



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

RECOMMENDATIONS ON AREAS UNDER THE JURISDICTION OF THE DIVISIONS OF THE HIGH COURT

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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.

[10] 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

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

strengths of each division, caseload trends in the divisions, population served by varied divisions and the affordability of any proposed outcome.

[11] 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.

[12] 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.

[13] 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

⁴ Paragraph 3 of the terms of reference.

⁵ Paragraph 2.1.1 of the terms of the reference.

- 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

[14] At the commencement of its work, the Committee received submissions from the Department of Justice (“**the Department**”) and consulted with a number of key stakeholders concerning the areas of jurisdiction of the various divisions of the High Court. Following these consultations, the Committee produced an interim report on phase 1 containing 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.

[15] The purpose of the Committee’s interim report was 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 Committee caused the interim report to be published together with an invitation to the public to provide comments.

[16] The submissions received in the public consultation process in response to the interim report have been taken into account by the Committee in compiling its final

⁶ Paragraph 2.1.2 of the terms of reference.

report on the areas of jurisdiction under the divisions of the High Court for submission to the Minister.

[17] 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

[18] The final report also makes additional recommendations advising on legislative amendments that in the Committee’s view may enhance access to courts.

[19] The Committee has been entrusted with an assignment of immense constitutional importance. It has kept access to justice as the lodestar in producing its final report on the areas of jurisdiction under the divisions of the High Court.

THE WORK OF THE COMMITTEE

[20] The Committee consulted with key stakeholders at different stages of phase 1. The first stage of consultation took place prior to the launch of the Committee’s interim report, and was held with key functionaries in the administration of justice. The second

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

stage of consultations took place after the release of the interim report, and called upon interested parties to consider the interim report and provide their views on the Committee's preliminary recommendations.

Consultation with key stakeholders

[21] 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.⁸

[22] During these consultations, the Committee 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.

[23] 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.

Consultation with the Department

[24] 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.

[25] 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.⁹

[26] 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

[27] 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

⁹ The Department's submissions are detailed below. A copy of the Department's submissions will be made available upon request.

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

[28] 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.

[29] 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

[30] 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 support 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.

[31] The second consultation was held with the 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.¹⁰

Consultation with Legal Aid SA

¹⁰ A copy of the submissions of the NPA will be made available upon request.

[32] 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 furnished written responses to the Committee both before and after the publication of the interim report.¹¹ The content is dealt with when the features of each division of the High Court are evaluated.

Consultation with the Magistrates Commission

[33] The Committee consulted the Magistrates Commission and whilst they did not make any specific suggestion about the boundaries of the High Court, the Magistrates Commission urged the Committee to consider the treatment of exclusive and appellate jurisdiction in local seats of each division of the High Court. The Magistrates 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.

Conclusion: Consultation with key stakeholders

[34] 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

¹¹ A copy of Legal Aid SA's written submissions will be made available upon request.

enriched the Committee's deliberations and have added value to the production of this report.

Public consultation process

[35] The Committee published its interim report together with an invitation to the public to comment on the Committee's preliminary recommendations in December 2022. The initial deadline for the submission of comments was 31 January 2023, but this was later extended to 28 February 2023 after a number of requests for an extension were received.

[36] The Committee received numerous written submissions from legal professional bodies (both national and regional), political parties, business, education centres, non-profit organisations and members of the public. The content of the comments received as part of the public consultation process are dealt with when the features of each division of the High Court are evaluated.

HISTORICAL BACKGROUND OF THE COURT SYSTEM

[37] 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 1913,¹² which deprived Africans of the right to own land in 93% of South Africa.¹³ Africans were only permitted to own land in ‘reserves’, the boundaries of which were described in schedules to the Act.

[38] This was followed by the Native Administration Act¹⁴ 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 “Supreme Chief”. The Act gave the State President virtually absolute powers to govern Africans by proclamation.¹⁵ 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.”¹⁶

¹² 27 of 1913 (“**Natives Land Act**”).

¹³ Section 1 of the Natives Land Act.

¹⁴ 38 of 1927.

¹⁵ *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].

¹⁶ *Ibid* at paras [76]-[77].

[39] The Native Trust Land Act,¹⁷ 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.

[40] 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.¹⁸ These pieces of legislation laid the foundation for the apartheid system’s policy of separate development through the establishment of homelands.

[41] The 13% of the land reserved for use by Africans was divided into homelands.¹⁹ The Promotion of Bantu Self-government Act,²⁰ 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.²¹

¹⁷ 18 of 1936.

¹⁸ *DVB Behuising* above n 16 at para [41].

¹⁹ *Herbert N.O. v Senqu Municipality* [2019] ZACC 31; 2019 (11) BCLR 1343 (CC); 2019 (6) SA 231 (CC) at para [8].

²⁰ 46 of 1959.

²¹ *DVB Behuising* above n 16 at para [42].

[42] The Black Homelands Citizenship Act of 1970²² 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.²³ The Constitutional Court in *eThekweni Municipality v Ingonyama Trust*²⁴ recognised that in this way “many Africans became ‘foreigners’ in the land of their birth”.²⁵

[43] 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.”²⁶

²² 26 of 1970.

²³ *DVB Behuising* above n 16 at para [42].

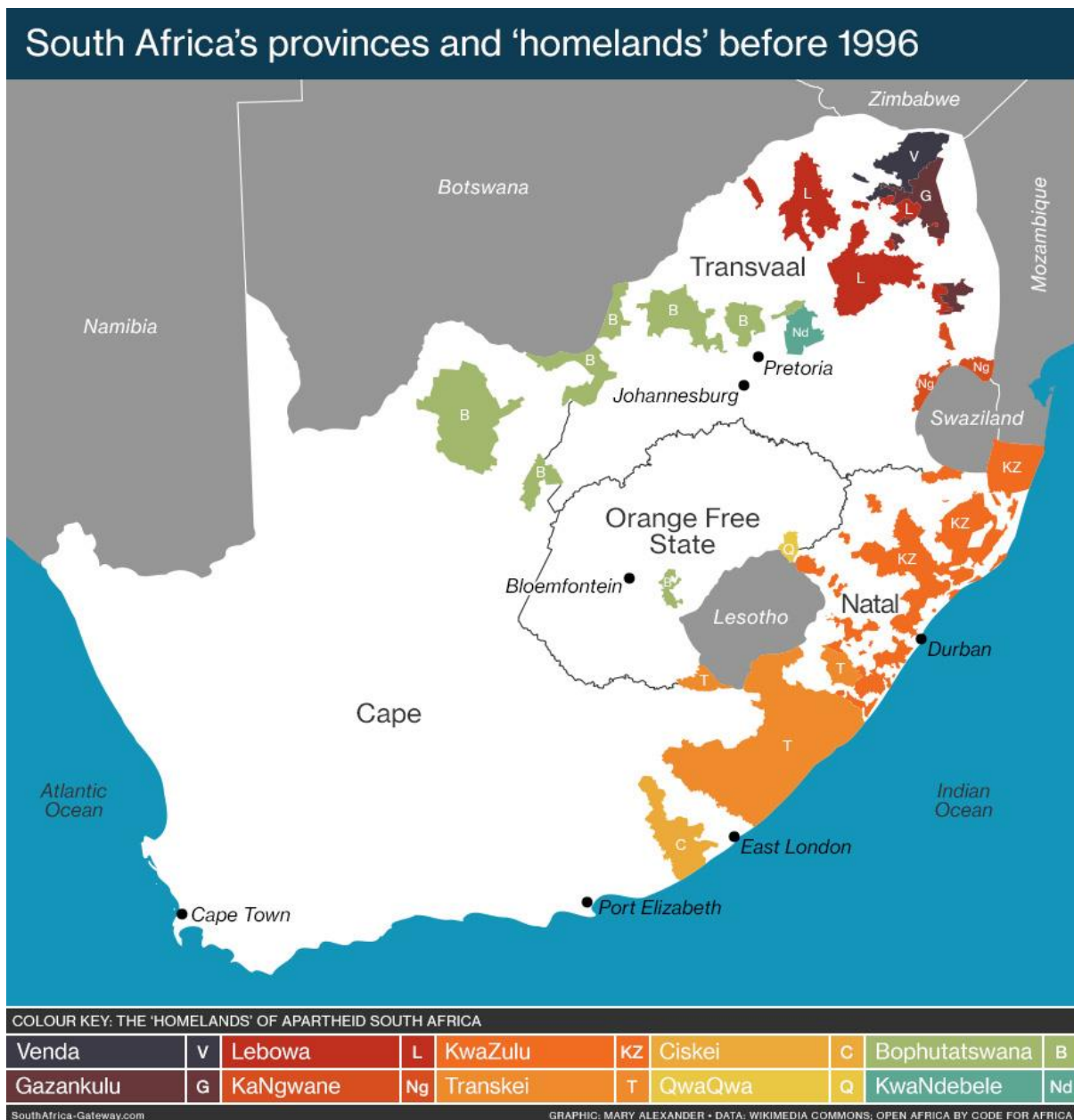
²⁴ *eThekweni Municipality v Ingonyama Trust* [2013] ZACC 7; 2013 (5) BCLR 497 (CC); 2014 (3) SA 240 (CC)

²⁵ *Ibid* at para [3].

²⁶ *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].

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

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



[46] When South Africa transitioned to democracy, the homelands were abolished. South Africa became a unitary state and the homelands were reincorporated into South Africa.²⁷ However, our Constitutional Court has recognised that the areas that were formerly homelands, “in general, still remain underdeveloped and poor”.²⁸

[47] 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

[48] 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.

[49] 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 territories²⁹

²⁷ Constitution of the Republic of South Africa Act 200 of 1993 (“**interim Constitution**”).

²⁸ *Mabaso v Law Society of the Northern Provinces* [2004] ZACC 8; 2005 (2) SA 117 (CC); 2005 (2) BCLR 129 (CC) at para [36].

²⁹ The Self Governing Territories included Gazankulu, Kangwane, Kwandebele, Kwazulu, Lebowa and Qwaqwa.

and the so-called TBVC states.³⁰ The territory of South Africa was further divided into four provinces.

[50] There was a single Supreme Court, which was divided into 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.³¹

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 Coast Local Division	Durban
Witwatersrand Local Division	Johannesburg

³⁰ The TBVC states are Transkei, Boputhatswana, Venda and Ciskei.

³¹ Section 6(2) of the Supreme Court Act 59 of 1959 (“**Supreme Court Act**”).

South Eastern Cape Local Division	Port Elizabeth
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[51] 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.

[52] The areas of jurisdiction of the divisions of the Supreme Court of South Africa were defined in schedule 1 of the Supreme Court Act.³²

[53] Each of the TBVC states enacted constitutions, which established the respective states.³³ Each of these constitutions established a supreme court for the state, which exercised jurisdiction over the territorial area of the state.³⁴ The supreme courts of the TBVC states had the same status as provincial divisions in the former South Africa.³⁵ 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

³² 59 of 1959.

³³ 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**”).

³⁴ 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.

³⁵ Schedule 6, item 6 of the Constitution.

Supreme Court of the Republic of Transkei	Umtata
Supreme Court of the Republic of Venda	Thohoyandou

[54] When the interim Constitution came into effect, it removed these territorial distinctions and created one sovereign democratic South Africa. The interim 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.³⁶

[55] 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.³⁷

[56] 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

³⁶ Part 1 of schedule 1 of the interim Constitution.

³⁷ Section 241 of the interim Constitution.

rationalised.³⁸ To achieve this end, the interim Constitution demanded that a rationalisation process take place, in terms of an Act of Parliament.³⁹

[57] 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 Constitution, without any alteration to its area of jurisdiction, subject to the rationalisation process.⁴⁰

[58] 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:⁴¹

“(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).”

³⁸ To create the judiciary as envisaged in Chapter 7 of the interim Constitution.

³⁹ Section 242 of the interim Constitution.

⁴⁰ Item 4 of schedule 6 of the Constitution.

⁴¹ Item 16 of schedule 6 of the Constitution.

[59] Our Parliament passed the Interim Rationalisation of Jurisdiction of High Courts Act⁴² (“**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 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.⁴³

[60] 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.⁴⁴ During 2009, the High Courts were renamed to reflect the new names of the provinces.⁴⁵

⁴² Interim Rationalisation of Jurisdiction of High Courts Act 41 of 2001 (“**Interim Rationalisation Act**”) which came into force on 5 December 2001.

⁴³ Section 2 of the Interim Rationalisation Act.

⁴⁴ These notices are discussed below in the chapters dealing with the various divisions of the High Court.

⁴⁵ This was done in terms of the Renaming of High Courts Act 30 of 2008 (“**Renaming of High Courts Act**”).

[61] In 2013, a constitutional amendment⁴⁶ established the unitary High Court of South Africa. The divisions of the High Court were to be determined by an Act of Parliament.⁴⁷ Following upon the constitutional amendment, the Superior Courts Act 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.⁴⁸

[62] 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.⁴⁹

⁴⁶ The Constitution 17th Amendment Act, 2012, which came into force on 23 August 2013 (“**Constitution 17th Amendment Act**”).

⁴⁷ The Constitution 17th Amendment Act amended section 169 of the Constitution to this effect.

⁴⁸ Section 50(1) of the Superior Courts Act.

⁴⁹ 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;

[63] Also, the Superior Courts Act retained the Minister's power to alter the area of jurisdiction of the divisions of the High Court,⁵⁰ 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.

[64] 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?

[65] 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

(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."

⁵⁰ 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."

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

[66] 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.

[67] 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”.⁵¹ 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”.⁵² The Constitution thus imposes a duty on, and requires of the Minister to provide courts,⁵³ 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”.⁵⁴ One of those requirements is to ensure that justice through the courts is accessible to all.

⁵¹ Section 1(c) of the Constitution.

⁵² Section 34 of the Constitution.

⁵³ See schedule 6, items 16 of the Constitution and section 34 of the Constitution. See also section 6(3) of the Superior Courts Act.

⁵⁴ Schedule 6, items 16(6) of the Constitution.

[68] 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 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”.⁵⁵

Access to justice

[69] 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.

⁵⁵ *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].

[70] 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 matter in a fair public hearing.⁵⁶ 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.⁵⁷ In some countries it has been broadly defined.⁵⁸

⁵⁶ 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.”

⁵⁷ 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.

⁵⁸ 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)

There, 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/>.

[71] 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.

[72] The right of access to justice through the courts is to be understood in accordance with the approach to 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.⁵⁹ It must seek to realise the objectives of the right.⁶⁰ 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.⁶¹

[73] 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

⁵⁹ Section 39(2) of the Constitution.

⁶⁰ *S v Zuma* [1995] ZACC 1; 1995 2 SA 642 (CC); 1995 (1) SACR 568 (CC); 1995 (4) BCLR 401 (SA) at para [15].

⁶¹ See the Preamble to the Constitution.

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”.⁶²

HIGH COURT JURISDICTION

[74] 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

[75] The High Court derives its general jurisdiction from both the Constitution, the Superior Courts Act and the common law. 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;⁶³ or is assigned to another court of similar status by an Act of Parliament.⁶⁴ 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

⁶² Kollapen “Access to Justice within the South African context – Keynote Address to Access to Justice Round-Table Discussion 5” 904 2013 *De Jure*.

⁶³ The Constitutional Court may hear a matter directly in terms of section 167(6)(a) of the Constitution.

⁶⁴ Section 169 of the Constitution.

jurisdiction and all other matters of which it may according to law take cognisance.⁶⁵

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.⁶⁶

Inherent jurisdiction

[76] Inherent jurisdiction is a discretionary power possessed by the superior courts in South Africa.⁶⁷ It is described as the unwritten power without which the court is unable to function with justice and good reason.⁶⁸ 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*,⁶⁹ the Constitutional Court held that this discretionary power is a “key tool” for courts to ensure their own independence and impartiality.⁷⁰ The only qualification to this discretionary power is the obligation to consider the

⁶⁵ Section 21(1) of the Superior Courts Act.

⁶⁶ Ibid.

⁶⁷ In South Africa, superior courts are the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa.

⁶⁸ Taitz, J *The Inherent Jurisdiction of the Supreme Court* (1985, Juta) 1.

⁶⁹ *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*”).

⁷⁰ Ibid at para [36].

interests of justice.⁷¹ 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".⁷²

Concurrent and exclusive jurisdiction

[77] 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.⁷³ 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.

[78] 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.

⁷¹ 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.

⁷² *Ibid* n 70 above at para [90].

⁷³ *Thembani Wholesalers (Pty) Ltd v September* [2014] 3 All SA 722 (ECG).

Appellate jurisdiction

[79] 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.⁷⁴ A full bench of a division of the High Court may also hear an appeal against the decision of a single judge.

[80] 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.⁷⁵ 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.

[81] Later in this report we make recommendations 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.

RATIONALISATION OF MAGISTERIAL DISTRICTS

[82] 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

⁷⁴ Section 21(1)(a)-(c) of the Superior Courts Act.

⁷⁵ Section 6(4)(a) of the Superior Courts Act.

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.

[83] The rationalisation of magisterial districts is both a constitutional and transformative imperative.⁷⁶ To that end, the Minister is authorised by law to create magisterial districts and to establish courts for such districts.⁷⁷

[84] 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.

[85] 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

⁷⁶ The imperative finds reflection in schedule 6, items 16 (1) and 16(6) of the Constitution.

⁷⁷ Section 2 of the Magistrates Court Act 32 of 1944.

other things, that communities do not have to travel long distances to access services at the relevant seat of the district or sub-district.

[86] 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:

[87] 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.

[88] 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.

[89] 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.

[90] 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.

[91] 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.

[92] 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.

[93] 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.

[94] 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.

[95] 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.

[96] The table below outlines the summary of the outcomes of the rationalisation process for each province:

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
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

[97] In this section, we record and discuss a variety of characteristics of the areas of jurisdiction of each division of the High Court.

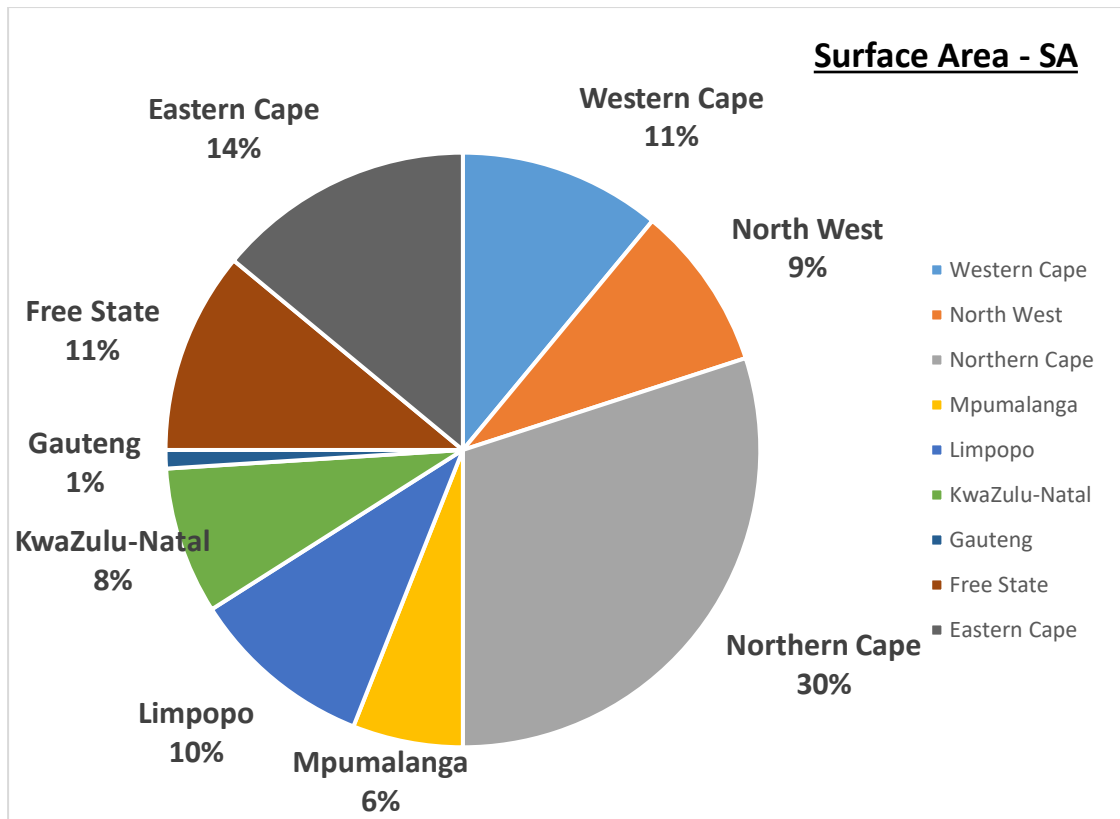
[98] Statistics and information drawn for purposes of discussing relevant national and provincial context in this section have been sourced from reports produced by Statistics South Africa (“Stats SA”).⁷⁸ Although a national census was undertaken from February to March 2022, the official reports and statistics are not yet available. The most recent population statistics are the 2021 mid-year population estimates.⁷⁹ 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.

Overview of the Republic

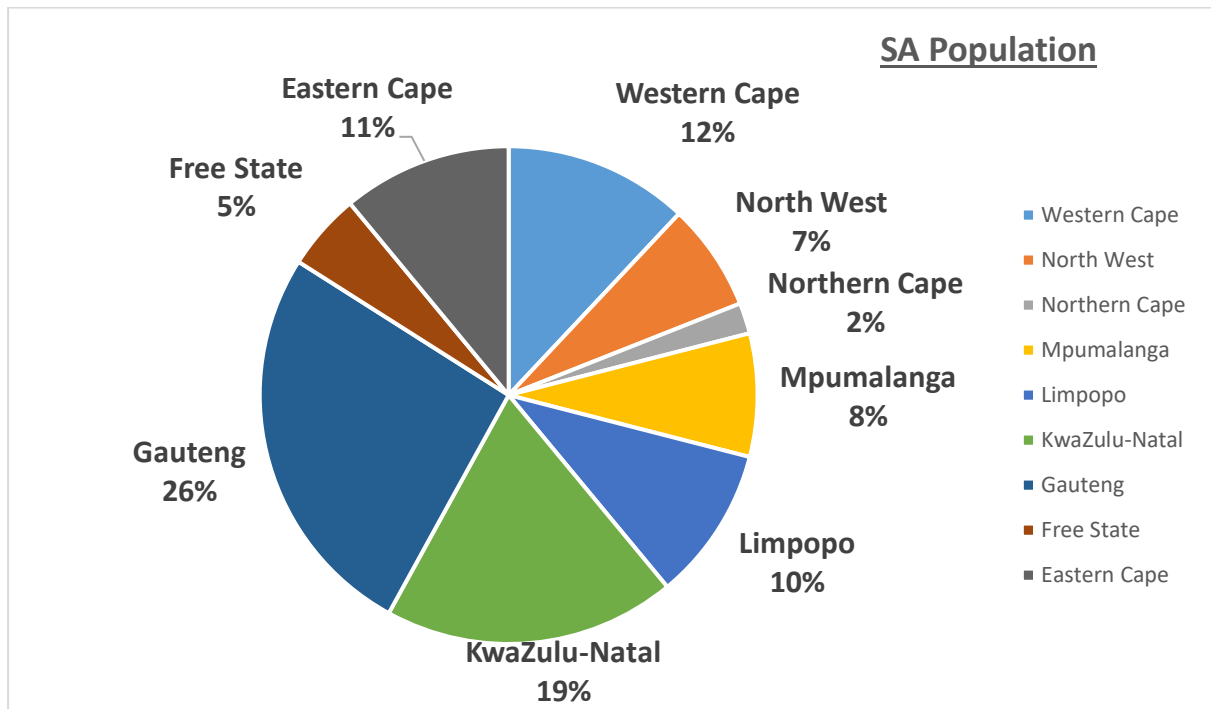
[99] The surface area of the Republic is represented as follows:

⁷⁸ Available at <https://www.statssa.gov.za/>.

⁷⁹ Available at <https://www.statssa.gov.za/>.



[100] The estimated population⁸⁰ of the Republic is represented as follows:



[101] 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 section

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

⁸⁰ 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 key stakeholders;
- h. The preliminary recommendations made by the Committee in our interim report;
- i. The comments received as part of the public consultation process; and
- j. The Committee's final recommendations and the reasons therefor

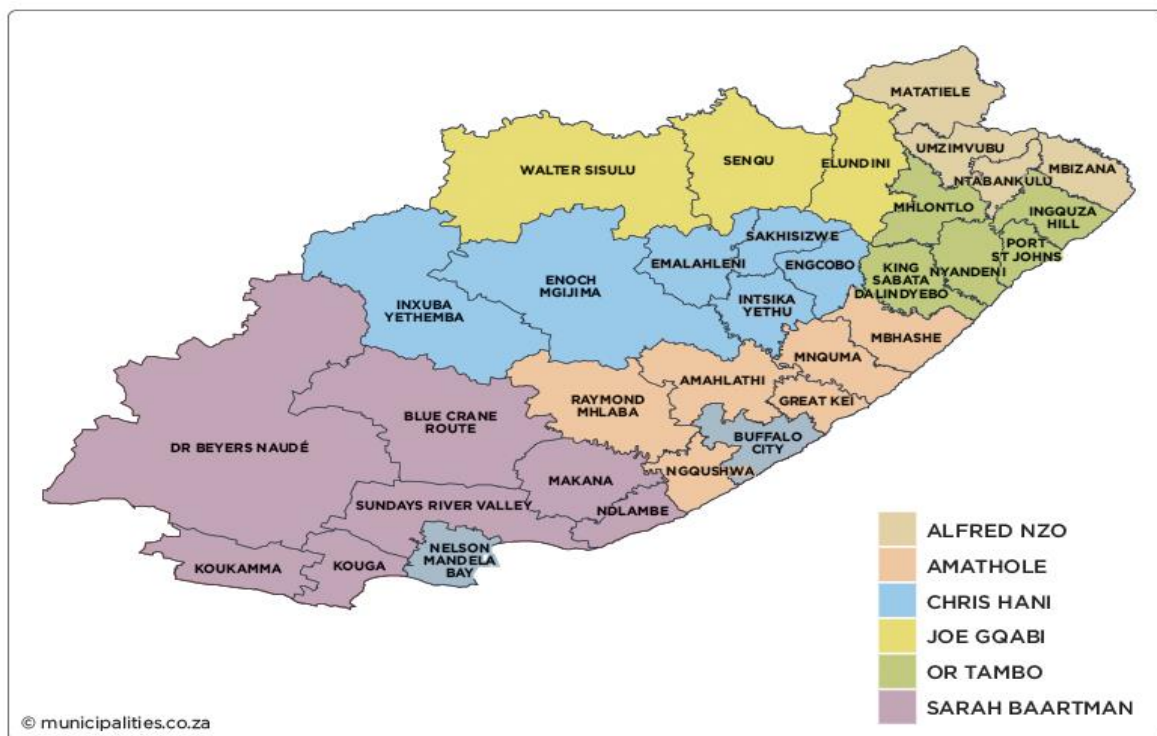
EASTERN CAPE DIVISION OF THE HIGH COURT

Eastern Cape province

[103] 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.

[104] 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.

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



[106] As at 2020, the province's economy was dominated by government services (23%), followed by trade, catering, and accommodation (20%) and finance (18%), manufacturing.⁸¹

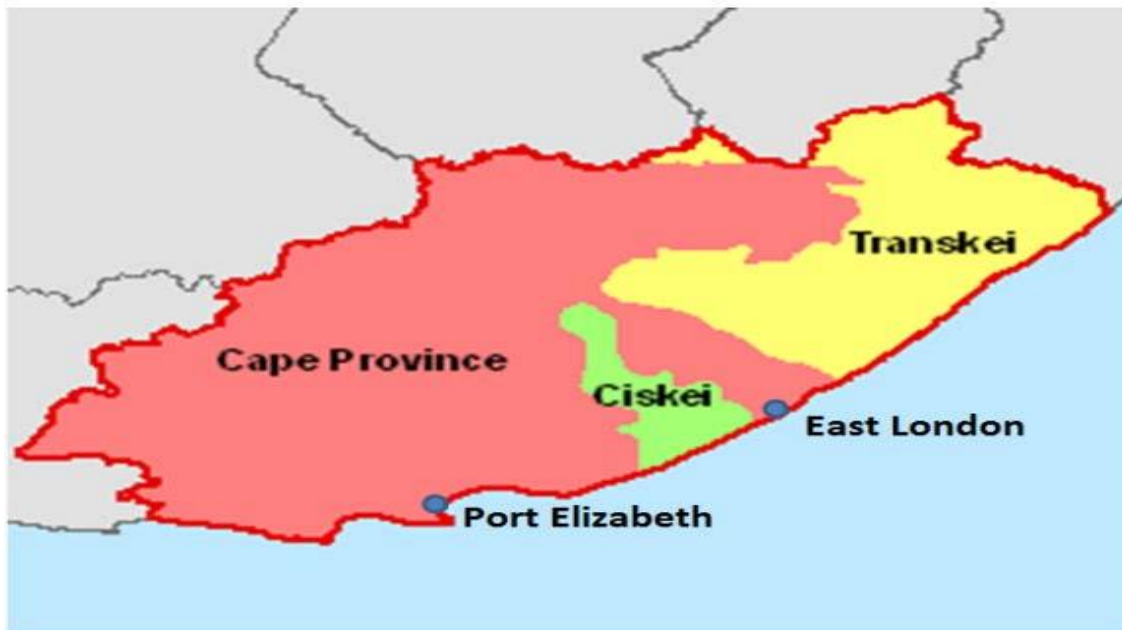
⁸¹ According to Stats SA 2020, Q4 report, accessed at:

[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

[107] 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.⁸² A map depicting the former area is set out below:⁸³



[108] The area that currently constitutes the Eastern Cape province historically 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).

