28 October 2022

RESPONSE TO RATIONALISATION PRESENTATION – 16 SEPT 2022

The presentation focused on information gathered from a survey conducted in 2017. The population of the Western Cape has certainly increased since then and due consideration should be given to that.

The anomaly mentioned in respect of Murraysburg is known but does not affect the High Court but rather the District and Regional Courts. Engagement with the lower court Judiciary is therefore a necessity.

As regards the possibility of two Local Divisions in the Western Cape, I am not adverse to the idea but would prefer that the George Local Division take preference at this point in time. We have conducted our own study of the area and thus opened the Thembalethu Court in the heart of the Township. Allowing for access to Justice for the local people including those in the neighbouring towns. We have already started the process of setting up an administrative component in the Court to ensure that matters are opened and processed in an expeditious manner.

There is no suitable case made out for a Worcester Local Division. In terms of distance from the main seat it is not far enough to have a separate set of Judges located there. The majority of the population of the Western Cape are based within the City of Cape Town and it would be feasible to rather capacitate the existing seat in Cape Town with additional Judges.

The pros and cons need to be looked at when establishing a small division. The number of Judges assigned who will effectively be able to manage the division and be able to attend to Full Bench appeals within the division. The administrative staff component that will be needed to

support the Judiciary. Should consideration be given for a Local Division then at least seven (7) Judges would be required together with adequate administrative support.



J M Hlophe

Judge President Western Cape High Court