⁸² Interim Constitution, sections 124(1)(a) and 124(2) read with schedule 1, part 1.

⁸³ The map is found in <https://www.sapecs.org/wp-content/uploads/2013/11/Eastern-Cape-Background-Report.pdf> at p 13.

[109] Schedule 1 of the Supreme Court Act only defined the territorial boundaries of the divisions of the Supreme Court of South Africa.⁸⁴ 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.

[110] The Constitution of the republic of Ciskei created the republic of Ciskei and established the Supreme Court, presided over by the Chief Justice.⁸⁵ 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.

[111] 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.⁸⁶ The area of jurisdiction for this court, was defined in schedule 1 of the Transkei Constitution.

Constitutional era:

⁸⁴ See schedule 1 of the Supreme Court Act.

⁸⁵ Section 53 of the Ciskei Constitution.

⁸⁶ Section 44 of the Transkei Constitution.

[112] The interim Constitution created the province of the Eastern Cape⁸⁷ and, included the areas of the former Ciskei and Transkei to form part of the newly constituted province.⁸⁸

[113] 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 identified⁸⁹ 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.

[114] In the new constitutional era, 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.⁹⁰ All four courts became High Courts of the Republic of South Africa.⁹¹

Rationalisation

⁸⁷ Section 124 of the interim Constitution.

⁸⁸ Interim Constitution, schedule 1, part 1, the Eastern Cape.

⁸⁹ Section 124(5), read with part 2 of schedule 1, of the interim Constitution.

⁹⁰ Section 241(1) of the interim Constitution.

⁹¹ Schedule 6, item 4 of the Constitution.

[115] In 2001, the Minister published notices altering the areas of jurisdiction of the courts in the Eastern Cape.⁹² 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 2003.⁹³

[116] In November 2003, alterations were made to the areas of jurisdiction of the Eastern Cape, Ciskei and Transkei High Courts (“**November 2003 Notice**”).⁹⁴ The November 2003 Notice is significant in two respects:

- a. It excised 11 towns⁹⁵ 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

⁹² Interim Rationalisation Act.

⁹³ GN R937 published in GG. 25141 dated 27 June 2003.

⁹⁴ Terminology as used in the schedule to the Supreme Court Act.

⁹⁵ 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.

[117] 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.⁹⁶ 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.

[118] A 2012 constitutional amendment established a single High Court.⁹⁷ 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,⁹⁸ and local seats at Bhisho, Mthatha and Port Elizabeth.⁹⁹

⁹⁶ GN 3440 published in GG 25880 dated 23 December 2003.

⁹⁷ Section 5 of the Constitution 17th Amendment.

⁹⁸ Section 6(1)(c) of the Superior Courts Act.

⁹⁹ Section 50(1)(c) of the Superior Courts Act.

[119] 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.¹⁰⁰

Status quo of the Eastern Cape Division

[120] The Eastern Cape Division of the High Court has its main seat at Makhanda¹⁰¹ and it has three local seats at Bhisho, Gqeberha¹⁰² 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.

[121] There are nine circuit courts. There are three 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.

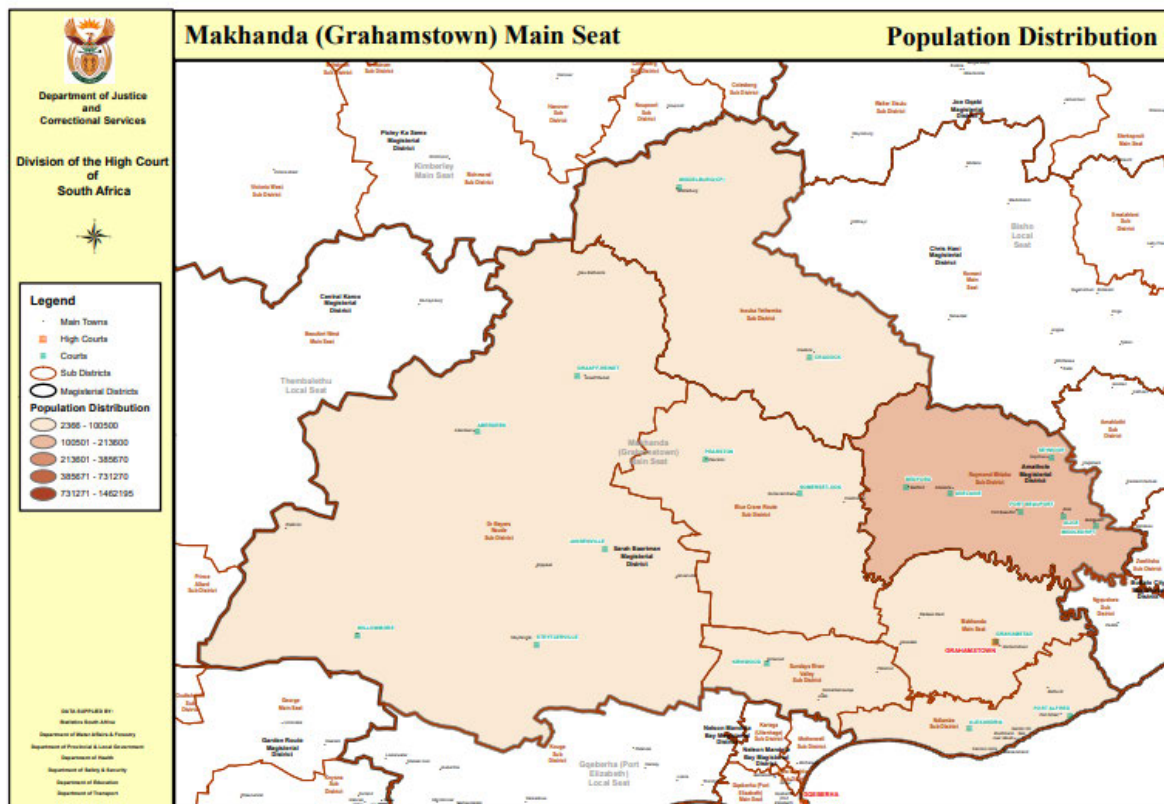
¹⁰⁰ The magisterial districts are: Amathole, Alfred Nzo, Buffalo City, Chris Hani, Joe Gqabi, Nelson Mandela, O R Tambo and Sarah Baartman The Department sets out the maps of the rationalised magisterial districts at: <https://www.justice.gov.za/maps/maps-ec.html>.

¹⁰¹ On 31 March 2022, Judge President Mbenenge issued a directive renaming the Eastern Cape Division (Grahamstown) as the Eastern Cape Division, Makhanda.

¹⁰² On 28 January 2022, Judge President Mbenenge issued a directive renaming the Eastern Cape Division (Port Elizabeth) as the Eastern Cape Division, Gqeberha.

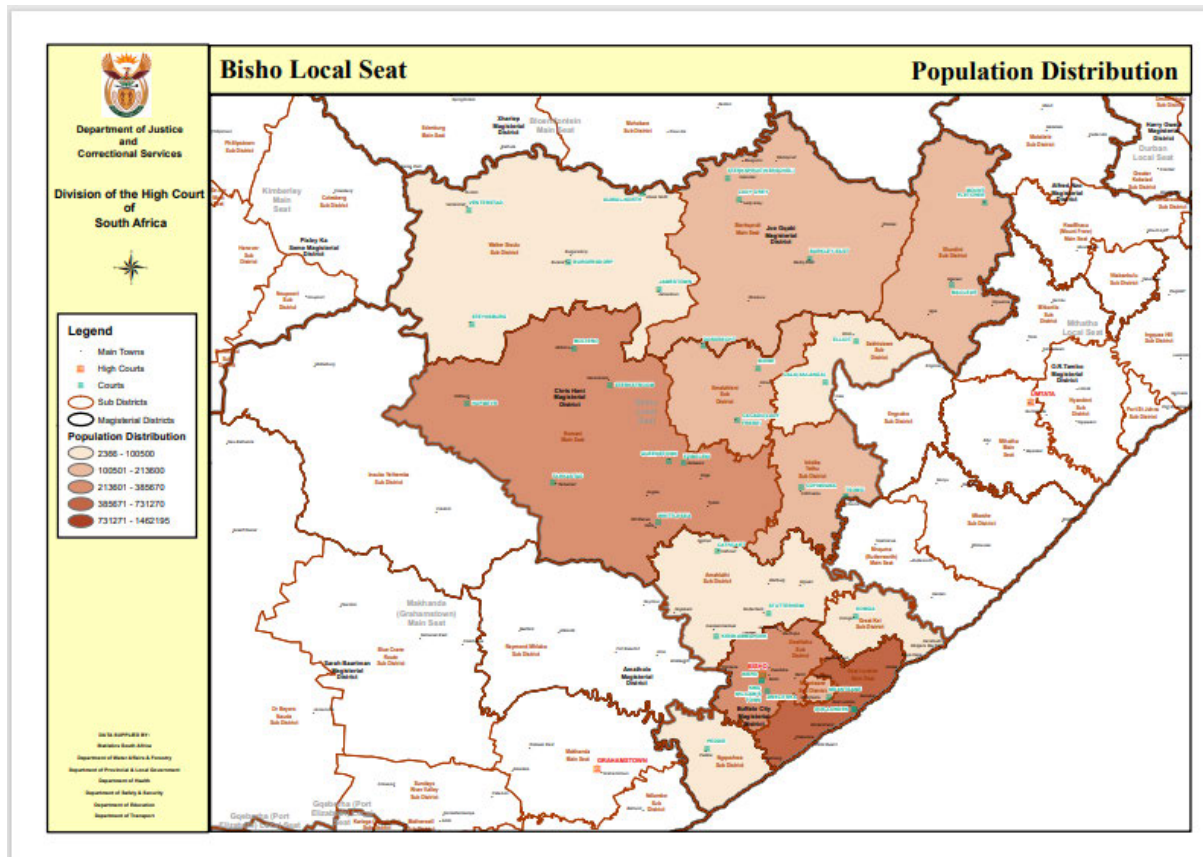
[122] The main seat at Makhanda exercises jurisdiction over territories that constituted the former South Eastern Cape province (pre-1994). It has concurrent jurisdiction with all the local divisions.¹⁰³ The Bhisho local seat exercises jurisdiction over the magisterial districts of the former Ciskei. 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.

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

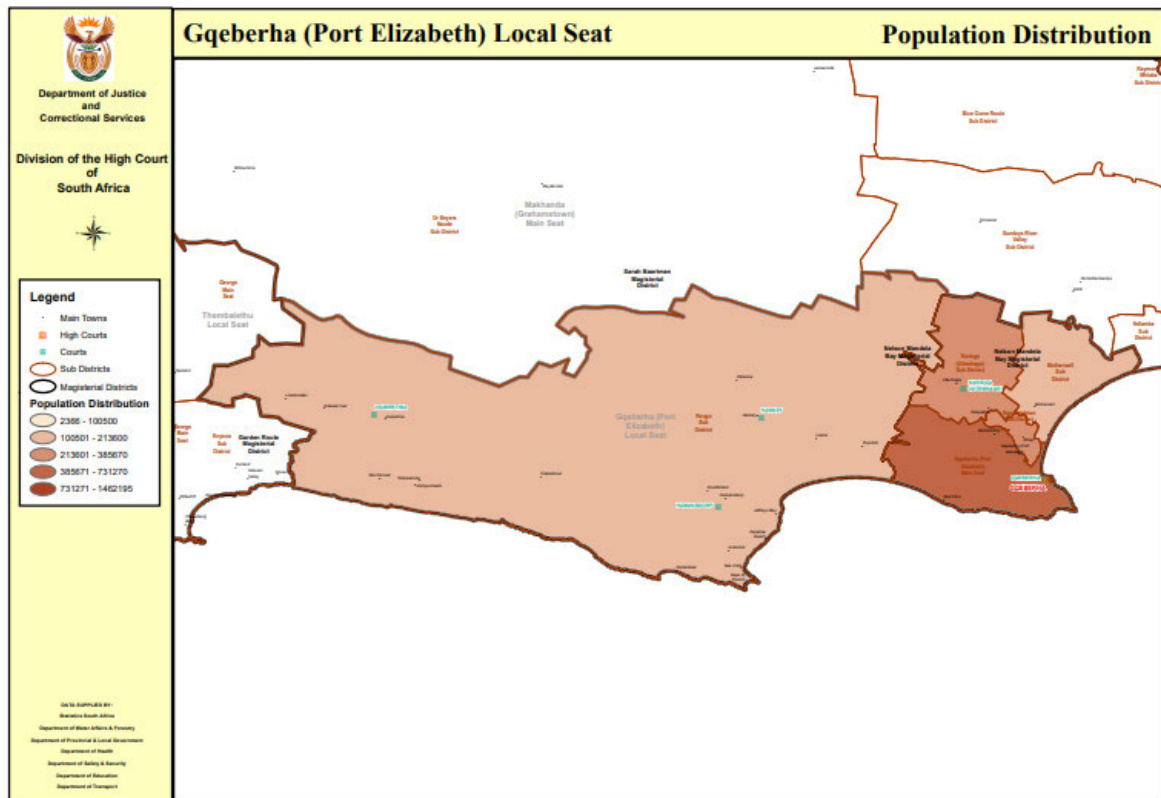


¹⁰³ Section 6(4)(a) of the Superior Courts Act.

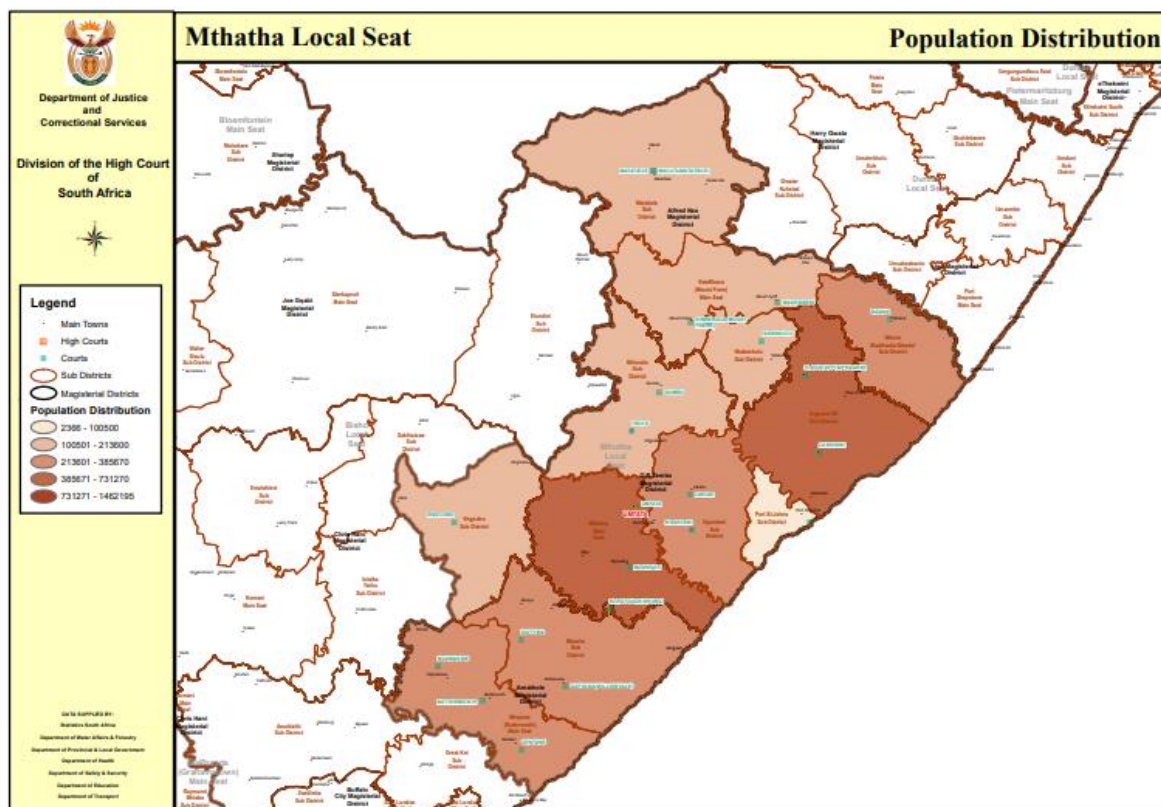
[124] The map below depicts the population density and the magisterial districts over which the local seat at Bisho exercises jurisdiction.



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



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



The anomalies

[127] 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 ¹⁰⁴ 259.7 km (3 h 39m)
Queenstown	225km	To the local seat at Bhisho

¹⁰⁴ 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.

(Komani)	(2h 44 m)	(153 km) 1h 49 m
Ugie	392 km (4 h 45 m)	To the local seat at Mthatha 87 km (1 h 20m)

[128] 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.

The caseload of the Eastern Cape Division

[129] 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 applications of further detention of mental patients	1204	837	774	2815
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The local seat at Bhishe

	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 applications of further detention of mental patients	0	0	0	0

The local seat at Gqeberha

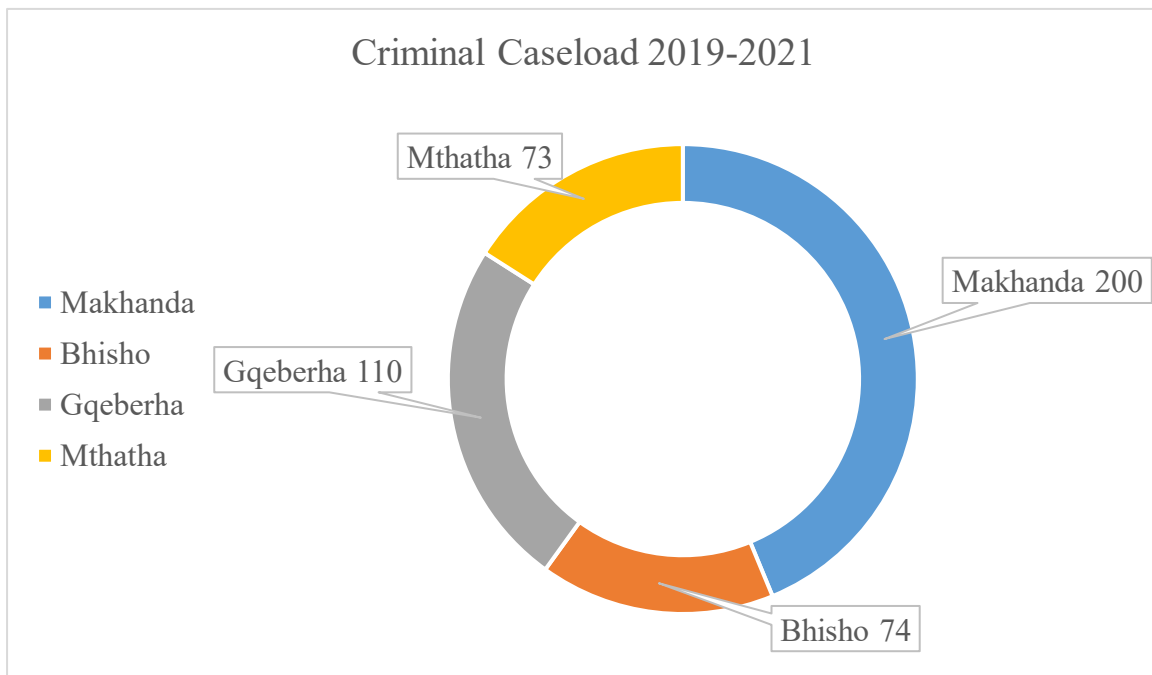
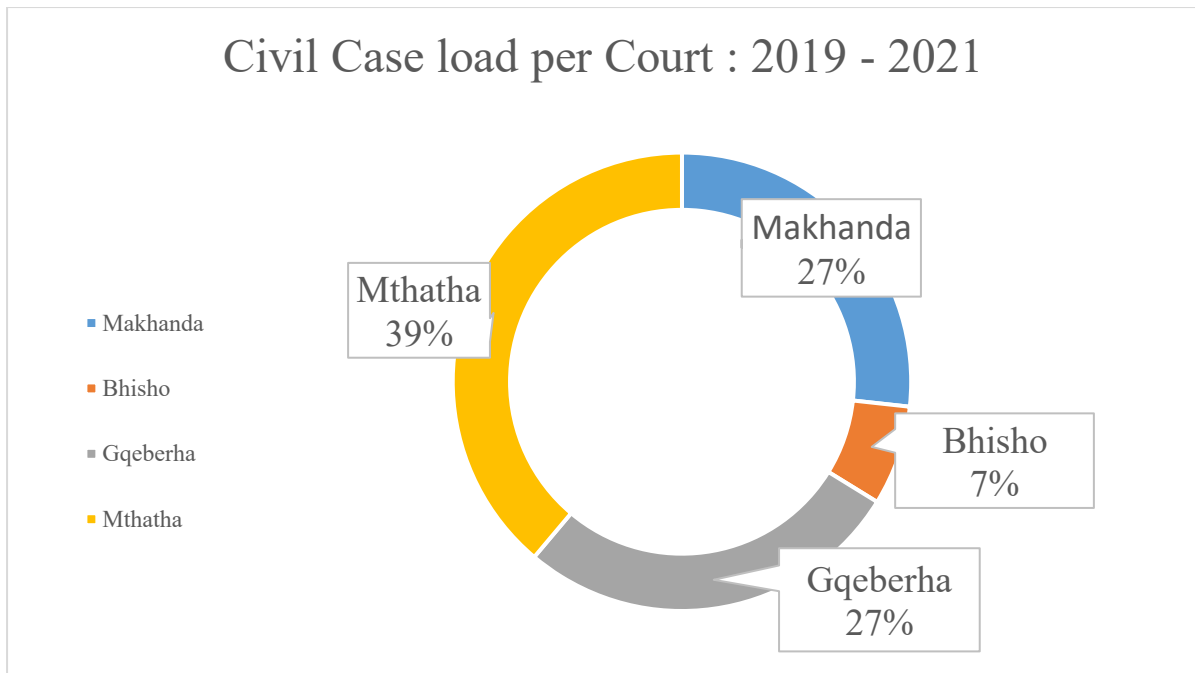
	2021	2020	2019	Total
No. of civil cases issued	3915	3157	3652	10 724
No. of criminal cases	51	33	26	110
No. of appeals	N/A	N/A	N/A	-
No. of automatic reviews	N/A	N/A	N/A	-

No. of applications of further detention of mental patients	3	0	0	3
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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 applications of further detention of mental patients	0	0	0	0

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

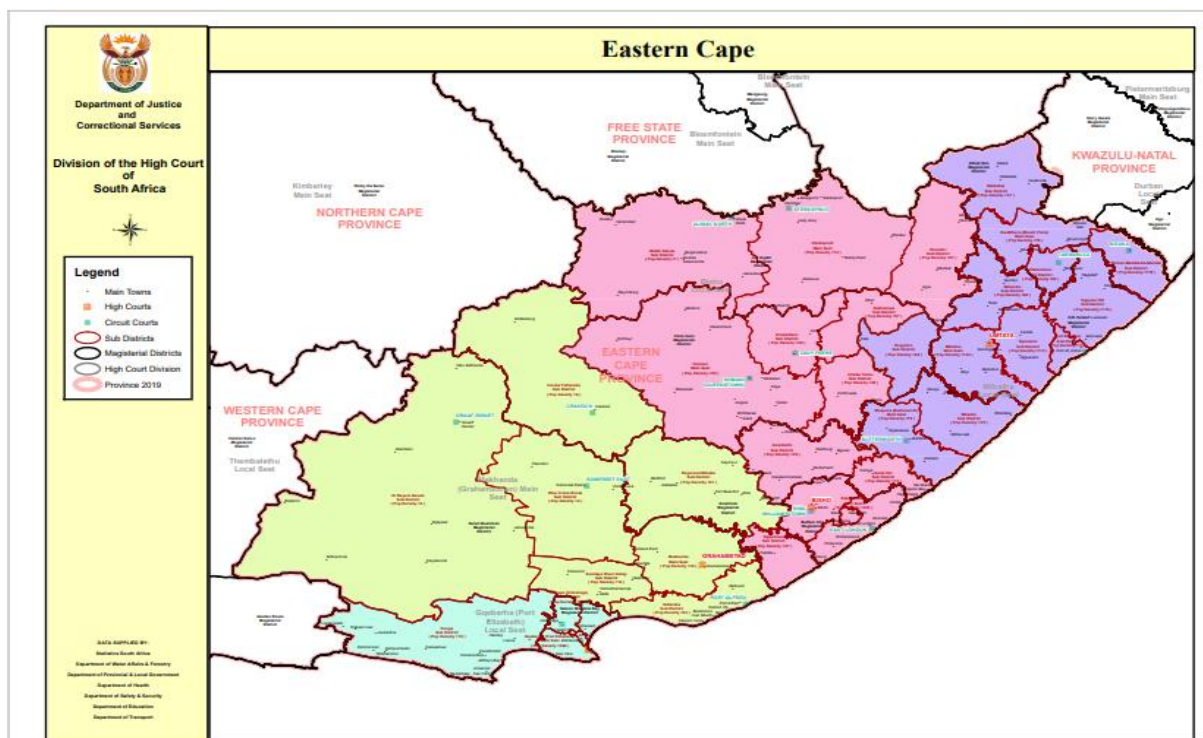


Submissions received from the Department

[131] 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.

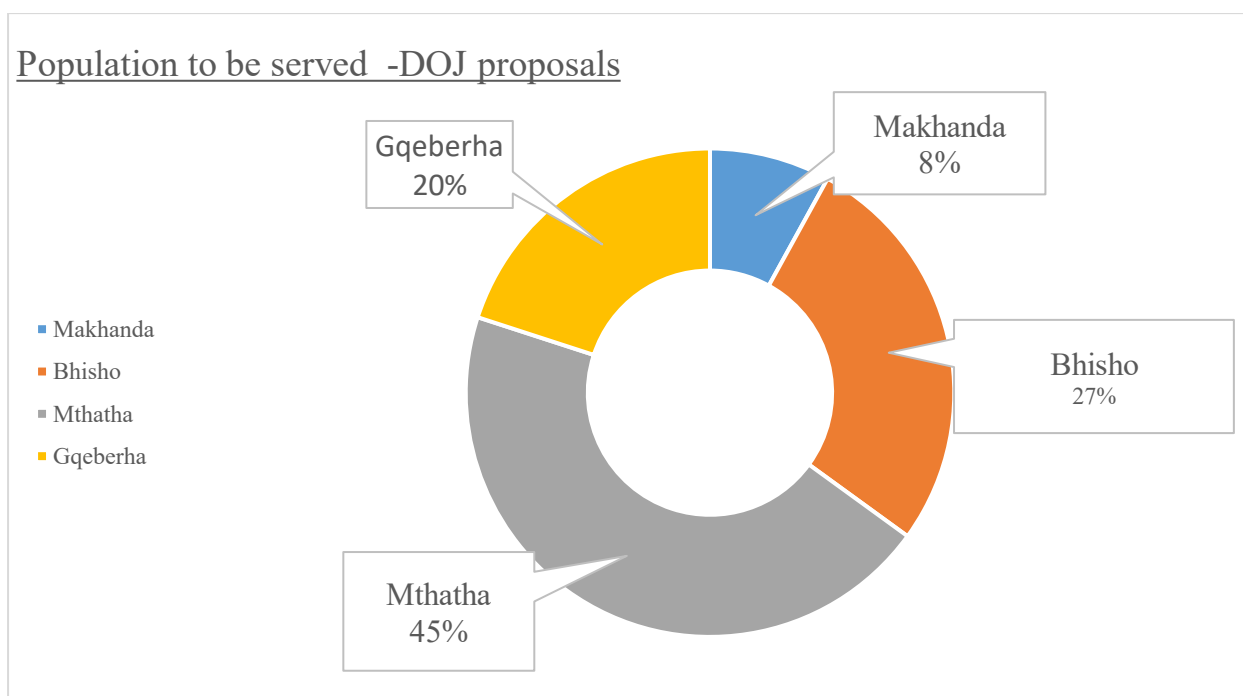
[132] Should the Department's submissions be accepted, the areas of jurisdiction of the four seats of the division would be as depicted on the map below:



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

[134] 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

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

Proposed area of jurisdiction of the main seat at Makhanda

[136] 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

[137] 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.

[138] 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.¹⁰⁵

Proposed area of jurisdiction of the local seat at Gqeberha

[139] 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

[140] 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.¹⁰⁶

Other considerations

¹⁰⁵ 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.

¹⁰⁶ The proposed changes will heighten the need to create additional judicial posts, together with the appointment of judicial officers to fill the posts.

[141] 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 instead be served by the local seat at Mthatha , rather than the KwaZulu-Natal Division, Pietermaritzburg.¹⁰⁷ 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

[142] 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”.

[143] The submissions incorrectly make reference to having considered the “Moseneke Report”. The Secretariat of this Committee provided the NPA with a copy

¹⁰⁷ This is based on section 6(3)(b) of the Superior Courts Act, 2013.

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".

[144] 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 Middledrift 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 Middledrift 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

[145] 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.

[146] 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 considered these submissions at a later stage, after input had been received from other professional bodies and members of the public, in preparation of this report.

The Committee's Preliminary Recommendations

[147] The Committee made 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 Middelrift.
 - 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.

[148] 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)

Towns	To be included in the area of jurisdiction of:	Distance
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)
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)

Towns	To be included in the area of jurisdiction of:	Distance
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)

Comments received through the Public Participation Process

[149] The Committee received an overwhelming response in relation to its interim report, particularly in relation to its preliminary recommendation that the main seat of the Eastern Cape Division of the High Court be relocated from Makhanda to Bhisho.

[150] Judge President Mbenenge made further written submissions. He noted that the written submissions he made on 11 August 2022 were limited to rationalising areas of jurisdiction of the Eastern Cape Division of the High Court and nothing more. In his further written submissions, Judge President Mbenenge recorded that the Committee's interim report was considered by judges in the Division. Judge President Mbenenge drew attention to the directives issued under his hand and which record the correct

appellations of the High Court Eastern Cape Division, namely the current main seat of the Eastern Cape Division is referred to as the “Eastern Cape Division, Makhanda”. The current local seats are to be referred to as Eastern Cape Division, Bhisho; Eastern Cape Division, Gqeberha and Eastern Cape Division, Mthatha”. Judge President Mbenenge requested that the Committee use these appellations in its final report.

The Legal Practice Council

[151] The Legal Practice Council, Eastern Cape Provincial Office (“**Legal Practice Council**”) supports the rationalisation process as it seeks to bring access to justice to all the people. The Legal Practice Council is satisfied that the Committee has adequately consulted to obtain input from interested parties. The Legal Practice Council sets out the majority and minority views in its Council, to assist the Committee to finalise its report.

[152] The majority of the Legal Practice Council accepts and supports the recommendation that the main seat of the Eastern Cape Division be moved from Makhanda to Bhisho. The majority accepts that the *status quo* does not advance the constitutional objectives of access to justice. The majority says that the interim report makes it clear that the proposed relocation of the main seat to Bhisho is based on Bhisho being the provincial capital. Bhisho is also relatively the most central town in the Eastern Cape. The Bhisho High Court would serve more litigants compared to any other seat in the province considering that the main seat has concurrent jurisdiction. The long distances to be covered by litigants to access justice through the courts by

leaving courts near to them and travelling further, remains an important consideration. The majority supports the removal of some areas from the area of jurisdiction of the Makhanda main seat to the areas of jurisdiction of the other divisions of the high court in the province.

[153] The minority of the Legal Practice Council is not in favour of the main seat being moved to Bhisho. The minority considers the proposed move to be irreconcilable with the rationalisation committee's statutory objective and constitutional mandate of promoting access to justice through the courts to the broader members of the public.

The following reasons are advanced to retain the main seat at Makhanda:

- a. Access to justice is not about a central location but rather about a service provided to a litigant.
- b. The purpose of access to justice is to ensure that litigants have access to the necessary legal services.
- c. The proposed move of the main seat will not serve access to justice.
- d. The Bhisho local seat does not have necessary and adequate infrastructure to accommodate legal practitioners outside Bhisho.
- e. There were no law firms, advocates chambers and civic society organisations providing access to justice to indigent members of the public.
- f. The proposed move of the main seat is not rational because the proposal does not appear to be linked to the requirement of enhancing access to justice. It appears that the proposed move is based on Bhisho

being the provincial capital and this factor does not appear to have been consistently applied across all the provinces. More particularly, in the Gauteng province the main seat will remain in Pretoria and not be moved to Johannesburg which is the capital city of the province.

- g. It does not appear that the economic prejudice to be suffered by the community in Makhanda or any other socio-economic factors have been considered.

[154] The Legal Practice Council preferred to remain neutral by neither supporting nor rejecting the findings and recommendations of the interim report. The minority adopts this approach to steer clear of being seen to be preferring one group or one section of society over another. The minority was mindful that they act under the Legal Practice Act and are mandated to advance and protect the public interest.

[155] Despite this appeal to neutrality, the Legal Practice Council's submission notes that the minority of the Legal Practice Council does not support the interim report and its recommendations until "*such time that the committee has considered all the relevant factors, including but not limited to the socio-economic factors.*"

The Law Society of South Africa

[156] The Law Society of South Africa's ("**Law Society**") written representations consist of copies of submissions made by Black Lawyers Association, Eastern Cape

(“**Black Lawyers Association**”); the National Association of Democratic Lawyers, Mthatha Branch and law firm De Jager & Lordan.

[157] The Black Lawyers Association supports the move of the main seat from Makhanda to Bhisho. It is noted that the proposed move will advance access to justice for the people in the province. The Black Lawyers Association notes that those who oppose the move focus on economic benefits that Makhanda currently enjoys. The Black Lawyers Association maintains that that the economic benefits are secondary whilst access to justice remains the priority. It is to be encouraged that another part of the province may stand to benefit from the proposed relocation of the main seat which brings with it, small economic spin-offs. It makes sense for the main seat to be located in the same town as the provincial capital. Those who oppose the move of the main seat focus on the loss of 400 jobs. However this must be balanced against the increased benefit of access to justice for the people and against the economic benefits for the long-disadvantaged communities of Bhisho, Zwelitsha and King Williamstown

[158] The law firm practising under the name and style of De Jager & Lordan is opposed to the proposed move of the main seat to Bhisho. The law firm says that the Committee has failed to consider the impact that the preliminary recommendations will have on the communities and that the preliminary recommendations overlook the economic hardships of poor people living within the Makana municipality. The law firms says that if the preliminary recommendations are accepted, it will adversely impact on communities in the Makana local municipality and the Sarah Baartman

district municipality. The communities will not likely recover if the preliminary recommendations are accepted. The preliminary recommendations fail to consider and protect the public interest, and fail to address the economic hardship of impoverished people living in the Makana municipality. The Committee failed to engage with the Makana community and failed to consider the impact of its recommendations and any submissions from the community, prior to the interim report being released.

[159] It is alleged that the Committee only proposes two reasons for its recommendation that the main seat be moved: first, that the main seat and the provincial capital should be located in the same city; and second, that the litigants' travelling time will be reduced. These two reasons are irrational and do not outweigh the prejudice that will be suffered by the Makana community.

[160] Access to justice means more than physical access and it also means the ability to be effectively heard. The law firm notes that the main seat means more than the physical location of the court building. It also includes the provision of legal services to the community. The law firm also relies on the findings of the Hoexter Commission to maintain the existing status quo. The independence of the judiciary militates against the main seat being located in the same city as the executive. The interim report is inconsistent as it does not follow the same approach in relation to Gauteng.

[161] Based on the 2016 census, the Eastern Cape Division, Makhanda serves 410 142 more people than the Eastern Cape Division, Bhisho. There are no advocates or

attorneys practising in Bhisho. There is no legal aid office nor any other entity providing legal services to indigent litigants. The economic impact on Makhanda will adversely affect the community and unemployment will increase. Retrenchment will have more severe impact if the legal profession withdraws from Makhanda, because other job opportunities are limited in Makhanda. If law firms close, this will have a ripple effect and other industries will also close down. The economic hardship that Makhanda will suffer will not be balanced by any gains to Bhisho. Those who leave Makhanda are not likely to move to Bhisho. They would more likely move to East London and commute.

[162] Bhisho is inappropriate to serve as the main seat. None of the advocates who are members of the Bhisho Society of Advocates hold chambers in Bhisho. There is inadequate or no office space to accommodate law firms. There is limited accommodation in Bhisho to service legal practitioners and witnesses who would travel there from outside of the town. They are likely to find accommodation at East London or King Williamstown and this will increase costs and travel time. No judges live in Bhisho. Judges reside in East London and travel to Bhisho daily. There are no Sheriff's offices in Bhisho. The costs of expansion of the Eastern Cape Division, Bhisho will be significant. One estimate is that it will be in excess of R 500 million. This money could be better spent for other pressing needs for the communities in the province. The expansion may take up to 5 years or longer. If the main seat is moved, the interim report suggests that JP Mbenenge recommends that the East London Circuit Court will not be retained. This will adversely affect cases arising from East London.

[163] The terms of reference establishing the rationalisation committee do not empower the committee to make recommendations to relocate the main seat.

[164] The National Association of Democratic Lawyers, Mthatha supports the proposal that the main seat be moved to Bhisho. The following reasons are provided for the support:

- a. Bhisho is relatively the most central town/city in the province. If regard is had to the fact that the seat of the division has concurrent jurisdiction it is only fair that the seat be accessible “equally or almost equally” by litigants. The current position with the main seat at Makhanda is “*totally unfair to other parts of the province.*”
- b. It is a fact that the majority of the population of the province is concentrated in the former Transkei area and is serviced by the Eastern Cape Division, Mthatha. Out of a total of approximately 6 million people, more than half are served by the Eastern Cape Division, Mthatha. On the other hand, the Eastern Cape Division, Makhanda only “*accommodates less than 600 000 citizens of the province.*”
- c. The seat must be as central as possible to ensure that it is accessible to the majority of the public. Bhisho seems to be an appropriate location to achieve this objective.
- d. Bhisho is the seat of the province’s government.

- e. The socio-economic conditions must be considered. At the moment, it is “*financially impossible for a litigant who is at [Mount Ayliff] or Mbizana who wishes to instruct an attorney to litigate*” in the seat of the Eastern Cape Division, Makhanda to do so because of the cost involved. It makes sense for the seat of the High Court to also be situated where the seat of the Government is situated.

[165] It is clear that the areas of the High Court’s jurisdiction was not created to service the majority of the population but rather it was designed to serve the “*comfortability/convenience of some segments of our society.*”

The Bhisho Society of Advocates

[166] The Bhisho Society of Advocates is an association of advocates affiliated to the General Council of the Bar. The written submission details the history of engagements held by the Department of Justice and the Chief Justice from around 2001, in relation to various proposals to alter the areas of jurisdiction of the High Court in the province. A summary is provided in relation to the recommendations that were made from 2001.¹⁰⁸

¹⁰⁸ Reference is made to a “*task-team*” and to a “*report on the interim rationalisation of high courts*” which was tabled at the meeting of the heads of courts. A copy of this report is not provided. There are no details about the composition of the task team.

[167] The Bhisho Society of Advocates submits that the rationalisation committee should recommend the implementation of these changes (para 18). The changes appear to be set out in paras 6 to 16. The proposals in the interim report align with the alteration of the areas of jurisdiction as contained in the various notices issued by the Minister. The Bhisho Society of Advocates supports the proposal that the Eastern Cape Division, Bhisho should be made the main seat and that the East London Circuit Court be made its circuit court. The submission repeatedly speaks about the need to move the main seat from Makhanda to Bhisho. It appears to reinforce the suggestion that the East London circuit court be made a circuit court of the Eastern Cape Division, Bhisho. It is suggested that the Eastern Cape Division, Bhisho *“needs to be beefed up in all respects, including its jurisdiction and physical and human resources.”*

The following reasons are advanced in support:

- a. The Eastern Cape provincial government sits at Bhisho.
- b. The East London/ Bhisho corridor is in the middle of the province.
The population of the province is concentrated in the east, west and middle with the local seats situated at Mthatha, Bhisho and Gqeberha being well placed to serve the population.
- c. Makhanda is located in the middle of a vastly rural area having a sparse population and is part of a bygone past.
- d. It will be more convenient and accessible for many litigants if the main seat was to be moved from Makhanda and located in the East London /Bhisho area.

- e. Section 6(1)(a) of the Superior Courts Act named Makhanda as the main seat of the Division. The Society contends that this needs to be changed “*without further delay*”. The move remains part of reconstructing the country and the province which has been “*ravaged by colonial and apartheid misrule and realigning institutions with the rational demands of the times to move the seat from Makhanda to Bhisho*”.

The Eastern Cape Society of Advocates

[168] The Eastern Cape Society of Advocates (“**Society of Advocates**”) aligns itself with the submissions made by the Makhanda High Court Action Committee.¹⁰⁹ The Society of Advocates contends that the main seat should remain in Makhanda. The Society of Advocates relies on the Hoexter Commission’s findings and meetings held since 2001 about the areas of jurisdiction of the courts in the province to justify the preservation of the status quo. It submits that there have been no material changes in circumstances since the Hoexter Commission’s findings in 1997. It suggests that the Committee should reach the same conclusion and recommend that the main seat remain at Makhanda.

[169] The submission speaks at length about the benefits of the main seat remaining at Makhanda. The factors include that the Eastern Cape Division, Makhanda has an

¹⁰⁹ The Society of Advocates sought the opportunity to consider written submissions received by the Rationalisation Committee and, if necessary to respond.

established community of legal organisations that provide services to litigants; the court building has been renovated and has a well-resourced library; the Court is considered to be particularly efficient with an equally efficient Registrar's office.

[170] The Society of Advocates responds to para 146(m) of the interim report, which notes that ordinarily the main seat is located at the capital of the province. The interim report goes on to say "*it follows that in the Eastern Cape too, the same situation should prevail.*" The Society of Advocates focuses on the words "it follows" and suggests that there is no merit in the recommendation. It suggests that the interim report does not follow the same route in relation to the Gauteng Division of the High Court. It maintains that the separation of powers and judicial independence require physical separation between the executive and the judiciary.

[171] The Society of Advocates responds to the proposal by the Bhisho Society of Advocates that the main seat be relocated to the Eastern Cape Division, Bhisho and that the East London Circuit Court should remain in existence. The Society of Advocates suggests that if this proposal is accepted, it would mean that more processes will be issued out of the East London Circuit Court than the main seat located at Eastern Cape Division, Bhisho.

Alteration of the areas of jurisdiction

[172] The Society of Advocates notes that the areas of Alice and Middledrift currently fall within the jurisdiction of the Eastern Cape Division, Bhisho and not the Eastern

Cape Division, Makhanda. There will be no reduction of travelling time for litigants who live in Alice and Middledrift.

[173] The inclusion of East London under the area of jurisdiction of the Eastern Cape Division, Bhisho is not supported as it will mean that litigants would have to travel further distance to get to Bhisho. Currently litigants in East London are serviced by a Circuit Court located in East London.

[174] Reliance is placed on a report by Dr Fox from Rhodes University who prepared maps to show the population within 200km radius of the Eastern Cape Division, Makhanda and that served by the Eastern Cape Division, Bhisho. The maps show that the Eastern Cape Division, Makhanda services 410 142 more people than the Eastern Cape Division, Bhisho. A costs consultant, Mark Bowles has prepared a report to show the percentage of travelling costs as against litigation costs. The report concludes that travelling expenses incurred by litigants are negligible and constitutes 0.08% of litigation costs. Both Dr Fox's report and that of Bowles is attached to the Makhanda High Court Action Committee's submissions.

Access to justice

[175] Access to justice requires more than access to a physical court. Litigants also require access to legal practitioners (attorneys and advocates), including Legal Aid South Africa, Legal Resources Centre, DPP's offices and organisations and legal practitioners who provide pro-bono services or act as amicus curiae. There are no legal

practitioners, attorneys and advocates practising in Bhisho. There is no legal aid board or similar institution providing legal services for indigent litigants in Bhisho. The Committee's recommendation that the travelling time would be reduced, should not be persisted with.

[176] Proximity of population has some relevance to determining the location of a main seat. What is more important is the proximity to the industrial and commercial activity which generates litigation requiring the attention of the High Court. (para 19 of the submission). The proposed relocation of the main seat to Bhisho would bring the court closer to litigants in some parts of the province but it would also mean that the main seat would be moving further from the major population situated at Port Elizabeth and Uitenhage. Reliance is placed on the Hoexter Commission's report which recognised that it is a reality that some litigants will live in an area that is far removed from the High Court in whose area of jurisdiction they find themselves.

The current workload and resources at the courts

[177] The interests of justice is best served by the main seat remaining at Makhanda. The Eastern Cape Division, Makhanda is a particularly efficient High Court and has a well-resourced library. The Registrar's office is highly organised and efficient. The Eastern Cape Division, Makhanda is also served by the Rhodes University law library. It is noted that after appearing at the Eastern Cape Division Makhanda, "some senior counsels have regularly commented that it is the best serviced division in the country".

By contrast the court building of the Eastern Cape Division, Bhisho is fully used and there is no space for expansion to cater for more court rooms and judges' chambers.

Legal Aid SA

[178] Legal Aid SA notes that the proposed rationalisation of the areas of jurisdiction of the four seats of the High Court will not adversely impact on how Legal Aid is operating in the Eastern Cape.

[179] More specifically, the submission notes that:

- a. In relation to the Eastern Cape Division, Gqeberha, the proposals in the interim report will not have any logistical or financial impact on how Legal Aid provides services at the Court.
- b. In relation to the Eastern Cape Division, Bhisho:
 - i. Legal Aid's office at Qonce (King Williamstown) currently serves the Eastern Cape Division, Bhisho.
 - ii. If the main seat is moved to Bhisho, the appeal jurisdiction will also move and this may require additional capacity from Legal Aid. Once the change is effected, the Qonce local office will need additional staff and resources with an estimated additional budget of R 1 million per year.
 - iii. There is likely to be an increase in demand for assistance with civil matters, especially administration of estates at the Qonce local office. At this stage, Legal Aid cannot quantify the

additional financial or human resources that will become necessary.

c. In relation to the Eastern Cape Division, Makhanda:

- i. If the seat of the Court moves from Makhanda to Bhisho, Legal Aid practitioners will have to be re-allocated from the office at Makhanda to move to Bhisho to deal with the anticipated increase in appeal work in the Eastern Cape Division, Bhisho.

d. In relation to the Eastern Cape Division, Mthatha:

- i. The increase in the areas of jurisdiction will require additional financial and human resources. It is anticipated that the Mthatha Local Office will need an additional budget of R 2 million per year.

The Mthatha Society of Advocates

[180] The Mthatha Society of Advocates submits that the main seat should be relocated to Bhisho as it is the provincial capital, Bhisho is the most central town, various government offices are located in Bhisho. The increase in the area of jurisdiction of the Eastern Cape Division Bhisho is to be welcomed. There is a need to improve infrastructure – court building, court rooms and court resources, the appointment of judges, court staff. Citizens who live in rural areas have little means and yet they are expected to incur expenses to access justice. The Committee is invited to “*actively resist the temptation to be conformist.*”

The National Association of Democratic Lawyers, Gqeberha and Districts
Branch

[181] The National Association of Democratic Lawyers, Gqeberha supports the recommendation that the main seat be moved to Bhisho. The proposed move will align with the movement of the concurrent jurisdiction to the Eastern Cape Division of the High Court, Bhisho.

[182] The National Association of Democratic Lawyers, Gqeberha's support is qualified by the following:

- a. The Eastern Cape Division, Makhanda be retained as a local seat. This will reduce job losses and prevent the existing infrastructure from becoming a "white elephant";
- b. The move of the main seat must take effect once the Eastern Cape Division, Bhisho has the necessary infrastructure and capacity to deal with the increased workload.

[183] The National Association of Democratic Lawyers, Gqeberha proposes the use of circuit courts as an interim measure. In support of this submission, it is submitted that the Eastern Cape Division, Bhisho will not have the infrastructure and facilities to accommodate an increased civil and criminal case load. It is suggested that circuit courts could be used as an interim measure, until structural changes are implemented. Circuit courts operating under the Eastern Cape Division, Makhanda will no longer be needed because certain areas will be excised from that court's jurisdiction. Circuit

courts falling under the Eastern Cape Division, Bhisho for example the East London circuit court could be used for cases arising from the Buffalo City magisterial districts and the Border circuit court sitting in Komani (formerly Queenstown) could be used for cases arising from the Chris Hani magisterial district.

Jurisdiction – appeals/reviews/ concurrency

[184] It is noted that section 6(4) of the Superior Courts Act provides that all seats of the court within the division of the Eastern Cape are empowered to hear appeals and reviews and that only on the direction of the Judge President will an appeal or review be heard at the main seat. It is suggested that instead of moving the concurrent jurisdiction from the Eastern Cape Division, Makhanda, consideration should be given to having a main seat at Eastern Cape Division, Bhisho and a local seat at Makhanda and for both these High Courts to have concurrent jurisdiction over the magisterial districts in the province.

The towns of Matatiele and Maluti

[185] The National Association of Democratic Lawyers, Gqeberha does not support the recommendation that Matatiele and Maluti be removed from the area of jurisdiction of the Kwazulu-Natal Division, Pietermaritzburg and be included in the area of jurisdiction of the Eastern Cape Division, Mthatha. The Committee's proposal is based on the fact that Matatiele and Maluti are situated within the Eastern Cape province. Access to justice will not be served by moving these areas to be serviced by the Eastern

Cape Division, Mthatha. There is only a 20km distance in travelling from Matatiele or Maluti to Pietermaritzburg.

[186] The National Association of Democratic Lawyers, Gqeberha further contends that the Committee has not had regard to the submission of Madondo AJP that residents in Maluti and Matatiele receive legal services from Pietermaritzburg because they either work in Pietermaritzburg or conduct their commercial activities in that town. Madondo AJP also notes that there is no objection to the residents in these areas being serviced by the Kwazulu-Natal High Court, Pietermaritzburg.

The town of Murraysburg

[187] The National Association of Democratic Lawyers, Gqeberha supports the recommendation that the town of Murraysburg continue to be served by the Eastern Cape Division, Makhanda until a local seat is established at Themba lethu. They suggest that there appears to be a conflict in the interim recommendation that Murraysburg is to be excluded from the area of jurisdiction of the Eastern Cape Division, Makhanda whereas later in the report it is recommended that Murraysburg will continue to be served by the Eastern Cape Division, Makhanda until a local seat is established at Themba lethu.

[188] The National Association of Democratic Lawyers, Gqeberha further suggest that there is an error in the the interim report with regard to the estimated population that the Eastern Cape Division, Gqeberha. They add that nothing turns on this error.

The Pan-African Bar Association, Mthatha

[189] The Pan-African Bar Association, Mthatha makes the following recommendations about the geographical areas of jurisdiction:

- a. Maluti, Matatiele, Cedarville, Mt Fletcher and parts of Alfred Nzo District Municipality should be serviced by Mthatha High Court.
- b. Maclear, Ugie, Rhodes, Barkley East, Rossouw, Lady Grey, Sterkspruit, Indwe Dordrecht, Komani and Lady Frere be serviced by Mthatha High Court.
- c. Aliwal North, Jamestown, Molteno, Burgersdorp, Steynsburg, Venterstad, Sterkstroom, Whittlesea, Queenstown, Tsomo, Ngqamakwe, Butterworth, Willowvale, Bedford, Adelaide, Fort Beaufort, Alice, Seymour, Middle Drift, King Williams, Stutterheim, Somerset East, Cookhouse and Peddie should be amongst the areas serviced by the Bhisho High Court.
- d. From Bathurst to Addo, Kirkwood, Reibeek East should be serviced by Makhanda High Court.
- e. The areas of jurisdiction under the Port Elizabeth High Court should remain.

[190] The Pan-African Bar Association, Mthatha notes that the relocation of the main seat from Makhanda to Bhisho will lead to the proper management of the judiciary and further access to justice

The Wildcoast Attorneys Association

[191] The Wildcoast Attorneys Association contends that the relocation of the main seat of the Eastern Cape Division to Bhisho will result in an accessible court to all citizens. Statistics show that the population in the former Transkei area are “*the most poorest of the poor in the province.*” Bhisho is the most accessible town in the Eastern Cape province.

[192] The towns of Sterkspruit, Lady Grey, Mount Fletcher, Barkely East, Khowa (formerly Elliot), Ugie, Maclear, Tsomo, Cofimvaba, Cala should fall under the area of jurisdiction of the Eastern Cape Division, Mthatha.

[193] Khowa, Barkely East, Ugie and Maclear currently fall under the area of jurisdiction of the Eastern Cape Division, Makhanda. These towns should move to the area of jurisdiction of the Eastern Cape Division Mthatha.

Submissions from government and organs of state

The Makana Local Municipality

[194] The Makana Local Municipality (“**the municipality**”) governs the area in which the town of Makhanda is situated. The submission notes that the well-being of the whole municipal area depends on the economy of Makhanda. The municipality

maintains that the proposed “*relocation of the seat from Makhanda will result in a local recession and the municipality therefore opposes the proposal.*”

[195] The municipality is aware of the representations advanced by the Makhanda High Court Action Committee (“**Action Committee**”). The municipality holds the view that the Action Committee reflects the views of the entire Makana community in relation to the proposed relocation of the main seat. The proposed relocation will impact upon the business sector and all those who depend on the legal c§ommunity for a livelihood. The economic analysis relied upon by the Action Committee has been commissioned by and officially adopted by the municipality. The municipality reiterates the fragile nature of the economy of the Makhanda area and that the removal of income from this area will adversely affect the poor. The municipality also confirms that employment opportunities in the Makhanda area are few and those who have been retrenched are unlikely to find new work.

[196] The municipality depends on income derived from property rates to fund the provision of services to the community. The municipality submits that if there is a reduction of property values and high income earners leave the Makhanda area, this will have an immediate negative impact on the revenue earned by the municipality. This in turn will adversely impact on the municipality’s ability to provide services to the community.

Political Parties

The African National Congress, Alfred Nzo Branch

[197] The Alfred Nzo Branch supports the move of the main seat from Makhanda to Bhisho. It advances the following reasons:

- a. Geographically, Bhisho is more accessible to people than Makhanda.
- b. The main seat being located in Makhanda is a legacy of apartheid and the main seat should be moved to Bhisho as soon as possible.
- c. The move to Bhisho will result in better access to all who need to use the main seat.

[198] The Alfred Nzo Branch also supports the recommendation that magisterial districts of Matatiele that fall under the Alfred Nzo District Municipality be moved to the area of jurisdiction of the Mthatha High Court.

[199] The Alfred Nzo Branch supports the move of magisterial districts of Maclear, Ugie, Elliot, Indwe and Barkley East, to be incorporated into the jurisdiction of the Mthatha High Court.

The Democratic Alliance Caucus in Makhanda

[200] Five councillors made the submissions on behalf of the Democratic Alliance Caucus in Makhanda. These councillors are Councillor Luvuyo Sizani, Councillor Cary Clark, Councillor Brian Jackson, Councillor Geoff Embling and Councillor Xolani Madyo. The Committee received one submission collectively in the name of the

Democratic Alliance Caucus in Makhanda and a separate letter from each councillor bearing their individual signatures.

[201] The Democratic Alliance Caucus opposes the proposal to move the seat from Makhanda to Bhisho. The objection is not politically motivated and is based on the human suffering that the move will bring to the Makhanda community. The unemployment rate is already at a high level. The proposed relocation of the seat will increase the unemployment rate. The Eastern Cape Division, Makhanda employs 400 people and they in turn employ other people who are the sole breadwinners in their families. People who use the Eastern Cape Division, Makhanda and for example the Sheriff's office contribute to the local hospitality industry and these businesses in turn employ more people in the Makhanda area. Real estate agents are contemplating that 400 properties will become available on the market in a short space of time and this will render some of their staff redundant. Businesses will be forced to close. Many people will be left without an income and the State will be burdened. The lowering of property prices in the Makana municipality will reduce the municipality's income and the municipality is already taking strain to provide basic services to the community.

[202] The Councillors who signed the submissions say that they can see no positive outcome from the proposed move and cannot understand the rationale or the need for moving the seat.

[203] The Young Communists League of SA opposes the proposed relocation of the seat from Makhanda to Bhisho. The Young Communists League of SA notes the high levels of unemployment amongst the youth in Makhanda. If the seat is moved to Bhisho, the youth will have no opportunities to find employment in Makhanda. The proposed move will leave the youth without hope. The Committee is urged to retain the Eastern Cape Division, Makhanda where it is as this will give the youth the opportunity to participate in the economic growth of the area. The proposed relocation will result in added costs and Makhanda may never recover from the economic loss of moving the Eastern Cape Division, Makhanda. The Committee is urged to consider the impact that the move will have on Makhanda as a town, on its people and their future.

Finance, Trade, Business

The Makhanda Business Forum

[204] The Makhanda Business Forum represents 181 business owners who oppose the move of the main seat of the Division from Makhanda. The Makhanda Business Forum maintains that the proposed move would adversely affect the local economy and result in business closures.

GBS Mutual Bank

[205] The GBS Mutual Bank opposes the move of the main seat of the Division from Makhanda. The grounds of opposition are:

- a. The recommendation will negatively impact the economy in Makhanda and will, in turn, impact the business of the Bank adversely.
- b. The recommendation will result in the relocation of legal services from Makhanda.
- c. The move of the main seat threatens Makhanda's viability with a knock-on impact on institutions and events of national importance held in Makhanda.
- d. The cost of developing the necessary infrastructure in Bhisho, which is estimated at R1 billion, would be better spent on other priorities.

Universities / Schools

Rhodes University

[206] The written submissions are presented by the Vice-Chancellor, Dr. Mabizela. Rhodes University opposes the relocation of the main seat. The opposition is based on the following grounds:

- a. The recommendation jeopardises the sustainability of the Makhanda community and, in turn, that of Rhodes University, which is a leading public higher education institution and the biggest employer in Makhanda.
- b. The recommendation will exacerbate unemployment, as the court in Makhanda is the third largest employer, and will marginalise poor communities.

- c. The recommendation will adversely affect Rhodes University given the massive dependencies between the University and the town of Makhanda.
- d. The recommendation will have an adverse impact on the Law Faculty's teaching and learning programme (see separate submission by law faculty).
- e. The recommendation will have a socio-economic impact on the operations and expansion of Rhodes University and ultimately affect the entire academic project negatively.
- f. The economic and social impact provides the following:
 - i. It estimates that more than 5000 jobs linked to the court and associated legal services will be lost.
 - ii. This will have a knock-on impact for other businesses. It estimates that a third of Makhanda's businesses will no longer be viable and will close.
 - iii. The result will be high unemployment, increased poverty and food insecurity.
 - iv. In addition, the Makana Municipality will lose millions of rands in revenue undermining its capacity to deliver services and maintain infrastructure. Rhodes University relies on municipal services for its operation. The reduction in services and deterioration of infrastructure will put an end to the

University's expansion programme and may place the viability and sustainability of the University at risk.

- g. Rhodes University relies on the submission of the Makhanda High Court Action Committee on the social and economic impact of the recommendation.
- h. The cost of setting up the infrastructure and facilities to house the main seat in Bhisho may cost around R1 billion.

Rhodes University Law Faculty

[207] Rhodes University Law Faculty opposes the relocation of the main seat to Bhisho. The basis for the opposition are:

- a. The location of the main seat in Makhanda is an attraction for students electing to study at the Rhodes University Law Faculty.
- b. Students are exposed to a broad range of litigation due to the court's province-wide concurrent jurisdiction through court visits and shadowing of practitioners.
- c. Students benefit from the participation of judges and practitioners in Makhanda who provide support for legal education in the Law Faculty (for example, part-time and visiting lecturers, moot and mock-trial judges, and external examination support).
- d. There is no university or law faculty near Bhisho that would benefit from the relocation.

- e. The resultant relocation of law firms will reduce employment opportunities for law graduates of Rhodes University.
- f. The Law Faculty and court libraries have different resources, strengths and complement each other. Together they provide a strong resource base for judges, practitioners and members of the Law Faculty.
- g. The Rhodes University Law Clinic, which provides free legal services to indigent members of the community and provides practical exposure to all LLB students, will no longer be able to assist litigants with high court litigation.

Kingswood College

[208] Kingswood College is opposed to the relocation of the main seat on the basis that the relocation would threaten the school's viability as a result of the economic impact on Makhanda.

Voluntary Associations

The Makhanda High Court Action Committee

[209] The Makhanda High Court Action Committee is a voluntary association which was established to respond to suggestions that the main seat of the Eastern Cape Division be moved from Makhanda to Bhisho. The Makhanda High Court Action Committee shall be referred to as the Action Committee. The Action Committee

opposes the relocation of the main seat to Bhisho. The Action Committee presented a petition containing 4960 signatures.¹¹⁰

[210] Pursuant to the publication of the interim report and the call for public comments, the Action Committee requested the opportunity to make oral submissions. On 10 March 2023, the Action Committee made oral submissions to the Committee. The Action Committee's delegation consisted of Dr Sizwe Mabizela, Vice-Chancellor of Rhodes University, Ms. Margaret Keeton, Adv Karen Watt and Ms. Raeesa Asmall. The delegation instructed its legal counsel, Adv G Budlender SC, to make oral submissions, on its behalf, to the Committee. The Action Committee noted that it represents several faith based organisations, businesses, non-governmental organisations, public benefit organisations, schools, Rhodes University, the Makana Local Municipality and ordinary citizens.

[211] The Action Committee has considered some of the submissions that support the relocation of the main seat to Bhisho, namely that:

- a. Bhisho is the capital city of the province,
- b. the move will increase access to justice,
- c. Bhisho is roughly the centre of the province,

¹¹⁰ The cover letter enclosing the petition was written under hand of Lazola Kati who is the campaigns co-ordinator with change.org. Although the cover letter refers to the Petition containing +6000 signatures, the petition lists names and details of people who, in total amount to 4960.

- d. while the High Court in Bhisho does not have existing infrastructure and resources, reliance could be placed on Circuit Courts.

[212] The Action Committee maintains that these reasons do not compare to the reasons to retain the main seat at Makhanda. In support of retaining the main seat at Makhanda, the Action Committee emphasised that:

- a. Around 2002, Chief Justice Chaskalson held a meeting with interested parties, about the relocation of the main seat from Makhanda to Bhisho. Practical consensus was reached for the main seat to remain in Makhanda.
- b. The Committee says that the main seat must move from Makhanda to Bhisho, because Bhisho is the provincial capital. The interim report is inconsistent because the same approach is not followed in relation to Gauteng, where Johannesburg is the provincial capital. The interim report does not similarly suggest that the main seat in Gauteng be moved from Pretoria to Johannesburg.
- c. Access to justice is the focus of the work of this Committee. Access to justice means more than physical location and travelling distance. The Committee appears to be focusing on giving people access to the court that is closest to them. This is borne out by the Committee's preliminary recommendations. Access to justice also means access to supporting legal services. Currently the Eastern Cape Division Makhanda is better placed to provide wider legal services to the public.

Civil society organisations are also providing pro-bono legal services to those in need. At Makhanda, people in need of legal services can easily access the services of Black Sash, Legal Resources Centre, Legal Aid SA, Rhodes University Law Clinic and there is a flourishing bar and several law firms. By contrast, Bhisho does not compare. Advocates do not hold chambers in Bhisho. There are no Sheriff's offices in Bhisho. There is no supporting services for example, accommodation and hospitality industry to serve counsel and attorneys who would need these services if they are travelling to Bhisho for hearings. Instead, attorneys and advocates will have to find accommodation at East London. Retaining the main seat at Makhanda will best serve access to justice.

- d. The Eastern Cape Division, Makhanda has an existing network of intersecting and mutually supporting institutions which form part of the justice system. The Master's office, the office of the NPA and the Sheriff's office are well-established and provide good services.
- e. There is physical infrastructure existing at the Eastern Cape Division, Makhanda. The Master's office is situated in a three storey building. This type of infrastructure will have to be developed in Bhisho and it will cost money. There is excellent infrastructure in Makhanda and not much in Bhisho. It is not just a court building that will need to be better resourced. There will be a compelling need to build infrastructure to accommodate supporting institutions. Bhisho has no

businesses, no shops, no housing and that explains why people are not attracted to the town.

- f. It is not sensible to move the main seat to Bhisho because it is not a case of swings and roundabouts. It cannot be claimed that what Makhanda loses, Bhisho will gain. The lawyers and administrative staff will not leave Makhanda and go to Bhisho. They will be jobless in Makhanda and there will be nothing to go to at Bhisho. The losses that Makhanda will suffer, will not be a definite gain for Bhisho. Instead, it is likely that what Makhanda will lose, those gains will be dispersed around the country.

[213] The Committee was urged to retain the main seat at Makhanda because the proposed move will cause devastating impact on the economy of Makhanda. The town currently has between 80 000 to 100 000 unemployed people and this is an unsustainably high level of unemployment. If the main seat is moved to Bhisho, there is no underlying industry that people can turn to for another source of employment. There are currently three main sources of employment in Makhanda: Rhodes University, which is the largest employer, the Makana local municipality, and the Eastern Cape Division of the High Court, Makhanda. The Committee was urged to carefully consider the report prepared by Prof Antrobus which says that as the law profession and businesses decline in Makhanda, livelihoods will be placed at risk. Unemployment rate is already high and food security will be placed at risk. Submissions were also made about the deep relationship that the Eastern Cape Division, Makhanda shares with the

community that it serves. The Action Committee suggested that the Committee undertake a site visit to Bhisho and Makhanda before it makes its recommendations.

Economic Impact Report prepared by Professor Antrobus

[214] The Action Committee placed extensive reliance on a written report prepared by Prof. Emeritus GG Antrobus, Department of Economics, Rhodes University. The report formed part of the Action Committee's submissions. The report serves as an economic impact report of the implications for Makhanda if the main seat is moved to Bhisho. The report examined the impact of the moving of the main seat as well as the impact of the closing of the court in Makhanda. The report concludes that moving the main seat will have the following impacts:

- a. Halving the number of attorneys in Makhanda with a resultant decline in professional assistants and support staff. Candidate attorneys likely eliminated. Firm closures anticipated.
- b. Reduction of advocates in Makhanda by two-thirds with resultant decline in support staff.
- c. Closure of association institutions in Makhanda including in the Master's Office and the Director of Public Prosecutions.
- d. A total loss of 5 000 jobs in the Makana District. This is in the circumstances where unemployment is already high, having doubled between 2010 and 2020, and there is limited opportunity for employment because of the narrow distribution of economic activities.

- e. Overall a significant negative impact on the local economy is anticipated.

Makana Residents Association

[215] The Makana Residents Association opposes the move of the main seat to Bhisho, on the basis that:

- a. the recommendation will disastrously affect the economy of Makhanda and destroy livelihoods.
- b. The court at Makhanda is well-resourced and has access to well stocked legal libraries.
- c. There are multiple free and affordable legal services in Makhanda including the Legal Resources Centre and the Rhodes University Legal Advice Centre.
- d. Close proximity to the Rhodes University Law Faculty.
- e. The cost of building facilities in Bhisho is estimated at about R1 billion.

[216] The submission is supported by letters written by members of the Makana Residents Association. The letters detail the harm that residents are likely to suffer if the main seat is moved from Makhanda to Bhisho.

Non-profit organisations

[217] The Grahamstown Feeding Association opposes the move of the main seat to Bhisho because Covid-19 has left many residents unemployed and the move will leave

these residents in dire poverty. Many households already survive on the support of private organisations for food, a good proportion of operating income will be lost as law offices and donors will have to move.

[218] The Makhanda Circle of Unity is against the move to Bhisho because this will have dire economic effects on the residents. Many jobs will be lost and unemployment will increase. The cost of moving the court could be employed in something for the betterment of the lives of residents. Additionally it will render all efforts to revive the city over the years futile. It is also unclear how the move to Bhisho will open up access to justice.

The Committee's Final Recommendations

[219] There has emerged a highly contested rift over our preliminary recommendations set out in paragraph 147. Many stakeholders in the Eastern Cape support our preliminary recommendations. Many others, particularly from Makhanda vehemently oppose our preliminary recommendations. We have, at great length and detail, set out [in paragraphs 149-218] the identity and capacity of each source of public commentary or response as well as the main thrust of the contentions or responses advanced in each case.

[220] The main opposition to our preliminary recommendations, barring a few matters of detail or correct description of magisterial districts or of local divisions, revolve only

around whether Makhanda division of the Eastern Cape should continue to serve as the main seat of that Division.

[221] We do not propose to restate the arguments of either side on whether the seat of the Eastern Cape Division of the High Court should be relocated from Makhanda to Bhisho. We also do not intend to respond to each contention advanced. Let it suffice to highlight only a few key considerations.

[222] First, the contention that the terms of reference of the Committee do not empower it to make recommendations on the location of the seat of any division of the High Court in a province is without merit. A plain reading of the terms of reference negates this assertion without more. If our recommendation were to be accepted, a legislative change to the Supreme Court Act will be necessary.

[223] As it will be remembered, our recommendations are far-reaching as they redraw the geography of all the divisions of our country and of the Eastern Cape. We explained in our preliminary report that in doing so we were moved by the imperative of access to justice by all citizens of that province and that relative physical or geographic nearness to institutions of justice is not the sole but certainly the foremost consideration in the rationalisation of the areas of jurisdictions of our courts. Our preliminary report demonstrates, through comparative data, the beneficial impact of lessened travelling distance for users of the High Court divisions within the province when the seat of the province is at Bhisho. We are unable to agree that travelling costs are a small portion of

legal costs. Many citizens and residents need to travel to or use courts without considerations of lawyer fees.

[224] Much has been written about how under-developed and ill-suited Bhishe is as the main seat. The details of the criticism are in the submissions of the proponents of Makhanda as the main seat of the division of the province. The criticism may be overstated. It matters not. Our rationalisation mandate is to recommend what is likely to enhance access to justice for most people going forward and not what the historical gifts and assets of any one place within the province might be. If Bhishe answers to the main attributes for enhancing access to justice for many people, steps must be taken, and resources put up for the gradual realisation of that public good. We struggle with the contention that because Makhanda might be now well-resourced, it is the only way access to justice for the many people in that province must be understood and achieved. Courts are themselves sites of development, inclusive change and public good. Where superior courts have sprung up, as in Polokwane, Limpopo province and Mbombela, Mpumalanga province access to justice has improved, law firms have flourished, chambers for advocates have sprouted, sheriffs have opened offices, nearby law schools have welcomed the new courts and the provinces, and their people are the better for it.

[225] In another contention, it is pointed out that the seat of a provincial division need not coincide with the legislative or executive capital. We agree with this observation. The preliminary report made the point that ‘ordinarily’ the seat of a division coincides with the capital of a province, as is the case in all provinces, except Gauteng province.

It is however less than accurate to contend that our recommendations rest only on this consideration. It is but one of several and even more fundamental considerations.

[226] If our recommendation were to be accepted, Makhanda will remain a seat of the division of the High Court in the province. It remains unclear to us why all the supportive environment which enhances the use and role of that division as a dispenser of justice as well as the socio-economic and other benefits derived therefrom should not continue. Put otherwise, it is unclear why Makhanda must be the main seat of the Division for it to continue dispensing justice and serving as a vital socio-economic hub or cog.

[227] As the Rationalisation Committee we have deliberated in depth on these contentions and considered each carefully. We have unanimously concluded that our preliminary recommendation that the main seat of the Eastern Cape Division of the High Court be relocated from Makhanda to Bhisho is consistent with the imperative of access to justice for most people who reside in the province of the Eastern Cape.

[228] Having carefully considered all of the submissions received, the Committee's preliminary recommendations in paragraph 147 in relation to the Eastern Cape division are made final.

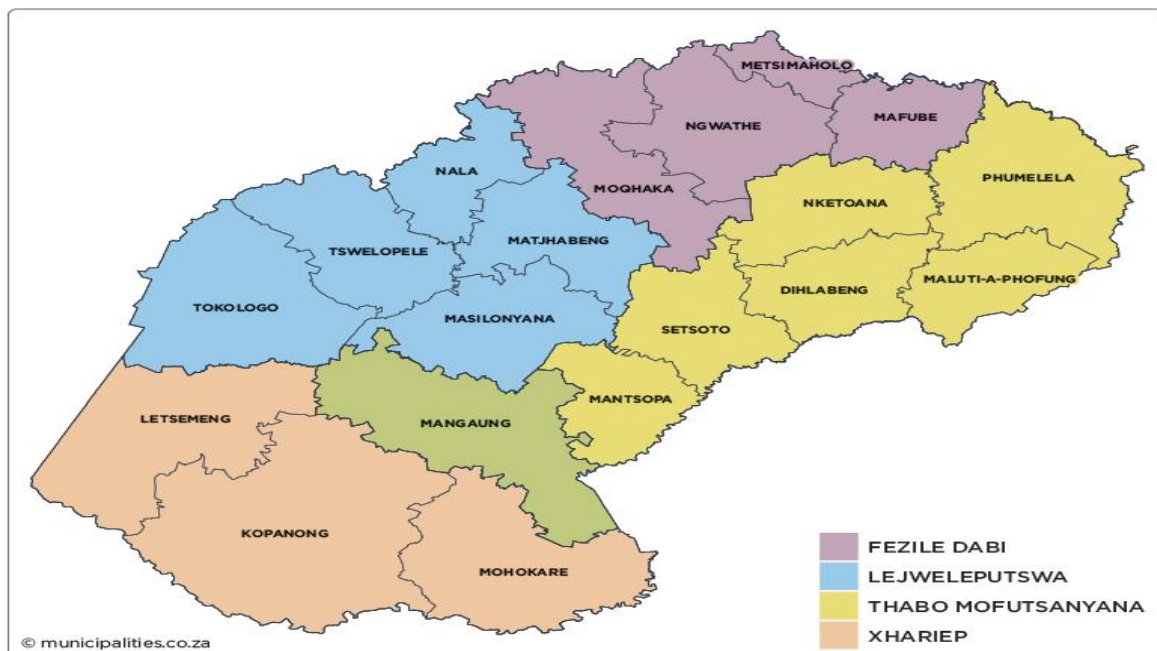
FREE STATE DIVISION OF THE HIGH COURT

Free State province

[229] The Free State province is the third largest province in South Africa, having a surface area spanning 129 825 km², which equates to 11% of the total surface area of South Africa. The province has an estimated population of 2 932 441, which amounts to 5% of the total population of the country.

[230] The province has one metropolitan municipality, the Mangaung metropolitan municipality. There are four district municipalities, namely: Fezile Dabi, Lejweleputswa, Thabo Mofutsanyana and Xhariep.

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



[232] 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

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

[234] 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:

[235] 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

[236] 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

[237] 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.

[238] 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.

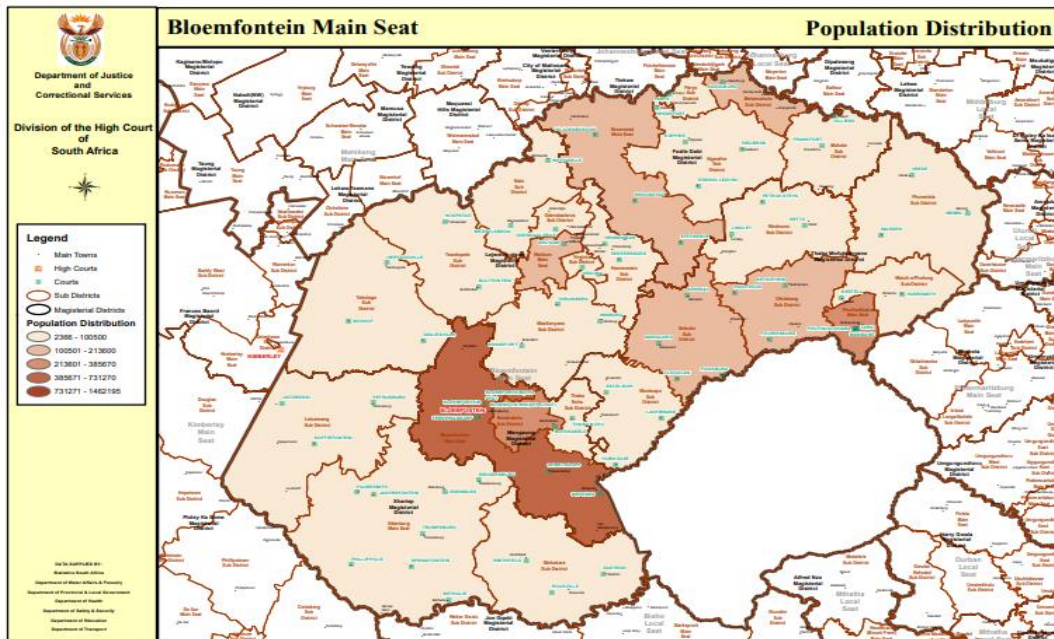
[239] The magisterial districts of the Free State province have been rationalised to accord with the municipal boundaries. There are currently five magisterial districts in the province.¹¹⁹

Status quo of the Free State Division

[240] The Free State Division has its seat at Bloemfontein. There are currently 16 judges in the division and one vacant post. 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.

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

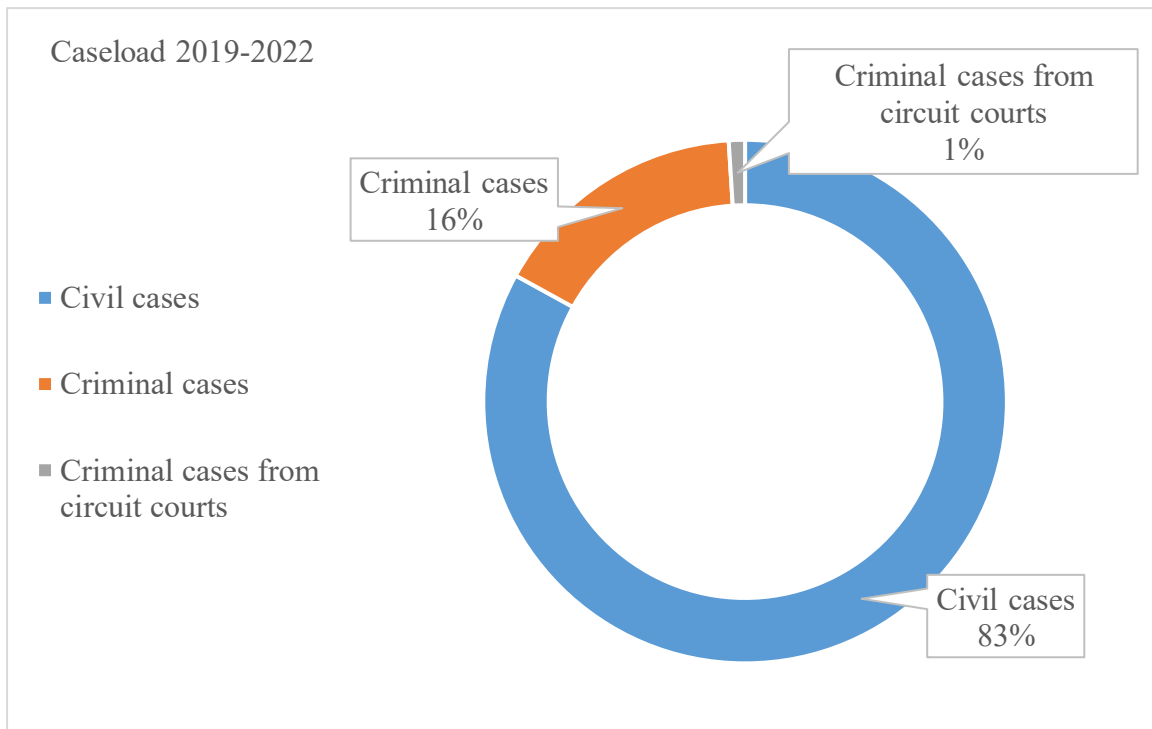
¹¹⁹ The magisterial districts are: Fezile Dabi , Lejweleputswa , Mangaung , Thabo Mofutsanyane and Xhariep. The Department sets out the maps of the rationalised magisterial districts at: <https://www.justice.gov.za/maps/maps-fs.html>.



The caseload of the Free State Division

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

[243] 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.



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

Submissions received from the Department

[245] 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

[246] 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.

[247] 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:

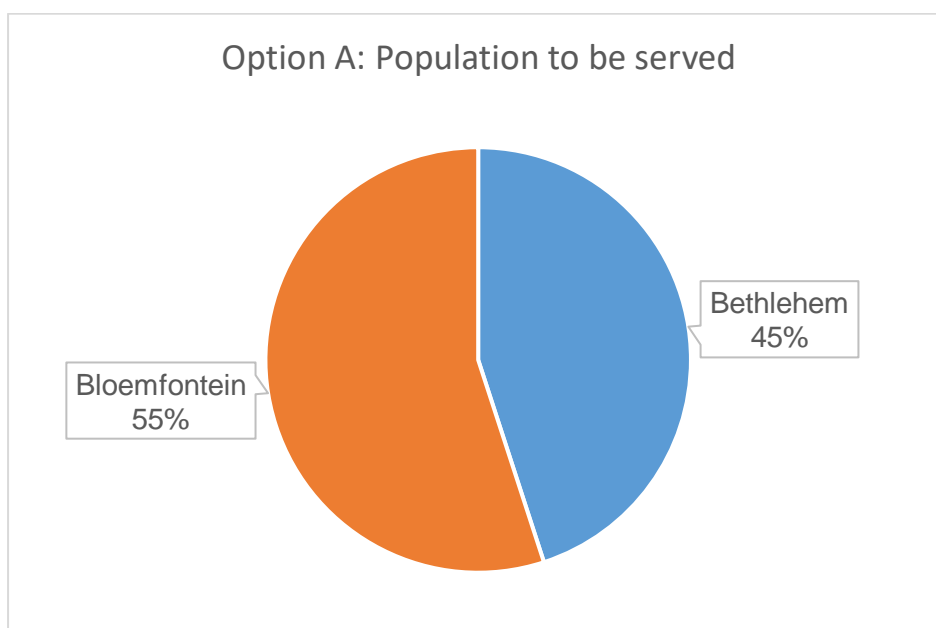
[248] Option A suggests that a new local seat be established at Bethlehem. It is suggested that the current main seat at Bloemfontein will exercise jurisdiction over the following magisterial districts and will serve an estimated 45% of the population of the Free State:

- 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.

[249] 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:

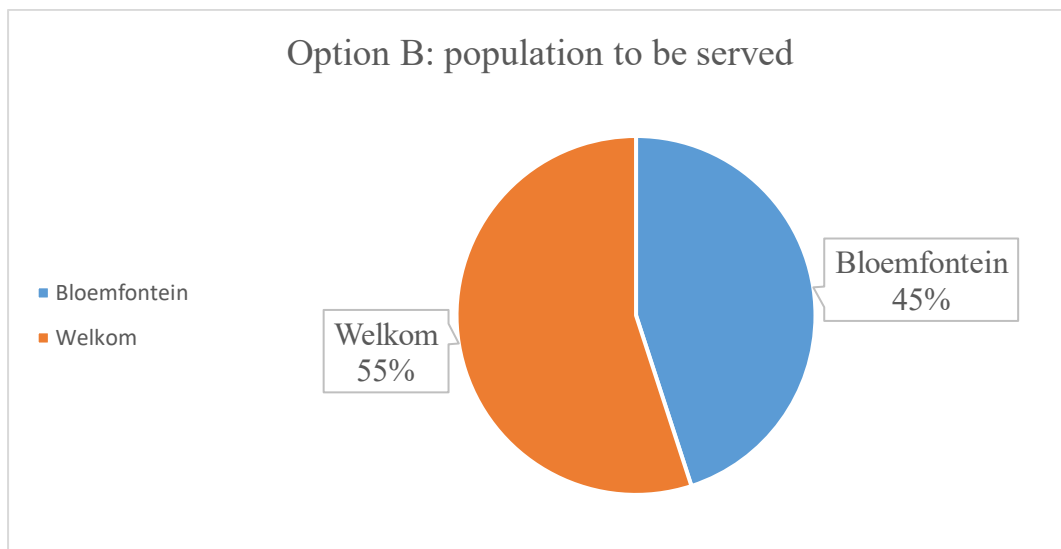
[250] Option B suggests that a local seat be created at Welkom. If this suggestion is adopted, it is proposed that the main seat at Bloemfontein would serve the following magisterial districts, having an estimated population of 45% of the province:

- 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.

[251] 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.



[252] 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.

[253] 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.

[254] 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.

[255] Acting Judge President Mbhele's made the submission 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.

[256] 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

[257] 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

[258] 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.

[259] 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

[260] The Committee made 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.

Comments received through the Public Participation Process

[261] Judge President Musi made further written submissions. Subject to one change, Judge President Musi supported the Committee's preliminary recommendations. Judge President Musi suggested changes to the areas of jurisdiction to be served by the Free State Division of the High Court, Bloemfontein and the new local seat to be established at Welkom. Judge President Musi recommended that the Free State Division of the High Court, Bloemfontein should exercise jurisdiction over the magisterial districts of Mangaung, Thabo Mofutsanyana and Xhariep. Judge President Musi also recommended that the new local seat to be established at Welkom should exercise jurisdiction over the magisterial districts of Lejweleputswa and Fezile Dabi.

[262] Legal Aid SA's written submissions agreed with the rationalisation of the areas of jurisdiction of the Free State Division of the High Court. Legal Aid SA however did not support the establishment of a new local seat at Welkom. Legal Aid SA's view is that Welkom is situated 150 km from Bloemfontein and accordingly, a new local seat

at Welkom will not have a significant impact on reducing travelling distances. Legal Aid SA suggests that the new local seat be created at Bethlehem, as Bethlehem is centrally located in the province. A new seat at Bethlehem will better serve the eastern part of the Free State which is more densely populated. Legal Aid SA notes that the creation of a new local seat either at Welkom or Bethlehem will require financial and human resources to capacitate and support Legal Aid SA's delivery of services to the public. Legal Aid estimates that an additional R 2 million per year will be required to create its local office, either at Welkom or Bethlehem.

The Committee's Final Recommendations

[263] The Committee notes that there is support for its recommendation that a new local seat be established. The Committee has carefully considered Legal Aid SA's submission that the local seat ought to be located in Bethlehem rather than Welkom. However, having considered the further written submissions received from Judge President Musi, the Committee is persuaded to follow Judge President Musi's submissions. 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. In the event that the circumstances change in the future, the need for a further local seat Bethlehem may be revisited.

[264] Having carefully considered all of the submissions received, the Committee's preliminary recommendations in paragraph 260 in relation to the Free State division are made final.

GAUTENG DIVISION OF THE HIGH COURT

Gauteng province

[265] 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.¹²⁰

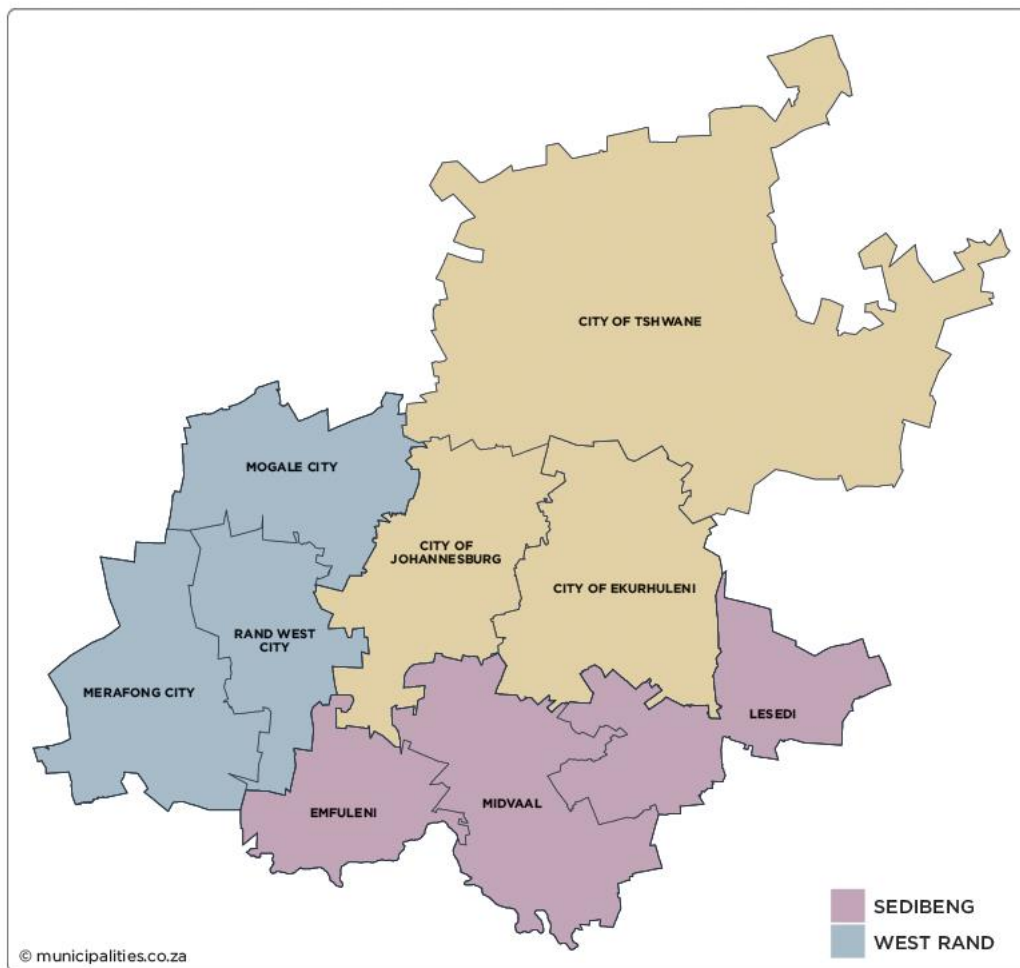
[266] Gauteng is the largest provincial economy in South Africa and the biggest contributor to the national GDP – contributing more than a third of national GDP.¹²¹ It has significant representation of nearly all economic activity, but finance, real estate and business services (25%), government services (21%) and manufacturing (15%) are the largest industries in the Gauteng economy.¹²²

¹²⁰ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

¹²¹ STATS SA 'Four facts about our provincial economies' (29 March 2019) available at <https://www.statssa.gov.za/?p=12056>.

¹²² 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/>.

[267] 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.¹²³



The history of the Gauteng Division

Pre-constitutional era:

¹²³ Maps of municipalities by province are available at <https://municipalities.co.za/>.

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

[269] 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),¹²⁴ while the Witwatersrand Local Division (“**WLD**”) sat at Johannesburg with concurrent jurisdiction over the area around Johannesburg.¹²⁵

Constitutional era:

[270] With the enactment of the interim Constitution, both the TPD and WLD became High Courts.¹²⁶ The seats and the area of jurisdiction of the courts remained the same.¹²⁷ The TPD had jurisdiction over Gauteng, Mpumalanga, Limpopo and portions of North West. The WLD retained concurrent jurisdiction over the area around Johannesburg.

[271] 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

¹²⁴ 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.

¹²⁵ 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

¹²⁶ Interim constitution.

¹²⁷ Section 4(2) of the Interim Rationalisation Act.

North West were excised from the jurisdiction of the TPD and included under the jurisdiction of the Bophuthatswana High Court.¹²⁸ In 2008, the TPD and WLD were renamed North Gauteng High Court, Pretoria and South Gauteng High Court, Johannesburg.¹²⁹

[272] A constitutional amendment, enacted in 2012, established a single High Court.¹³⁰

In 2013, the Gauteng Division of the High Court was established as a division of the unitary High Court with its main seat at Pretoria¹³¹ and a local seat at Johannesburg.¹³²

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.¹³³

Rationalisation:

¹²⁸ 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.

¹²⁹ Section 1 of the Renaming of High Courts Act.

¹³⁰ Section 5 of the Constitution 17th Amendment Act.

¹³¹ Section 6(1)(c) of the Superior Courts Act.

¹³² Section 50 of the Superior Courts Act.

¹³³ Section 50(2) of the Superior Courts Act.

[273] 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.¹³⁴

[274] 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.¹³⁵ The Gauteng Division was conferred jurisdiction over magisterial districts in Gauteng,¹³⁶ Mpumalanga¹³⁷ and the North West.¹³⁸ The main and local seats now have concurrent jurisdiction.¹³⁹ The local seat has concurrent jurisdiction with the main seat only until such time as its area of jurisdiction is determined by the Minister.

¹³⁴ 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.

¹³⁵ GN30 in GG 39601 dated 15 January 2016.

¹³⁶ 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.

¹³⁷ 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), Emalaheni (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.

¹³⁸ The following magisterial districts: Madibeng (with the exclusion of the Ga- Rankuwa sub-district), Tlokwe (and Orkney and Stilfontein sub-districts) and Ventersdorp.

¹³⁹ Ibid.

[275] In the same notice, the Minister determined the areas of jurisdiction of the Limpopo Division.¹⁴⁰ The magisterial districts in the Limpopo province were excised from the Gauteng Division's jurisdiction. Later the Minister published notices determining the areas of jurisdiction of the Mpumalanga¹⁴¹ and North West Divisions.¹⁴² 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

[276] 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.

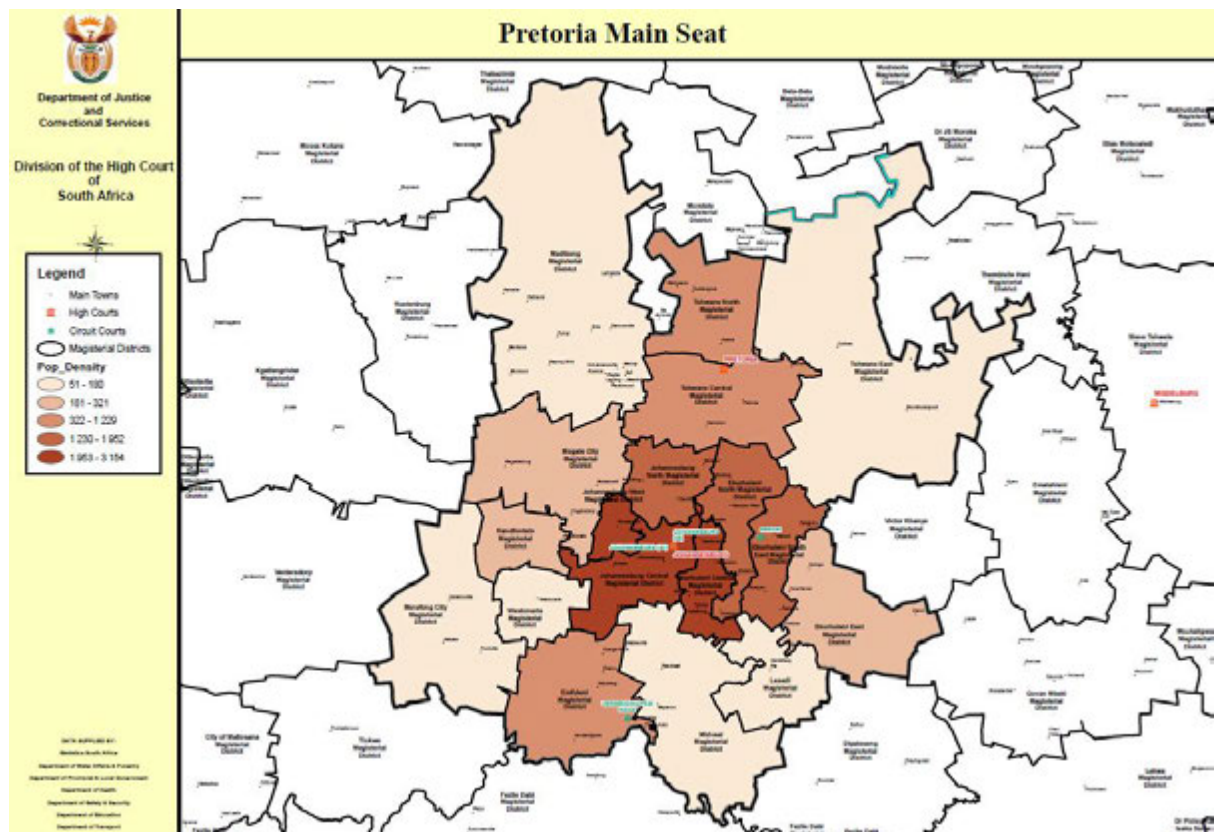
¹⁴⁰ Item 1 of the Schedule to GN30 published in GG 39601 dated 15 January 2016 relating to Limpopo.

¹⁴¹ 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.

¹⁴² 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.

[277] 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.

[278] 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.

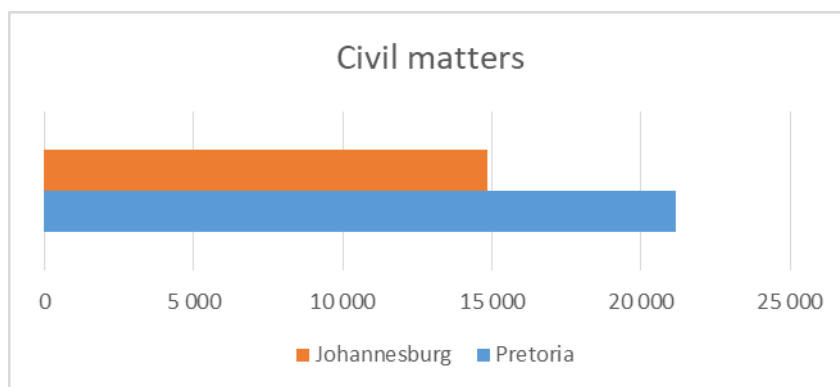


The caseload of the Gauteng Division

[279] The Judiciary Annual Report 2020/2021¹⁴³ 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.

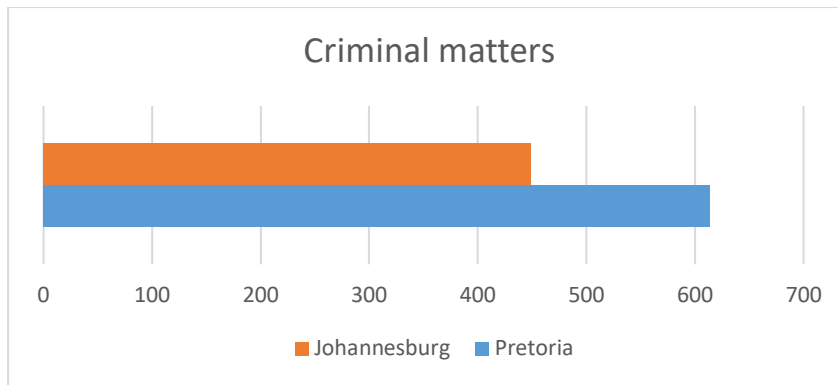
[280] During the relevant period:

- 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%.

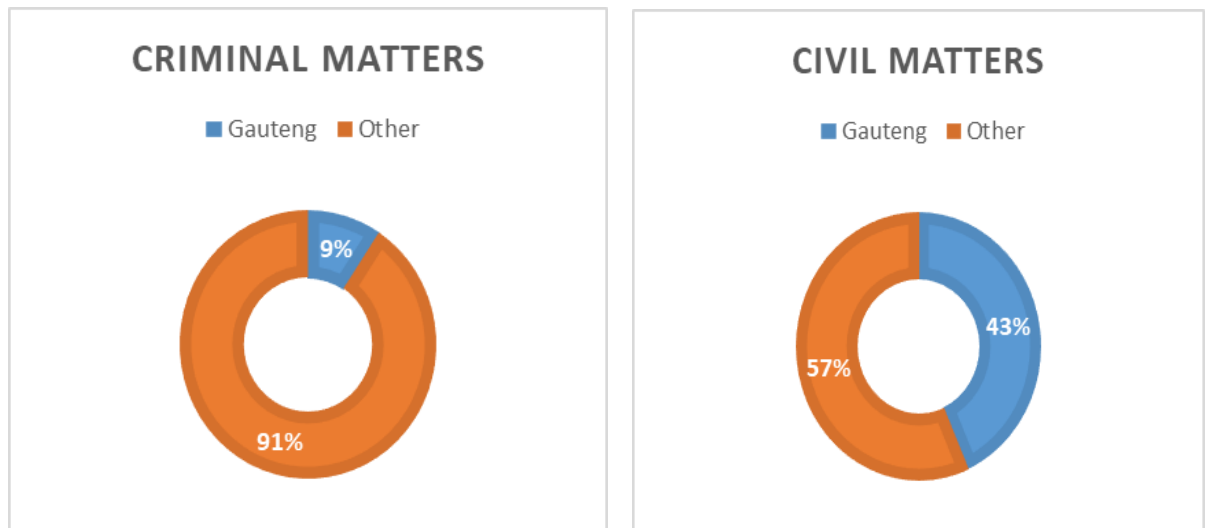


- b. The main seat at Pretoria heard a total of 614 criminal matters (58% of criminal matters heard by the division); of which it finalised 66%. The local seat at Johannesburg heard 449 criminal matters (42% of criminal matters heard by the division); of which it finalised 43%.

¹⁴³ Available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.



- 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

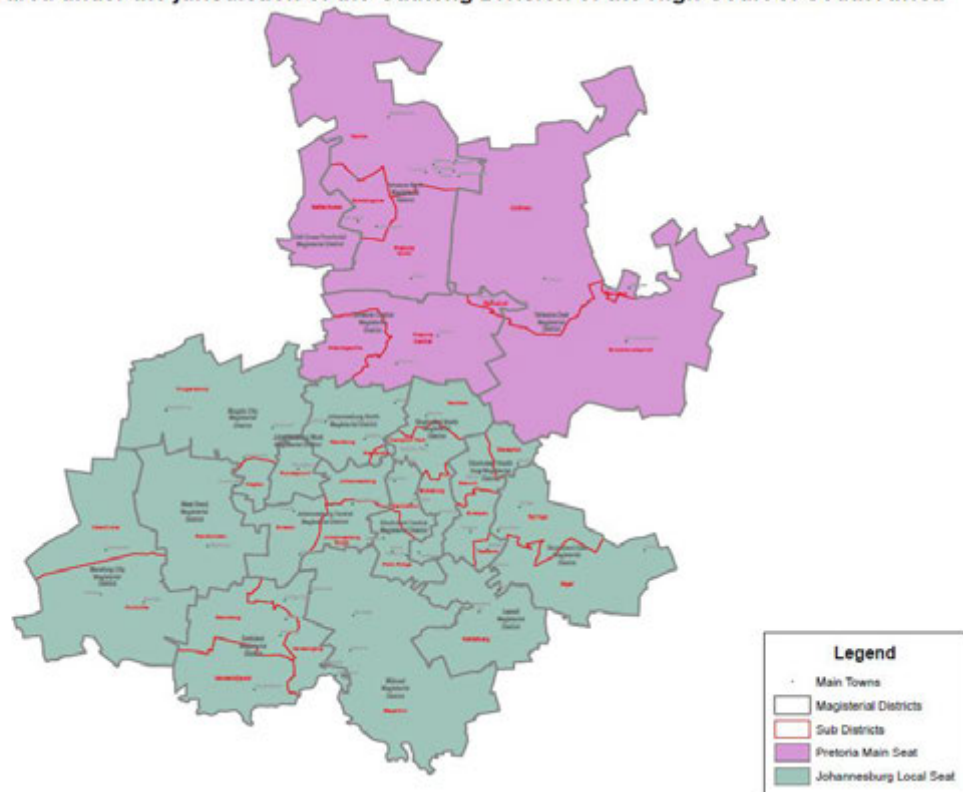
[281] The Department submitted two proposals concerning the area of jurisdiction of the Gauteng Division.

[282] 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.

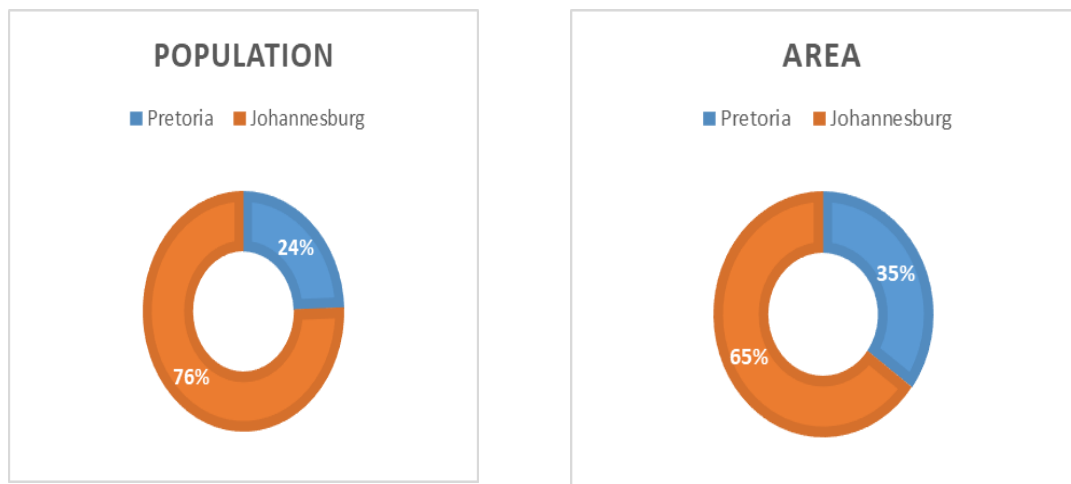
[283] The Department's first proposal is depicted in the map below.

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



[284] 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).



[285] 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
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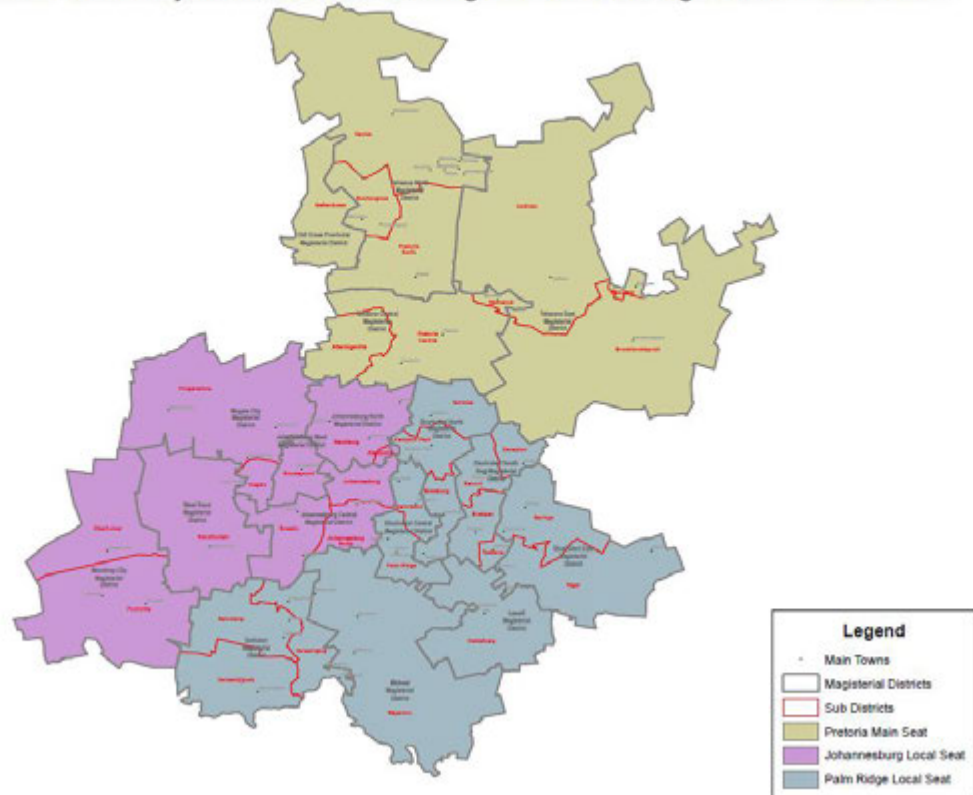
Madibeng	51 km (via R511 and N4) Travel time: Approx. 55 min.	262 km (via N4) Travel time: Approx. 3hr 15 min	67 km (via N4) Travel time: Approx. 1hr.
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[286] The Department's second proposal is the establishment of a second local seat at Palm Ridge, 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.

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

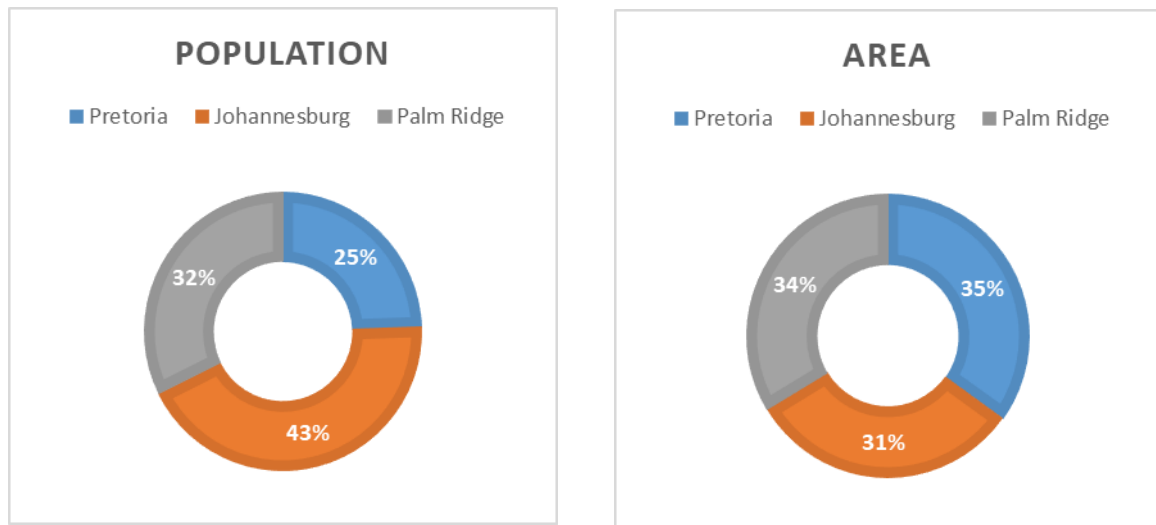
The proposed area under the jurisdiction of the Gauteng Division of the High Court of South Africa



[288] 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

[289] 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.

[290] 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

[291] 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

[292] 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

[293] The Committee made 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.

Comments received through the Public Participation Process

[294] Legal Aid SA says that the establishment of a local seat at Palm Ridge will have a significant impact on its budget, and will place an additional burden on its capacity.

However, it notes that an additional seat will relieve the burden on the Johannesburg local seat and will provide the public with a further option to access courts. In the long term, if the local seat in Palm Ridge is established, Legal Aid would need to establish a high court unit at the Germiston local office. This will require additional office space and staff. The budgetary implication for Legal Aid SA in acquiring office space, operational expenditure as well as salary expenditure for the appointment of a High Court Unit Manager, High Court Unit practitioners for both criminal and civil work, paralegal and administration staff will be around R5,2 million per year.

[295] The Pretoria Society of Advocates supports the recommendations that:

- a. The main seat remain in Pretoria;
- b. The Gauteng Division continue to exercise jurisdiction over the Madibeng magisterial district in the interim;
- c. The Gauteng Division also exercise jurisdiction over the Moretele magisterial district in the interim; and
- d. The establishment of a new local seat at Palm Ridge.

[296] The Pretoria Society of Advocates does not support the recommendation that the areas of jurisdiction of the seats at Pretoria and Johannesburg be delimited to certain magisterial districts. They suggest that Pretoria and Johannesburg seats retain concurrent jurisdiction over the whole of Gauteng. They suggest that delimiting Pretoria's jurisdiction to Tshwane will result in a large volume of cases being shifted to the local seats and the court in Pretoria and the judges there being underutilised.

[297] It is suggested that delimiting Johannesburg's concurrent jurisdiction will mean that all cases against the National Government and the Road Accident Fund will have to be heard in Pretoria and will result in a less rational split of work between the courts. They further suggest that retaining the status quo in which both Pretoria and Johannesburg have concurrent jurisdiction over the whole province will give better effect to the right of access to courts.

The Committee's Final Recommendations

[298] The Committee notes that there is broad support for the establishment of an additional 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.

[299] The Committee considers that the Johannesburg local seat having concurrent jurisdiction with the main seat over the entire Gauteng province is an anomaly. The area of jurisdiction of the Johannesburg local seat should be delimited as recommended in the interim report to maintain consistency with other local seats, which have delimited areas of jurisdiction.

[300] The Committee further notes that its preliminary recommendation in respect of the Gauteng Division would not remove the concurrent jurisdiction that the Pretoria court has over the areas of jurisdiction of the local seats, as the main seat of the division. The court at Pretoria would continue to have jurisdiction over the entirety of the province notwithstanding its exclusive jurisdiction being delimited to Tshwane.

[301] Having carefully considered all of the submissions received, the Committee's preliminary recommendations in paragraph 293 in relation to the Gauteng division are made final.

KWAZULU-NATAL DIVISION OF THE HIGH COURT

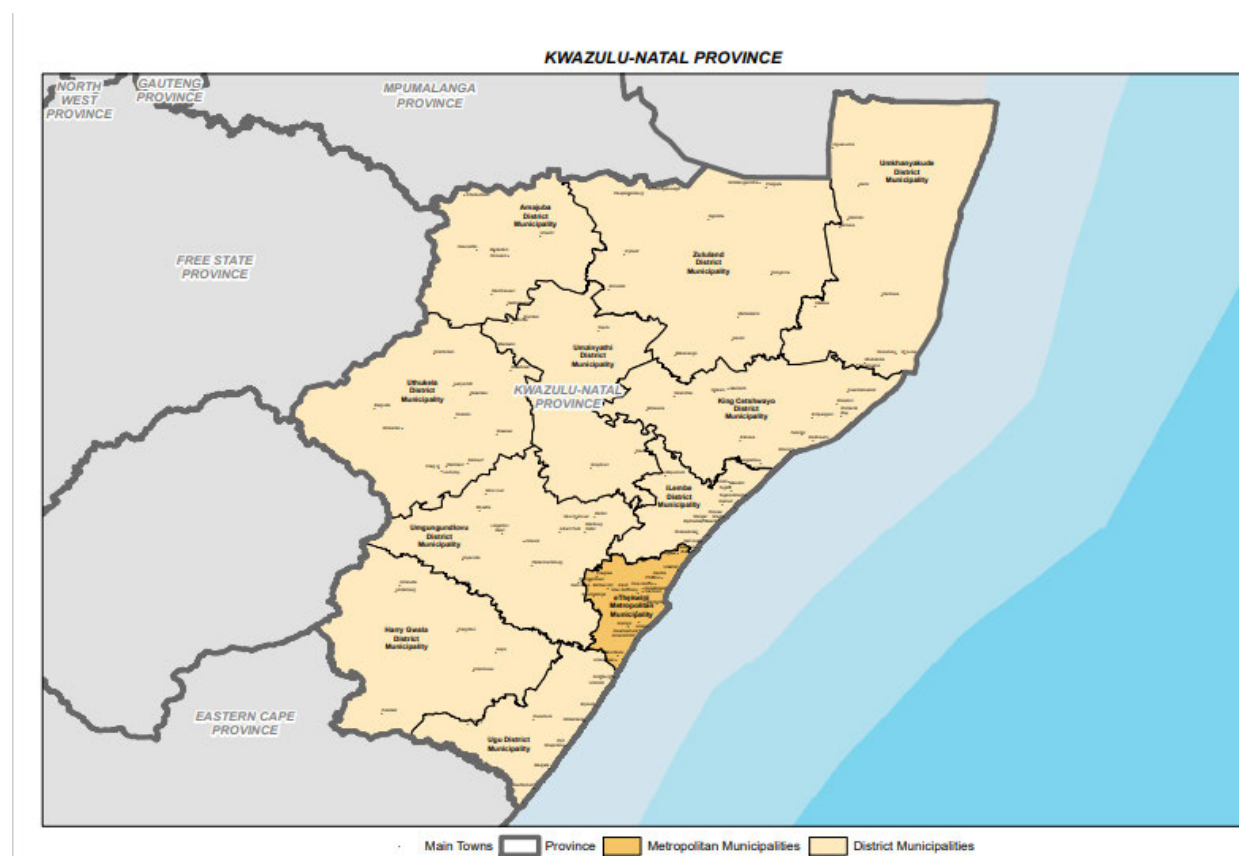
Kwazulu-Natal province

[302] 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.¹⁴⁴

¹⁴⁴ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

[303] KwaZulu-Natal is the second biggest contributor to the country's GDP.¹⁴⁵ The province is fairly represented in varied industries such as finance (16.28%), agriculture (3.9%), manufacturing (18.2%) and government services (16.7%).¹⁴⁶

[304] 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.



¹⁴⁵ 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/>.

¹⁴⁶ Ibid.

The History of KwaZulu-Natal Division

Pre-Constitutional Era

[305] 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.¹⁴⁷ The local division exercised jurisdiction over certain specified magisterial districts.¹⁴⁸

Constitutional Era

[306] When the Constitution came into force, the courts became High Courts.¹⁴⁹ The courts continue to exercise jurisdiction as they did before the coming into effect of the Constitution.

[307] In 2009 they were renamed the KwaZulu-Natal High Court, Durban and KwaZulu-Natal High Court, Pietermaritzburg.¹⁵⁰ In 2013, the courts became two seats of the KwaZulu-Natal Division of the High Court of South Africa.¹⁵¹ The main seat in

¹⁴⁷ Schedule 1 of the Supreme Court Act.

¹⁴⁸ 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 Urnflozi, Mahlabatini, Hlabisa, Nongoma, Ubombo and Ingwavuma.

¹⁴⁹ See Item 16(4) of the Constitution.

¹⁵⁰ See section 1 of the Renaming of High Courts Act.

¹⁵¹ 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.¹⁵²

Rationalisation

[308] 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.¹⁵³ According to the notice, one metropolitan municipality and ten magisterial districts have been established.¹⁵⁴

[309] 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.¹⁵⁵

Status Quo of the KwaZulu-Natal Division.

[310] 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

¹⁵² See schedule 1 to the Supreme Court Act.

¹⁵³ GN. 930 published in GG 46132 dated 30 March 2022.

¹⁵⁴ The metropolitan municipality is eThekwin and the magisterial districts are Amajuba, Harry Gwala, iLembe, King Cetshwayo, Ugu, uMgungundlovu, Umkhanyakude, uMzinyathi, Uthukela and Zululand.

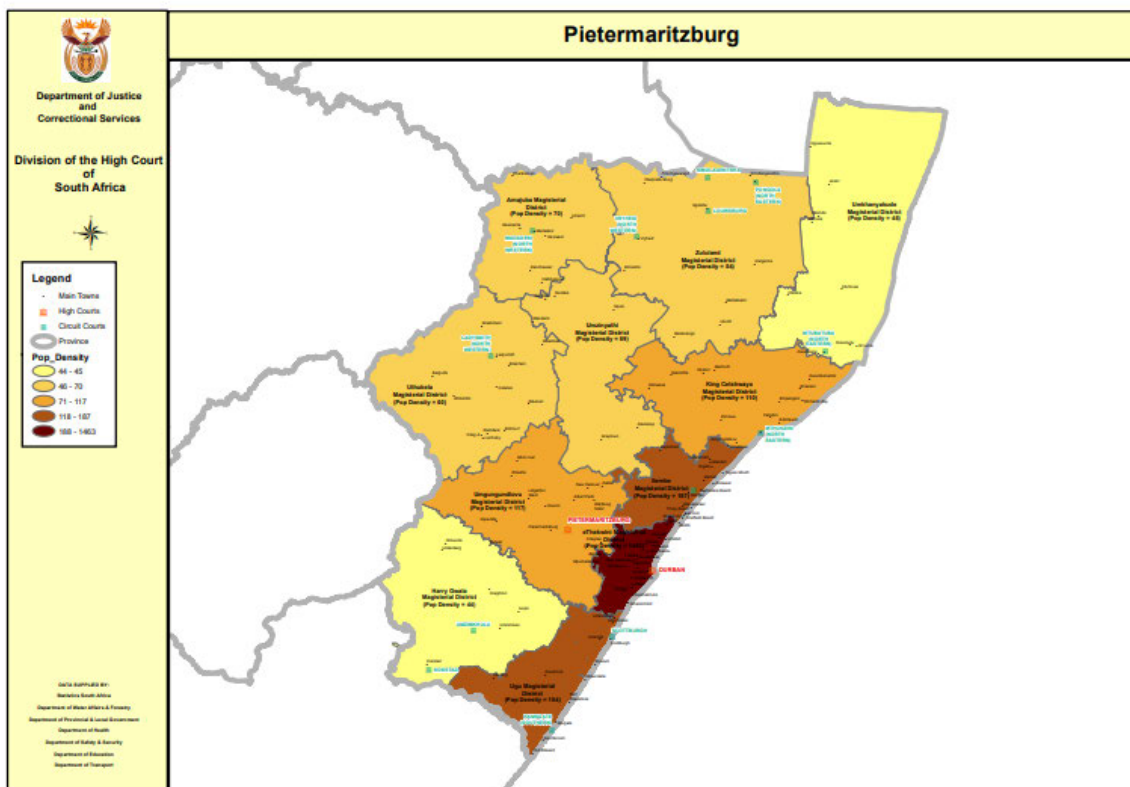
¹⁵⁵ See section 51 of the Supreme Court Act.

districts of: Ugu, eThekweni, iLembe, King Cetshwayo, uMkhanyakude and Zululand.¹⁵⁶

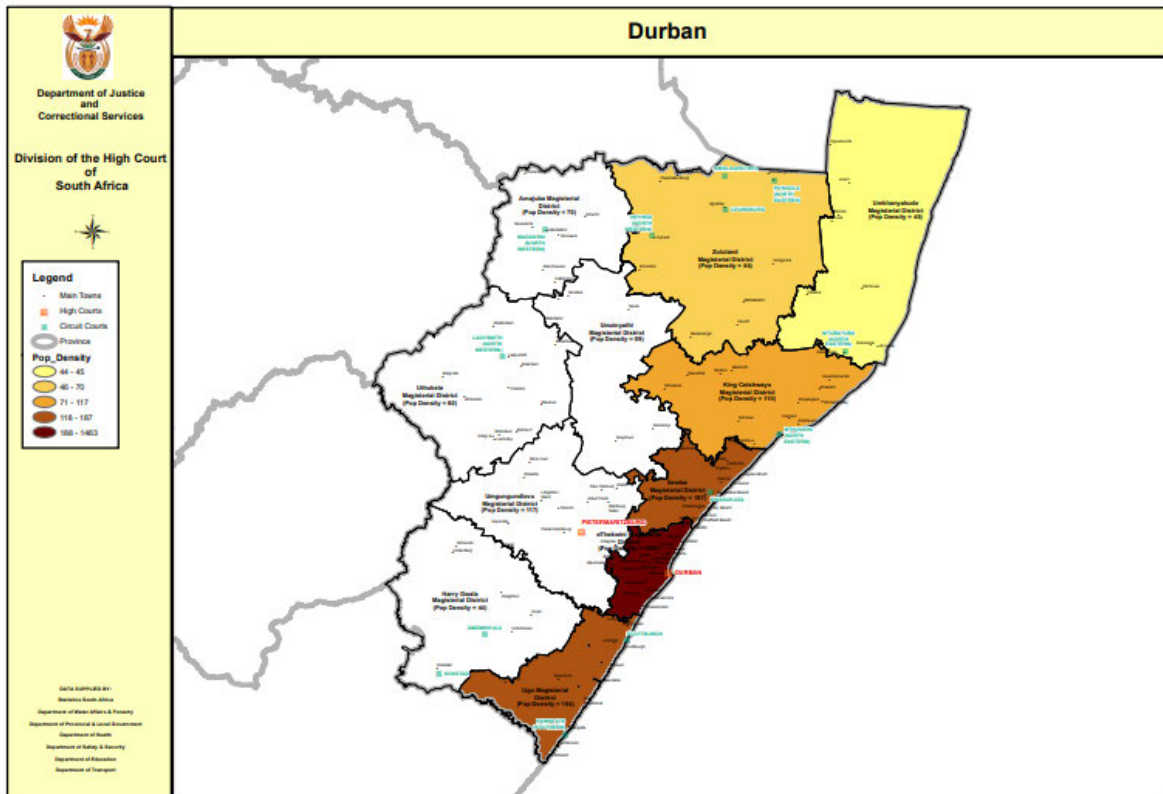
[311] The court is made up of 23 judges with nine judges at the main seat at Pietermaritzburg and 14 judges at the local seat in Durban. There are two circuit courts under the main seat at Ramsgate and Madadeni and three circuit courts under the local seat at Pongola, Mtubatuba and Mtunzini. The indication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

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

¹⁵⁶ This is according to schedule 1 to the Supreme Court Act.



[313] The map below depicts only the magisterial districts falling under the area of jurisdiction of the local seat at Durban with population density.

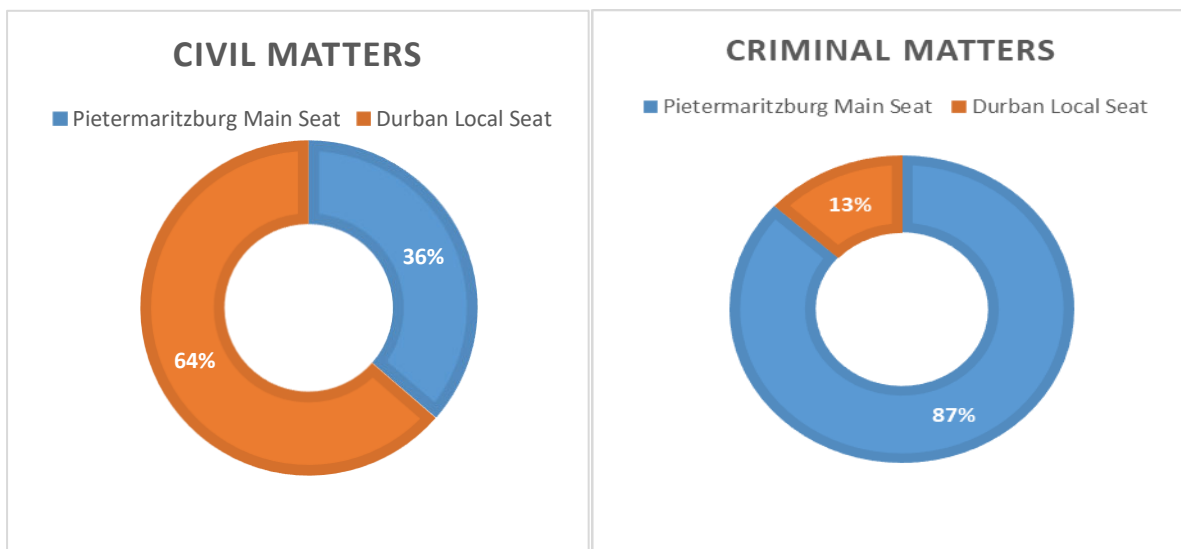


[314] Apart from the magisterial districts depicted on these maps, the KwaZulu-Natal Division exercises jurisdiction over the area and population of Matatiele (Maluti) which provincially resides in the Eastern Cape, Alfred Nzo magisterial district.

[315] 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.

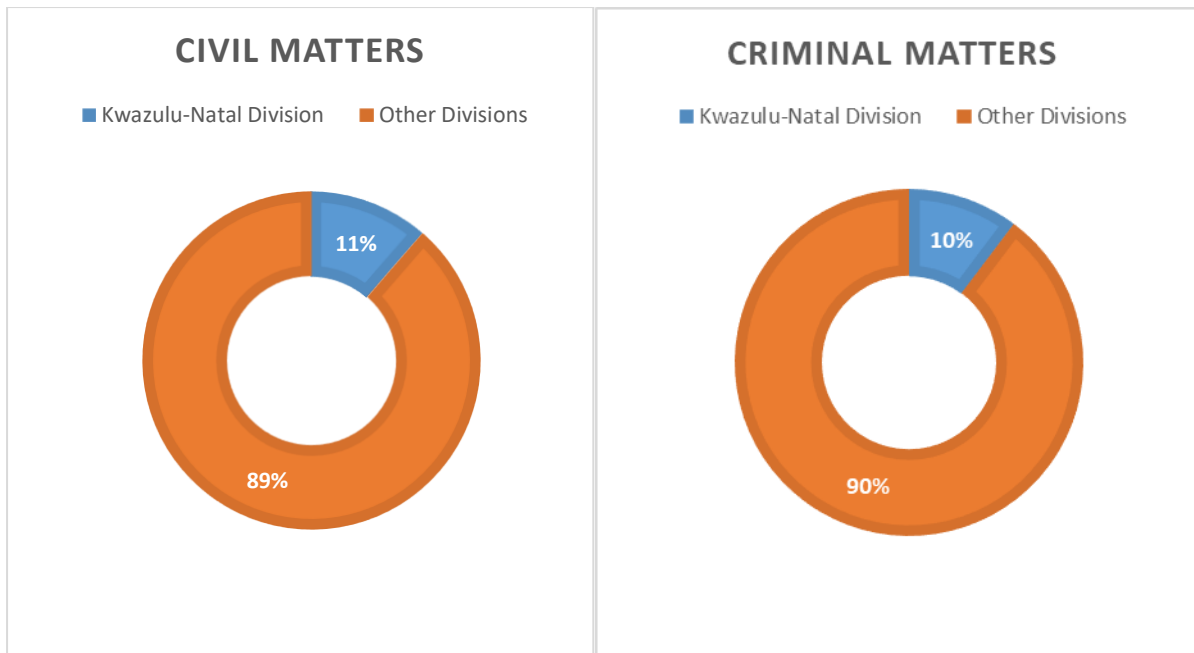
The Caseload of KwaZulu-Natal Division

[316] 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.¹⁵⁷



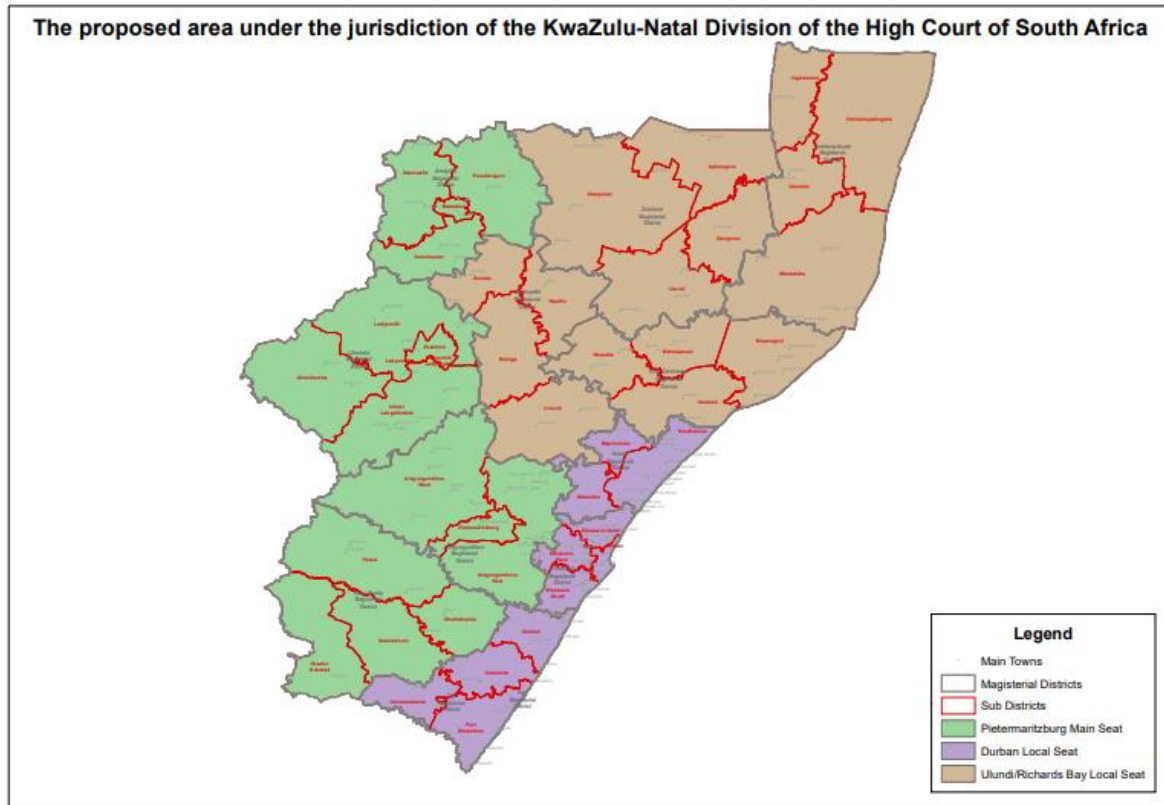
[317] Compared to other divisions of the High Court, the KwaZulu-Natal Division heard a total of 10 689 of all civil matters heard in the High Court and a total of 1 306 of all criminal matters in the High Court.

¹⁵⁷ The Judiciary Annual Report 2020/2021 available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.



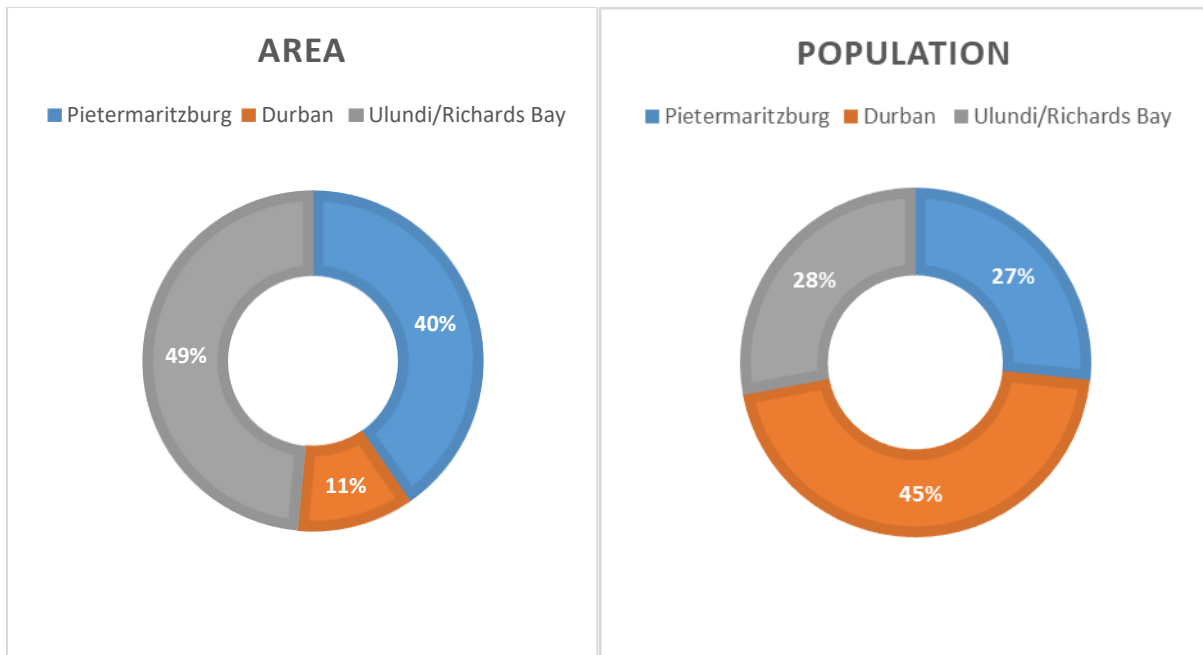
Submissions received from the Department

[318] 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.



[319] 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

[320] 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.

[321] The Acting Judge President made written submissions to the Committee, 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.

Submission received from the NPA

[322] 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.

[323] 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

[324] The Committee made 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.

Comments received through the Public Participation Process

[325] During the public participation process, the Committee received further comments from Legal Aid of South Africa, Kwazulu-Natal, in which Legal Aid expressed its support for the Committee's preliminary recommendations. These include the recommendations to establish a second local seat of the division at Richards Bay and to remove Matatiele including Maluti, from the areas of jurisdiction of the Kwazulu-Natal Division to the Eastern Cape Division of the High Court, Mthatha.

[326] Although not opposed to these recommendations, Legal Aid submits that the establishment of a second local seat will necessitate upgrades to its offices at Ulundi Satellite Office and Empangeni Local Office, if established at Richards Bay. The establishment will further require additional Legal Aid High Court and support staff.

The Committee's Final Recommendations

[327] The Committee has considered all the submissions made to it in relation to the Kwazulu-Natal Division. Most are in agreement that the establishment of a second local seat at Richards Bay will better enhance access to justice, particularly for the residents in the northern and southern parts of the province. The Committee accepts that a second local seat at Richards Bay will bring courts closer to people in those parts of the province, and many other areas. Travelling distances and costs will be reduced. This Committee concludes that Richards Bay, for its economic development and centrality to the many citizens of the province, is best placed to ensure access to justice to many litigants.

[328] Having carefully considered all of the submissions received, the Committee's preliminary recommendations in paragraph 324 in relation to the Kwa-Zulu Natal division are made final.

LIMPOPO DIVISION OF THE HIGH COURT

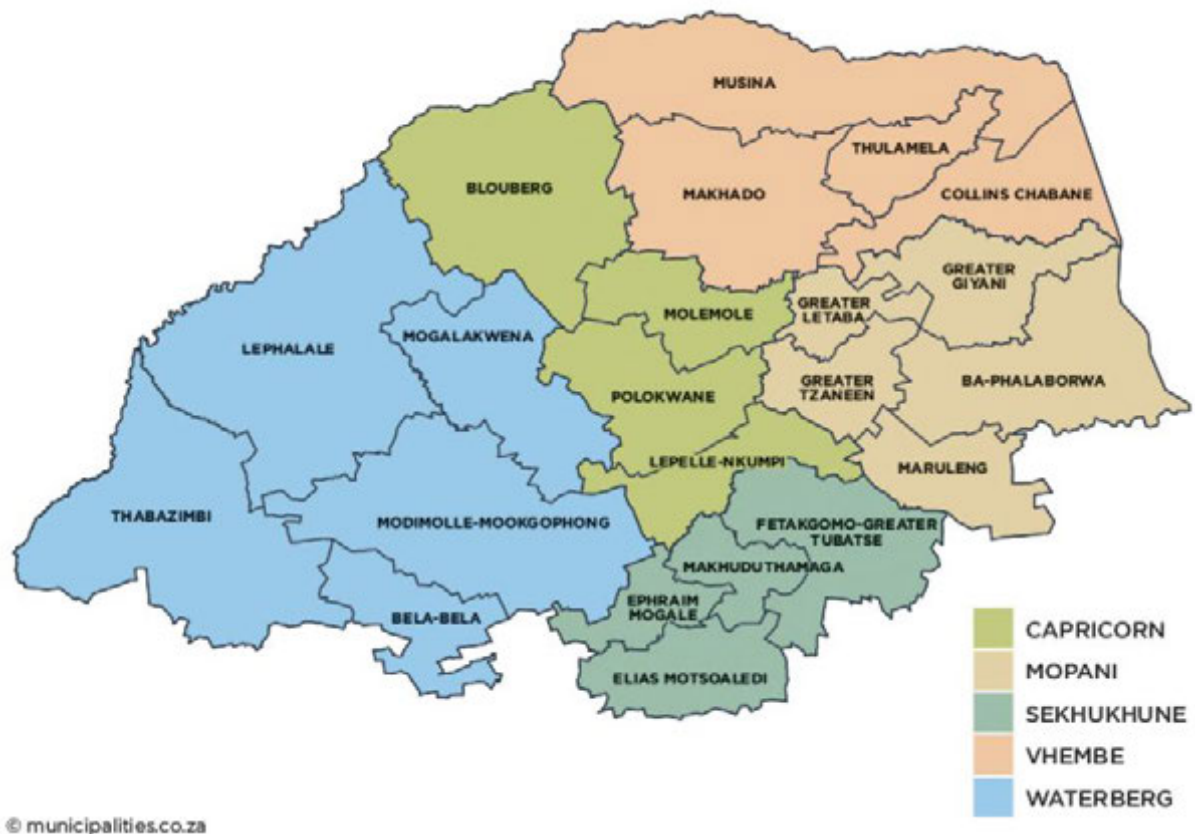
Limpopo province

[329] 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.¹⁵⁸

¹⁵⁸ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

[330] Limpopo is among the smaller economies in South Africa.¹⁵⁹ Mining (28%) is the largest industry in Limpopo, followed by general government services (20%) and trade, catering and accommodation (15%).¹⁶⁰

[331] There are five district municipalities in Limpopo, namely Capricorn, Mopani, Sekhukhune, Vhembe and Waterberg. The municipalities in Limpopo are depicted on the map below.¹⁶¹



¹⁵⁹ 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/>.

¹⁶⁰ Ibid.

¹⁶¹ Maps of municipalities by province are available at <https://municipalities.co.za/>.

The history of the Limpopo Division

Pre-constitutional era:

[332] The Limpopo province previously fell within the Transvaal province in the former South Africa. The TPD had jurisdiction over much of Limpopo.¹⁶²

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.¹⁶³

Constitutional era:

[333] With the enactment of the interim Constitution, the Venda Supreme Court became a High Court;¹⁶⁴ retaining its seat and area of jurisdiction.¹⁶⁵ 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.¹⁶⁶ The Venda Supreme Court was renamed the Limpopo High Court, Thohoyandou.¹⁶⁷

¹⁶² Schedule 1 of the Supreme Court Act.

¹⁶³ Sections 42 and 43 of the Republic of Venda Constitution Act, 1979.

¹⁶⁴ Interim Constitution.

¹⁶⁵ Section 4(2) of the Interim Rationalisation Act.

¹⁶⁶ Ibid.

¹⁶⁷ Section 1 of the Renaming of High Courts Act.

[334] 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.¹⁶⁸ The court at Thohoyandou became a local seat of the division.¹⁶⁹ The Gauteng Division initially functioned as the Limpopo Division.¹⁷⁰

Rationalisation:

[335] 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.¹⁷¹

[336] 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.¹⁷² 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.¹⁷³

¹⁶⁸ Section 6(1)(c) of the Superior Courts Act.

¹⁶⁹ Section 50(1) of the Superior Courts Act.

¹⁷⁰ Section 50(2) of the Superior Courts Act.

¹⁷¹ 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.

¹⁷² GN30 published in GG 39601 dated 15 January 2016.

¹⁷³ 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),

[337] 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

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

[339] 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.

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).

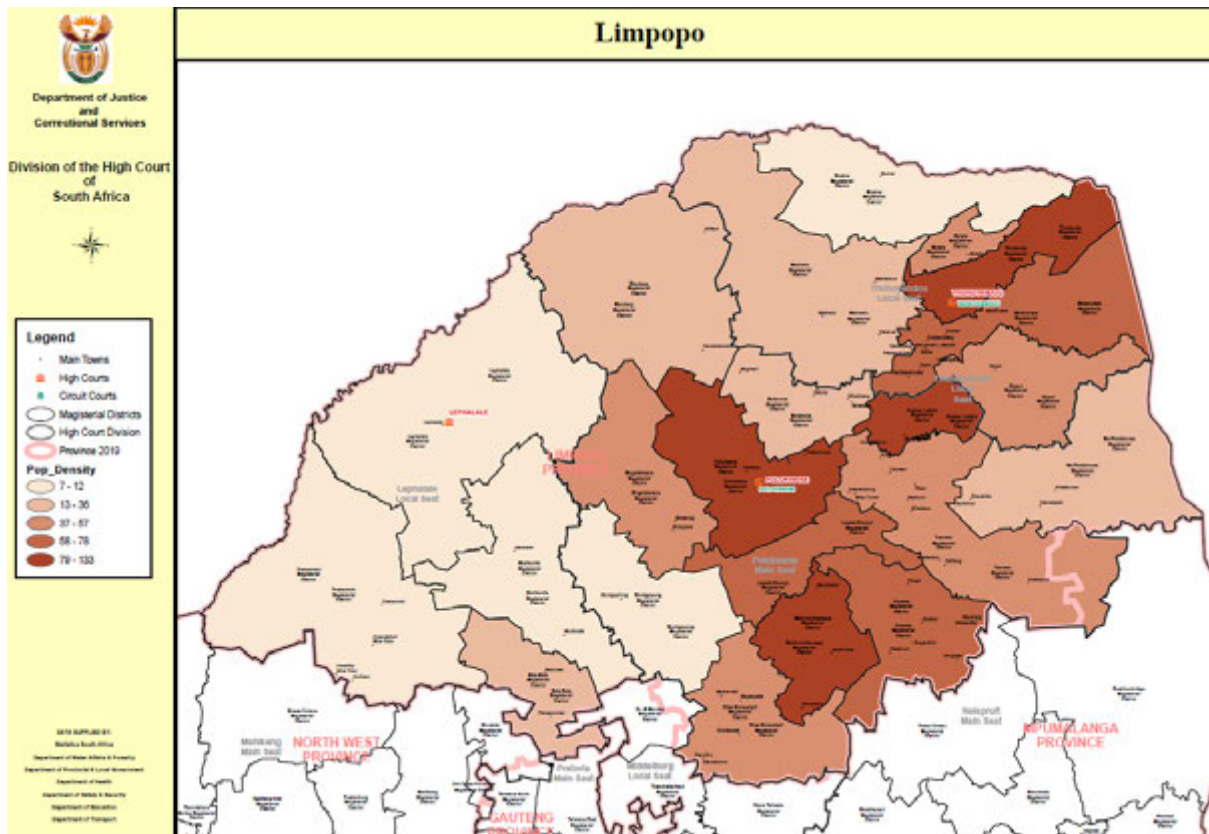
Magisterial districts within the areas of jurisdiction of the local seat at Thohoyandou: Giyani, Makhado (and Dzanani, Hlanganani, Tshilwavhusiku and Tshitale sub-districts), Malamulele (and Tiyani and Vuwani sub-districts), Mutale, Musina and Thulamela.

[340] 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.

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



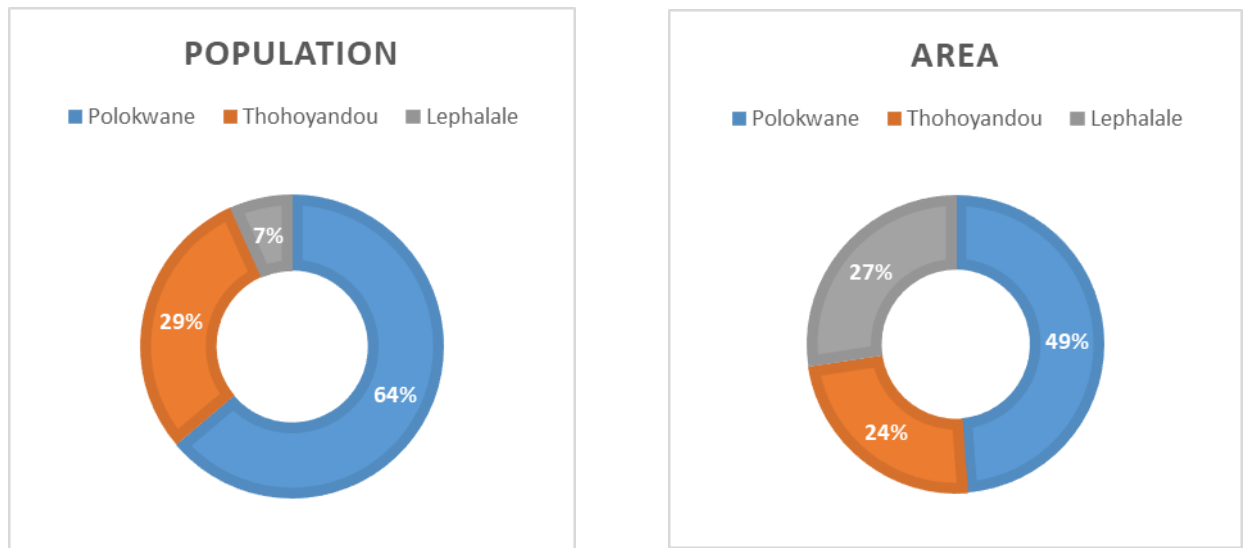
[342] The map below depicts the population density of the magisterial districts in the Limpopo province.



[343] 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

[344] 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.

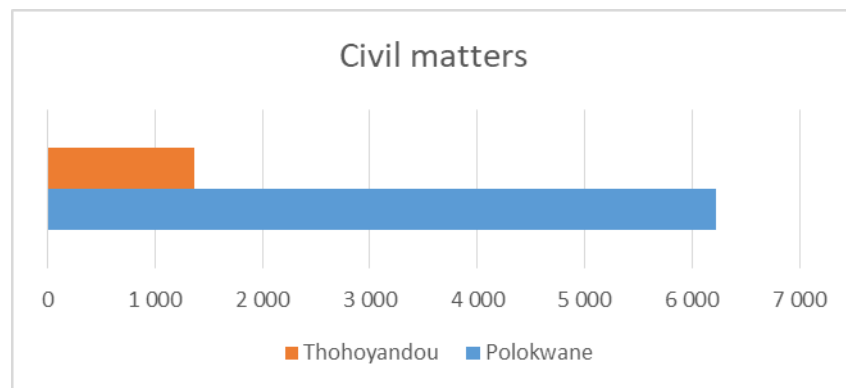
The Caseload of the Limpopo Division

[345] The Judiciary Annual Report 2020/2021¹⁷⁴ 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.

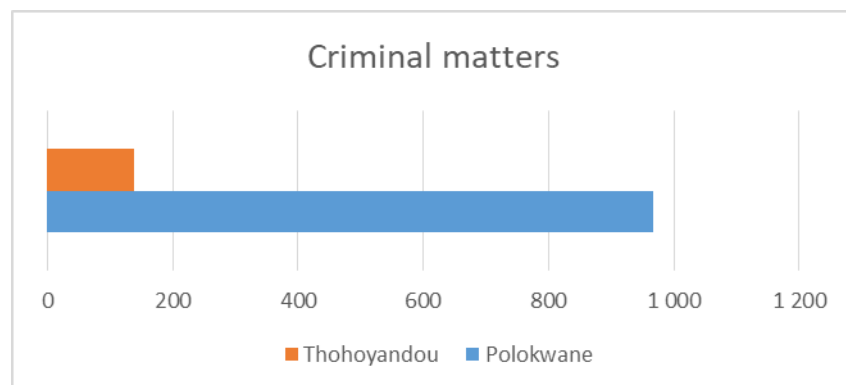
¹⁷⁴ Available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.

[346] During the relevant period:

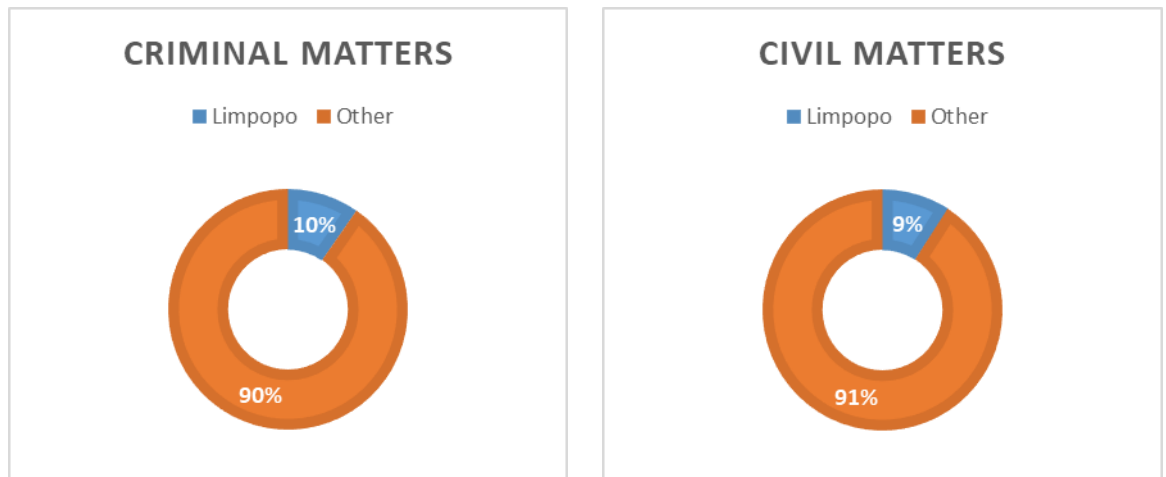
- a. The Limpopo Division, Polokwane heard a total of 6 228 civil matters (82% of civil matters heard by the division); of which it finalised 89%. The Limpopo Local Division, Thohoyandou heard 1 367 civil matters (18% of civil matters heard by the division); of which it finalised 93%.



- 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 1 105 criminal matters (10% of all criminal matters heard in the High Court).



Submissions received from the Department

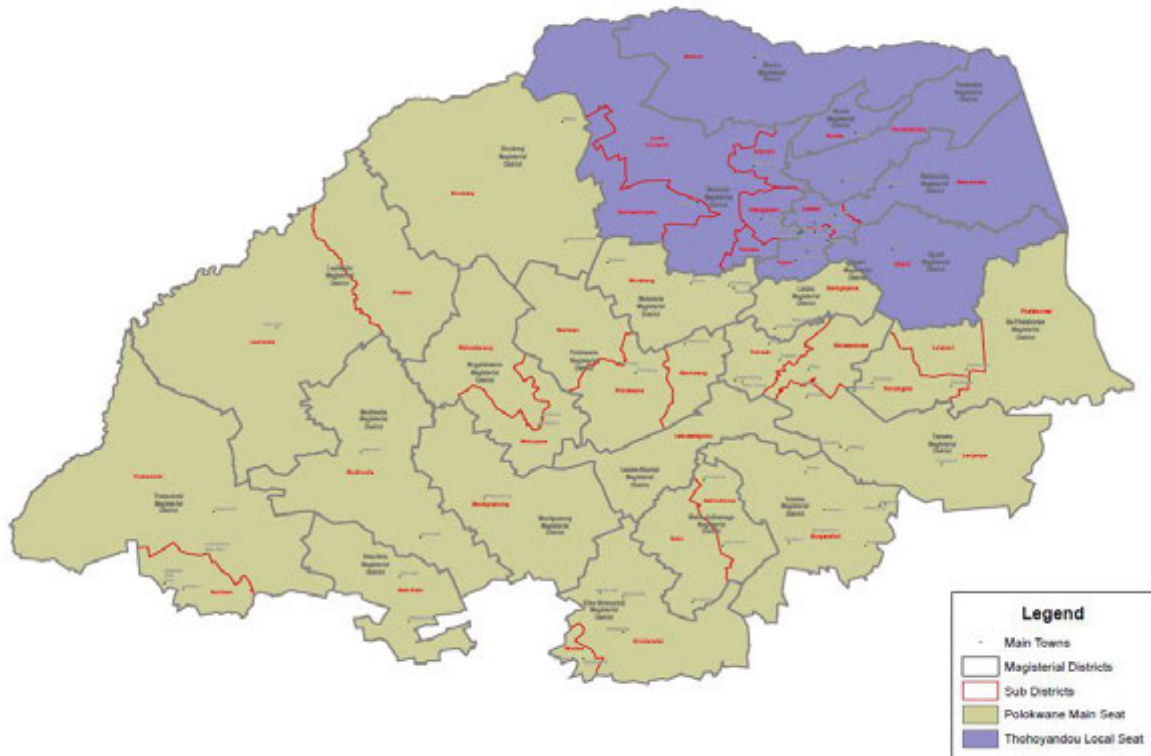
[347] The Department proposed that the local seat at Lephalale be disestablished and that the magisterial districts currently listed as falling under the jurisdiction of the Limpopo Local Division, Lephalale instead be served by the Limpopo Division, Polokwane.

[348] 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.

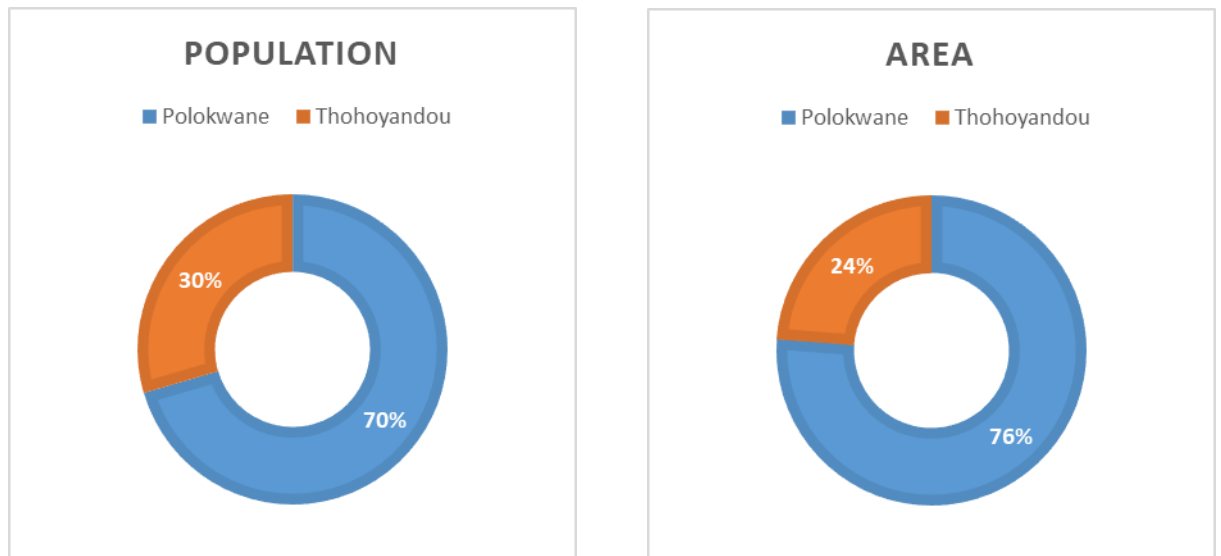
[349] The Department's proposal is depicted in the map below.

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



[350] 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

[351] 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.

[352] 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.

[353] 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.

Submissions received from the NPA

[354] 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

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

The Committee's Preliminary Recommendations

[356] The Committee made the following preliminary recommendations:

- 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.

Comments received through the Public Participation Process

[357] Legal Aid does not support the disestablishment of the Lephalale local seat as the seat has the potential to impact access to justice by reducing travelling distances. Should the Lephalale local seat remain, then Legal Aid legal practitioners can be housed in Modimolle in the short term. The retention of the seat in Lephalale would require additional staffing and resourcing with an estimated additional cost of R2 million per year.

[358] The Limpopo Society of Advocates supports the disestablishment of the local seat at Lephalale. It recommends that the area be served by a circuit court.

The Committee's Final Recommendations

[359] The Committee accepts that the local seat at Lephalale is intended to serve a small population and that there is currently insufficient work for a local seat in Lephalale. The Committee is also mindful that Judge President Makgoba supported the proposal for the disestablishment of the local seat at Lephalale and suggested that the area continue to be served by a circuit court. The Committee remains in favour of the

disestablishment of the court at Lephalale. If circumstances change in the future, the need to re-establish the local seat at Lephalale may be revisited.

[360] Having carefully considered all of the submissions received, the Committee's preliminary recommendations in paragraph 356 in relation to the Limpopo division are made final.

MPUMALANGA DIVISION OF THE HIGH COURT

Mpumalanga Province

[361] 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.¹⁷⁵

[362] Mpumalanga is among the smaller economies in South Africa.¹⁷⁶ Mining (23%) is the largest industry in Mpumalanga, followed by trade, catering and accommodation (15%), and manufacturing (14%).¹⁷⁷

¹⁷⁵ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>

¹⁷⁶ 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/>.

¹⁷⁷ Ibid.

[363] There are three district municipalities in Mpumalanga, namely Ehlanzeni, Gert Sibande, Nkangala. The municipalities in Mpumalanga are depicted on the map below.¹⁷⁸



The history of the Mpumalanga Division

Pre-constitutional era:

¹⁷⁸ Maps of municipalities by province are available at <https://municipalities.co.za/>.

[364] 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.¹⁷⁹

Constitutional era:

[365] With the enactment of the interim Constitution, the TPD became a High Court;¹⁸⁰ retaining its seat and area of jurisdiction.¹⁸¹ Mpumalanga continued to fall under the jurisdiction of the TPD, which was later renamed the North Gauteng High Court, Pretoria.¹⁸²

[366] 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.¹⁸³ The Gauteng Division initially functioned as the Mpumalanga Division.¹⁸⁴

¹⁷⁹ Schedule 1 of the Supreme Court Act.

¹⁸⁰ Interim Constitution.

¹⁸¹ Section 4(2) of the Interim Rationalisation Act.

¹⁸² Ibid.

¹⁸³ Section 6(1)(c) of the Superior Courts Act.

¹⁸⁴ Section 50(2) of the Superior Courts Act.

Rationalisation:

[367] 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.¹⁸⁵

[368] 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.¹⁸⁶ The areas of jurisdiction of the main and local seats were also determined.¹⁸⁷

[369] 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.

¹⁸⁵ 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.

¹⁸⁶ GN615 published in GG 42420 dated 26 April 2019

¹⁸⁷ 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.

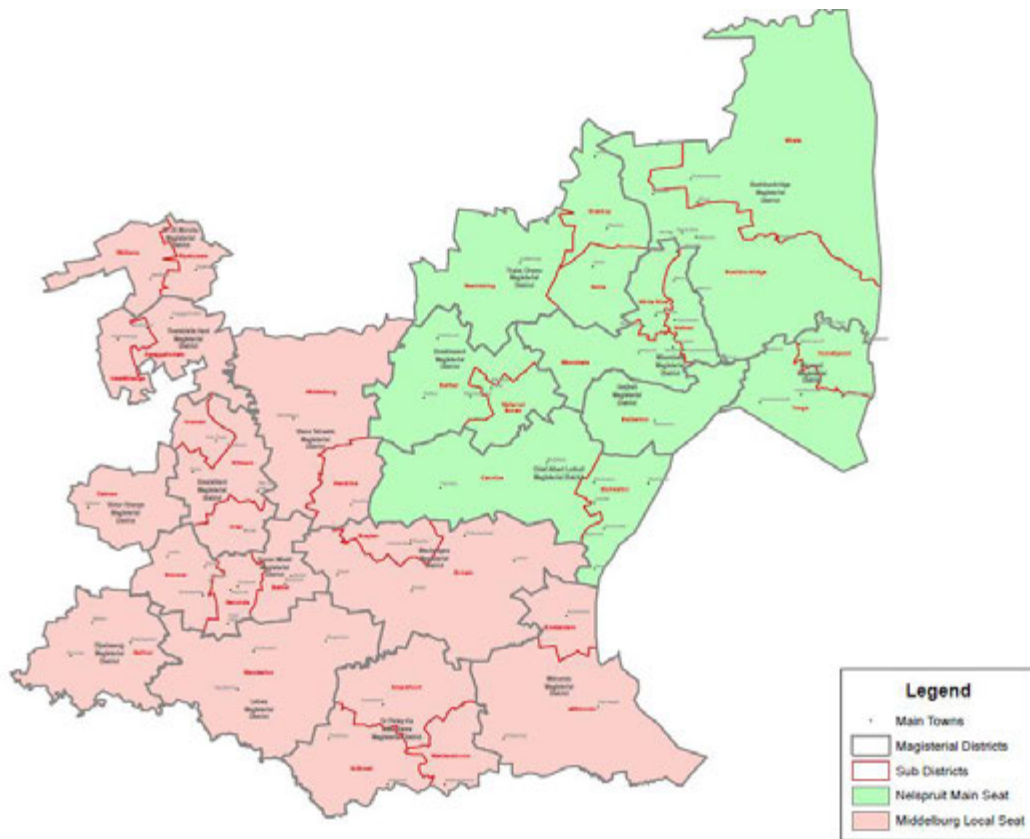
The following magisterial districts fall under the jurisdiction of the local seat at Middelburg: Dipaleseng; Dr JS Moroka (including Mbibana sub-district); eMakhazeni (excluding a portion of the Emgwenya sub-district); eMalahleni (including Ga-Nala and Vosman sub-districts); Dr Pixley Ka Isaka Seme (including 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.

Status quo of the Mpumalanga Division

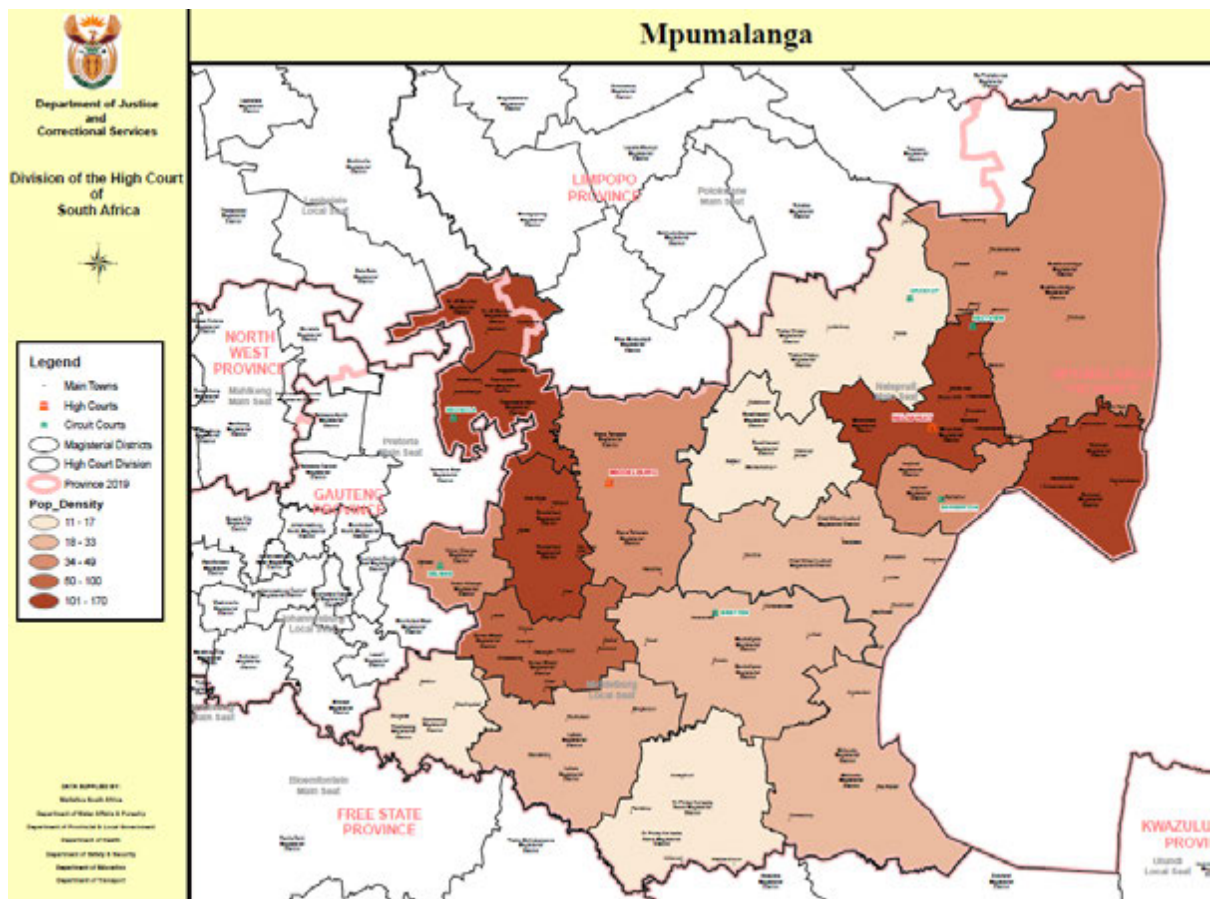
[370] The Mpumalanga Division now has its main seat in Mbombela and a local seat at Middelburg. The main seat at Mbombela has exclusive jurisdiction over Bushbuckridge, Chief Albert Luthuli, Emgwenya sub–district of eMakhazeni district incorporating the adjacent farms, Mbombela, Nkomazi, Thaba Chweu 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 Ka Isaka Seme, Govan Mbeki, Lekwa, Mkhondo, Msukaligwa, Steve Tshwete and Thembisile Hani and Victor Khanye. The main seat has concurrent jurisdiction with the local seat over its area of jurisdiction.

[371] There are a total of eight judges on the establishment in the Mpumalanga Division. The main seat at Mbombela has three judges, with one vacant post, while the local seat at Middelburg has four judges. There are five courts served on circuit by the Mpumalanga Division at Barberton, Breyten, Delmas, Graskop and KwaMhlanga.

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



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



The caseload of the Mpumalanga Division

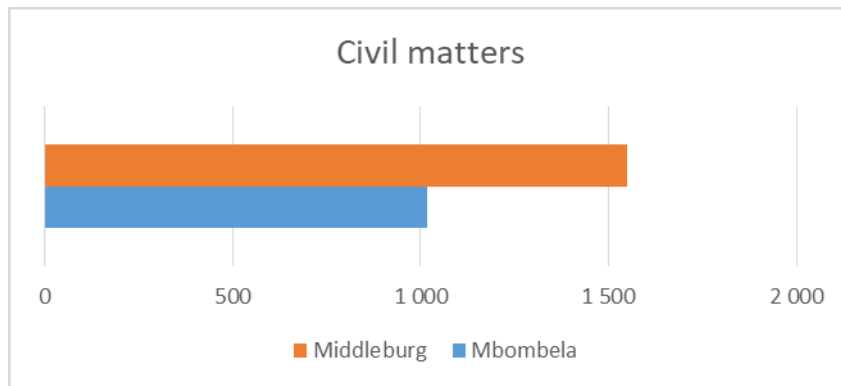
[374] The Judiciary Annual Report 2020/2021¹⁸⁸ sets out the number of criminal and civil matters heard in the Mpumalanga Division from 1 April 2020 to 31 March 2021, and the percentage of matters finalised during that period.

[375] During the relevant period:

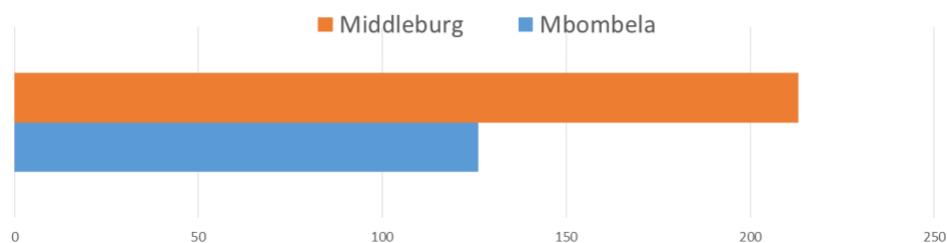
- a. The Mpumalanga Division, Mbombela heard a total of 1 019 civil matters (40% of civil matters heard by the division); of which it finalised 90%. The

¹⁸⁸ Available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.

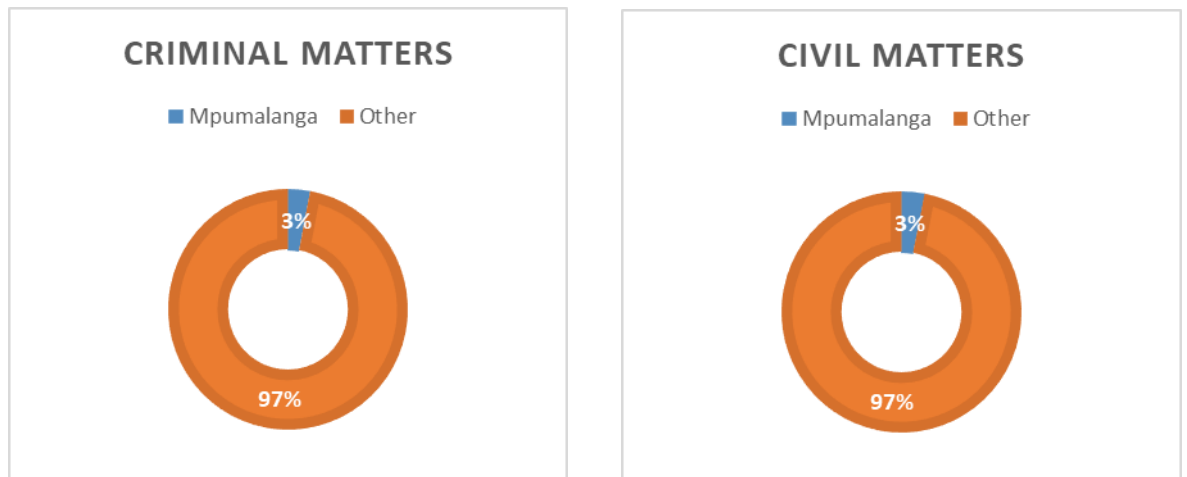
Mpumalanga Local Division, Middelburg heard 1 549 civil matters (60% of civil matters heard by the division); of which it finalised 91%.



- 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%.



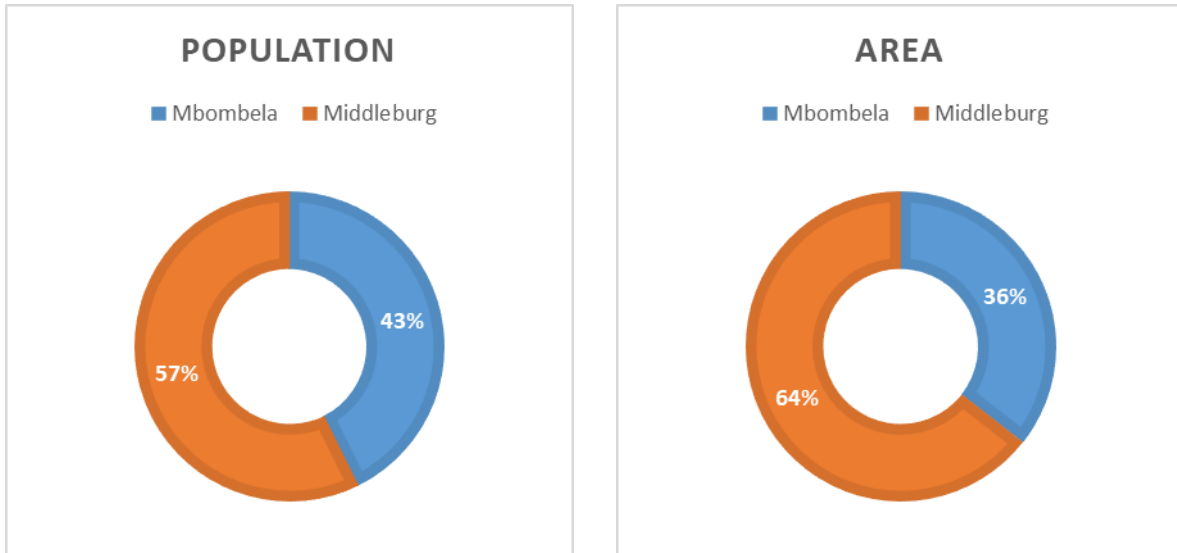
- c. Collectively, the courts heard 2 568 civil matters (3% of all civil matters heard in the High Court) and 338 criminal matters (3% of all criminal matters heard in the High Court).



Submissions received from the Department

[376] 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

[377] 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.

[378] 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

[379] 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

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

The Committee's Preliminary Recommendations

[381] The Committee made 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.

Comments received through the Public Participation Process

[382] The only comment received in relation to Mpumalanga was from Legal Aid SA and was in support of the Committee's preliminary recommendations.

The Committee's Final Recommendations

[383] Having carefully considered all of the submissions received, the Committee's preliminary recommendations in paragraph 381 in relation to the Mpumalanga division are made final.

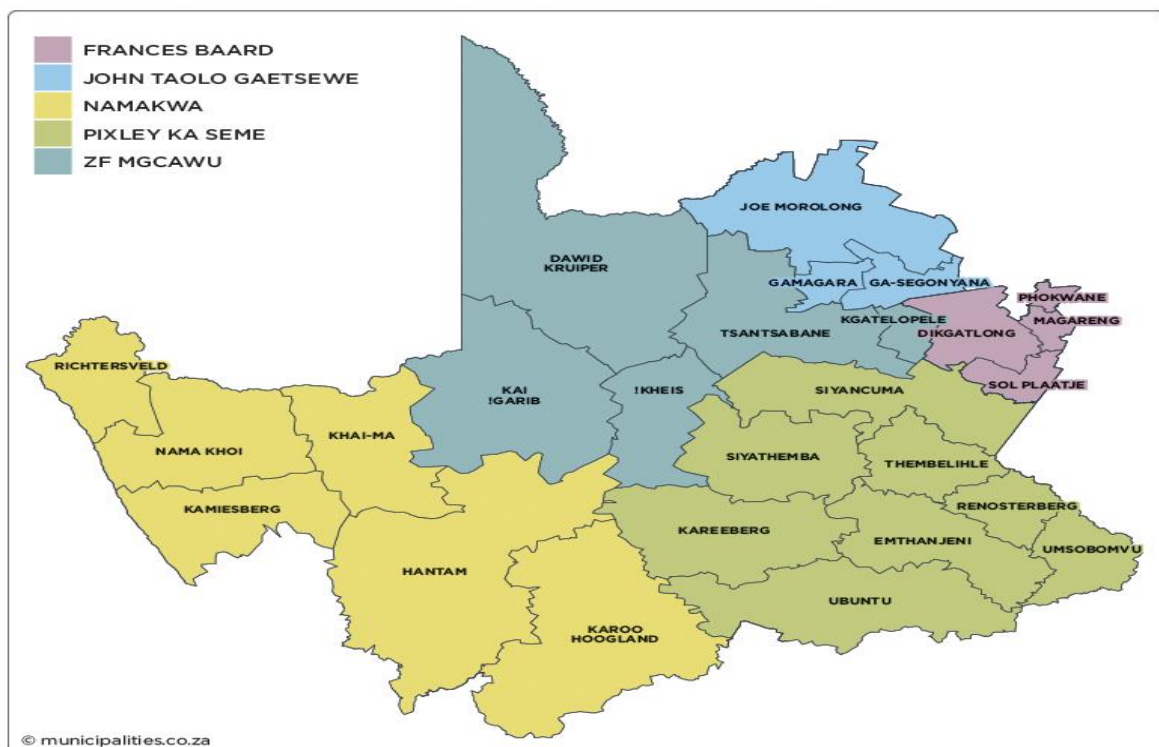
NORTHERN CAPE DIVISION OF THE HIGH COURT

The Northern Cape province

[384] 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.

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

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



[387] The province's economy is dominated by mining services (21%), followed by government services (17%), and finance (13%).¹⁸⁹

¹⁸⁹ 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/>

The history of the Northern Cape Division

Pre-constitutional era

[388] 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.

[389] 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:

[390] The interim Constitution created the province of the Northern Cape.¹⁹⁰ The Northern Cape Division of the Supreme Court became a High Court.¹⁹¹ During 2009, the court was renamed as the Northern Cape High Court, and its seat was retained at Kimberley.¹⁹² A constitutional amendment, enacted in 2012, established a single High

¹⁹⁰ Interim Constitution, section 124 read with schedule 1, part 1.

¹⁹¹ Schedule 6, item 4 of the Constitution.

¹⁹² Renaming of High Courts Act.

Court.¹⁹³ 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.¹⁹⁴

Rationalisation

[391] With effect from August 2003, the magisterial districts of Namaqualand (Springbok), Williston, Sutherland, Calvinia, Fraserburg, Noupoort, Colesberg and Hanover were included in this court's jurisdiction.¹⁹⁵ The magisterial district of Kudumane was added to the territorial jurisdiction of the Northern Cape Division, with effect from August 2013.¹⁹⁶

[392] 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.¹⁹⁷

¹⁹³ Section 5 of the Constitution 17th Amendment Act.

¹⁹⁴ Section 6(1)(c) of the Superior Courts Act.

¹⁹⁵ GN R937 published in GG25141 dated 27 June 2003.

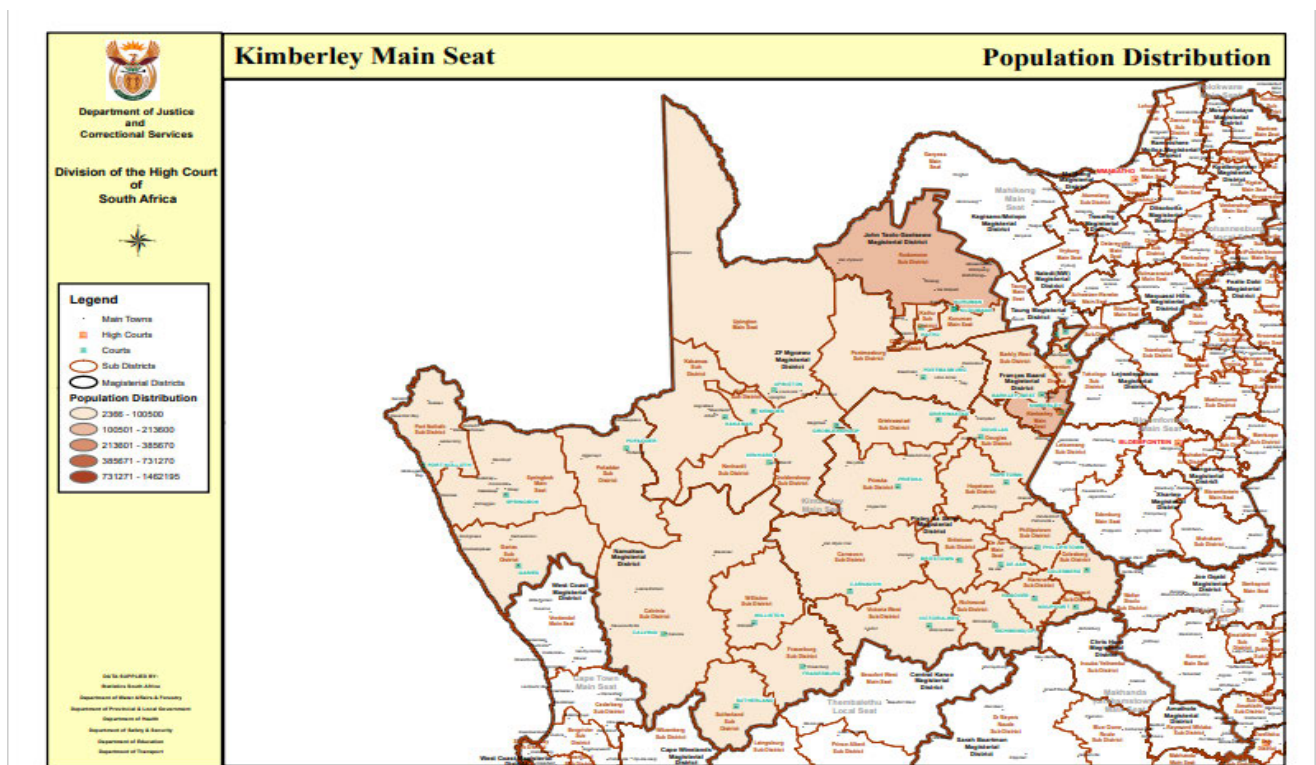
¹⁹⁶ GN 547 published in GG 36718 dated 31 July 2013.

¹⁹⁷ The Department sets out the maps of the rationalised magisterial districts at: <https://www.justice.gov.za/maps/maps-nc.html>

Status quo of the Northern Cape Division

[393] 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.

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



The caseload of the Northern Cape Division

[395] Civil and criminal case information for Term 3, 2022¹⁹⁸ has been provided as follows:

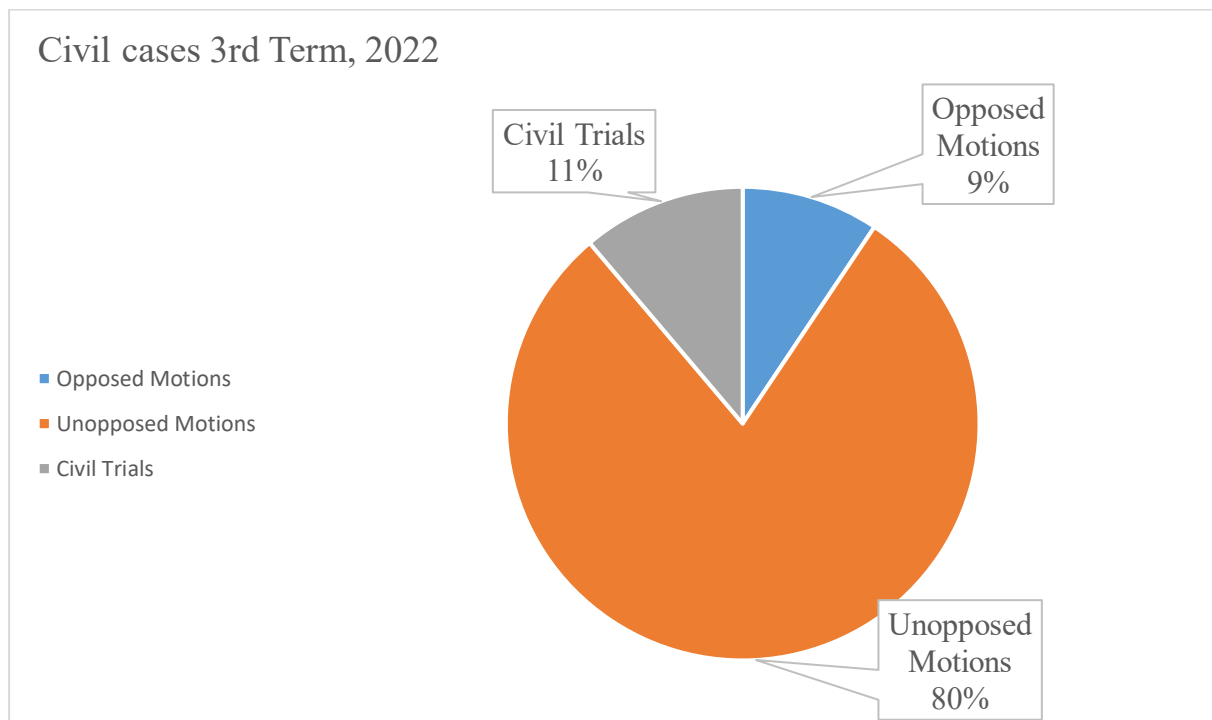
¹⁹⁸ Term 3 runs for the period 18 July 2022 to 18 September 2022.

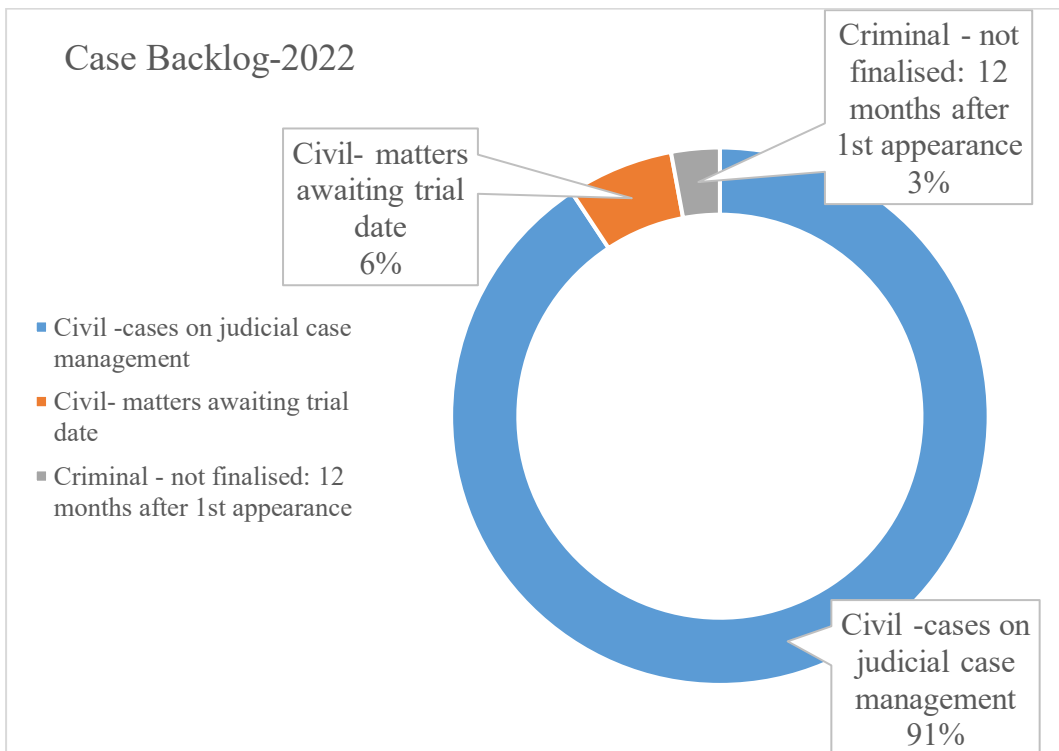
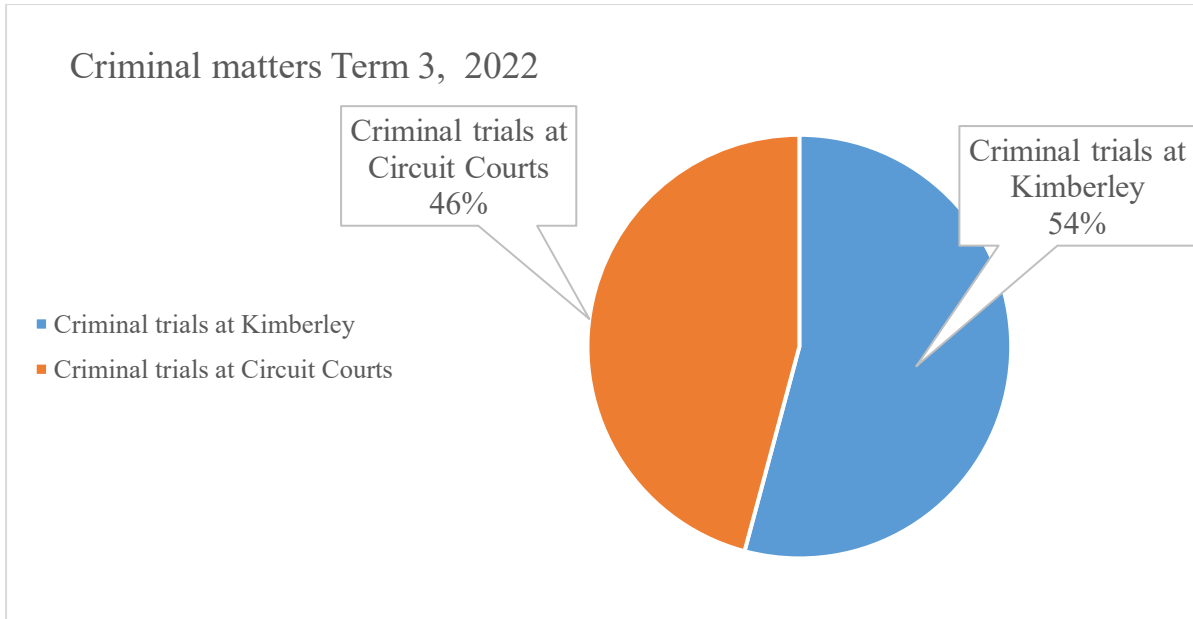
Civil matters 2022	
Opposed motions	42 matters
Unopposed motions	355 matters from 1 July 2022 to 4 August 2022
Appeals (Full Bench, Civil and Criminal) and leave to appeal applications	14 matters
Reviews	3 cases
Civil Trials	50
Criminal matters 2022	
Criminal trials at seat of Court (Kimberley)	13 set down for hearing
Criminal trials at circuits	11 set down for hearing

[396] 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 Gariiep and Kgalagadi circuit courts are reported to be carrying the bulk of circuit court cases.

[397] 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. 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.

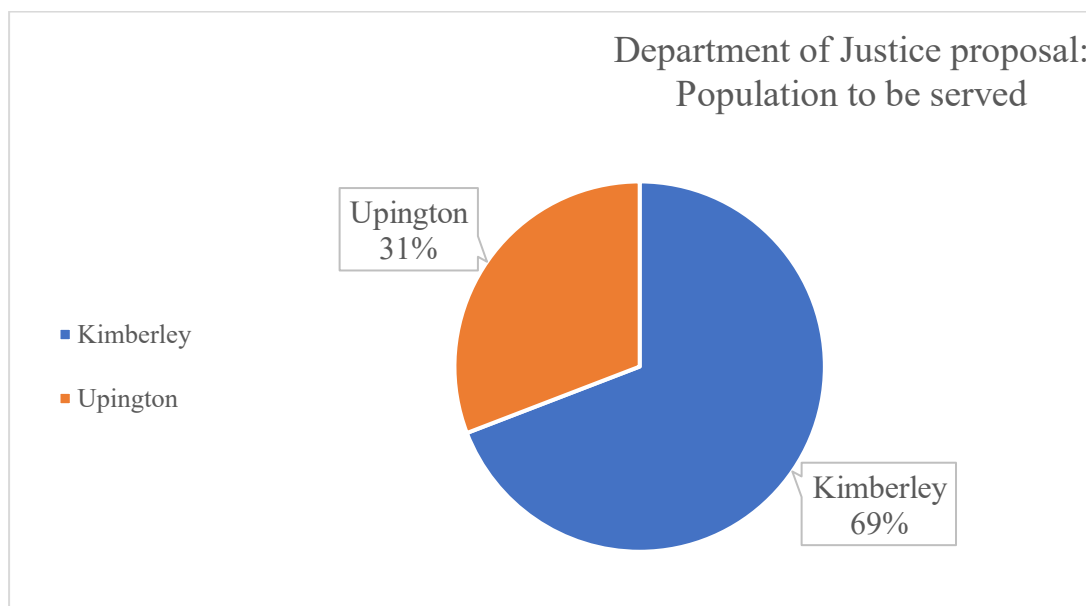




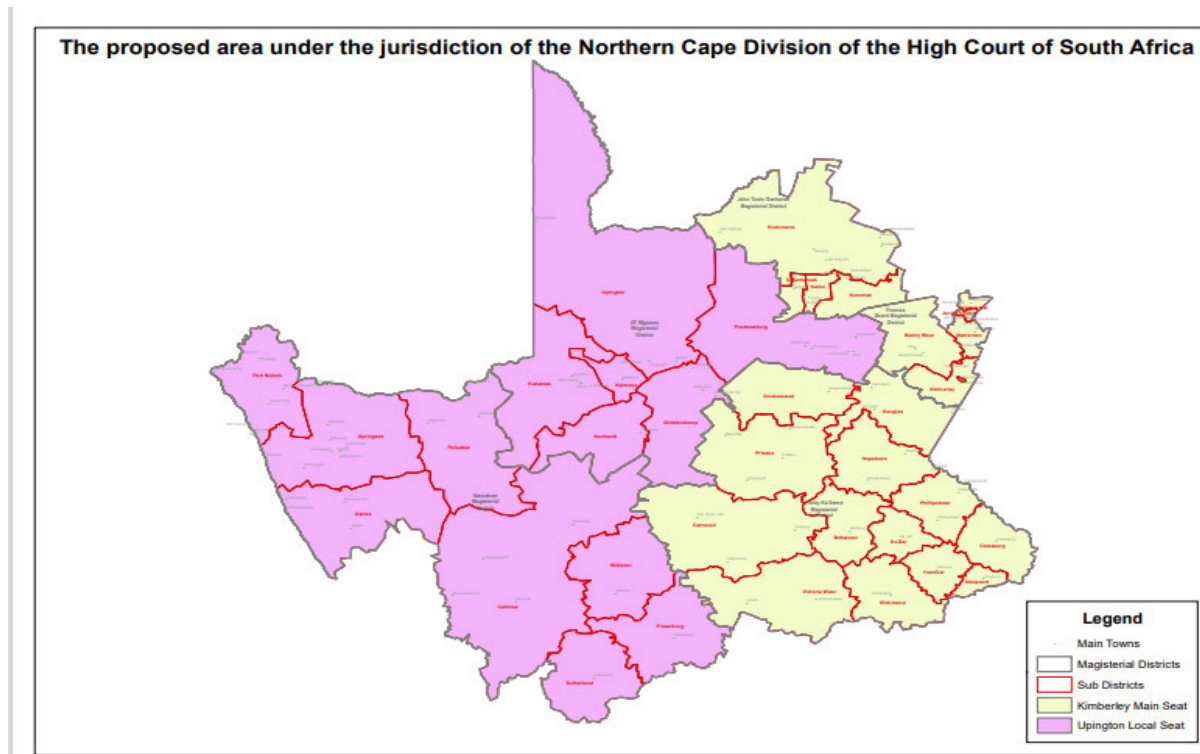
Submissions received from the Department

[398] 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.

[399] 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.



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



[401] 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

[402] The Judge President of the Northern Cape Division supported the Department's proposal. In response to the interim report, Judge President Tlaletsi made written submissions accepting the Committee's interim recommendations.

Submissions received from the NPA

[403] 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

[404] 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

[405] The Committee made 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.

Comments received through the Public Participation Process

[406] Judge President Tlaetsi made written submissions which in substance accepts the preliminary recommendations made by the Committee. Judge President Tlaetsi clarified that the current judicial establishment for the Northern Cape Division of the High Court, Kimberley provides for seven judges. Currently there are 6 judges in the division. The one vacancy is expected to be filled during the April 2023 sitting of the JSC. Judge President Tlaetsi noted that there is some urgency for the establishment of the new local seat at Upington. While Judge President Tlaetsi noted the concerns by the NPA and Legal Aid SA that there is presently no infrastructure for a new court at Upington, he urged that resource constraints should not be a reason to hold back on the creation of the new local seat.

[407] Legal Aid SA's written submissions supported the Committee's preliminary recommendations. Legal Aid SA anticipates that the new local seat at Upington will have a substantial case load. Legal Aid SA records that it will need to re-allocate its resources and increase its staffing capacity. Legal Aid SA estimates that the establishment of a full litigation Unit at the new local seat will cost approximately R 3 million per year.

The Committee's Final Recommendations

[408] The Committee has noted that the JSC interviewed candidates for the one vacancy at the Northern Cape Division of the High Court¹⁹⁹ and that a recommendation has been made. The Committee trusts that the vacancy will be filled shortly.

[409] The Committee considers that 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 establishment of a new local seat will reduce the long distances that people have to travel to access high court services at the main seat at Kimberley. In this way, access to justice will be enhanced for people living in the Northern Cape through the establishment of a new local seat..

[410] Having carefully considered all of the submissions received, the Committee's preliminary recommendations in paragraph 408 in relation to the Northern Cape division are made final.

NORTH WEST DIVISION OF THE HIGH COURT

North West province

¹⁹⁹ https://www.judiciary.org.za/images/news/2023/Media_Advisory_-_JSC_Interviews_Schedule_-_17_-_21_April_2023.pdf (*Note to Committee members: pursuant to interviews held on 18 April 2023, the JSC has recommended Adv Stanton for appointment – note to be deleted at internal readthrough)

[411] 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.²⁰⁰

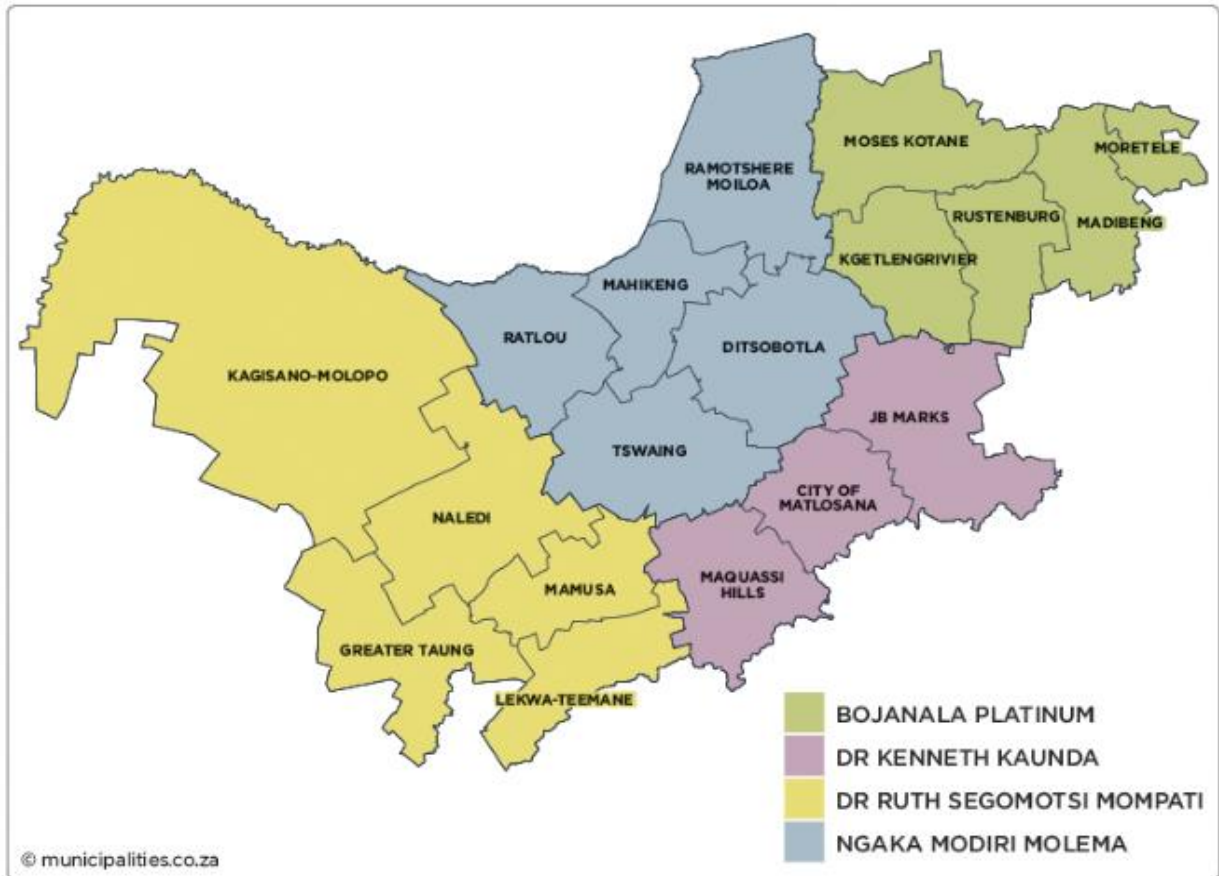
[412] Although agriculture (2.7%), trade (11.8%), government services (13.4%) and finance (13.3%) are dominant drivers behind the economy of the North West province, mining is the biggest driver behind the economy of the North West having contributed over a third of revenue for the provincial economy (33.3%).²⁰¹

[413] 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.²⁰²

²⁰⁰ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

²⁰¹ STATS SA 'Four facts about our provincial economies' (29 March 2019) available at <https://www.statssa.gov.za/?p=12056>.

²⁰² Maps of municipalities by Province are available at <https://municipalities.co.za/>.



The History of the North West Division

Pre-Constitutional Era

[414] 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

[415] 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.²⁰³ In 2008, the Bophuthatswana court was changed to the North West High Court, Mahikeng.²⁰⁴

[416] With the establishment of a unitary High Court, the North West Division of the High Court, Mahikeng was established.²⁰⁵ The division still exercises jurisdiction over the whole of North West, except Madibeng which is served by the Gauteng Division.

Rationalisation

[417] The rationalisation of magisterial districts in the North West established 18 magisterial districts.²⁰⁶

[418] 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

²⁰³ 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.

²⁰⁴ Section 1 of the Renaming of the High Courts Act.

²⁰⁵ See section 2 of the Constitution 17th Amendment Act; Section 6 of the Superior Courts Act.

²⁰⁶ 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.²⁰⁷

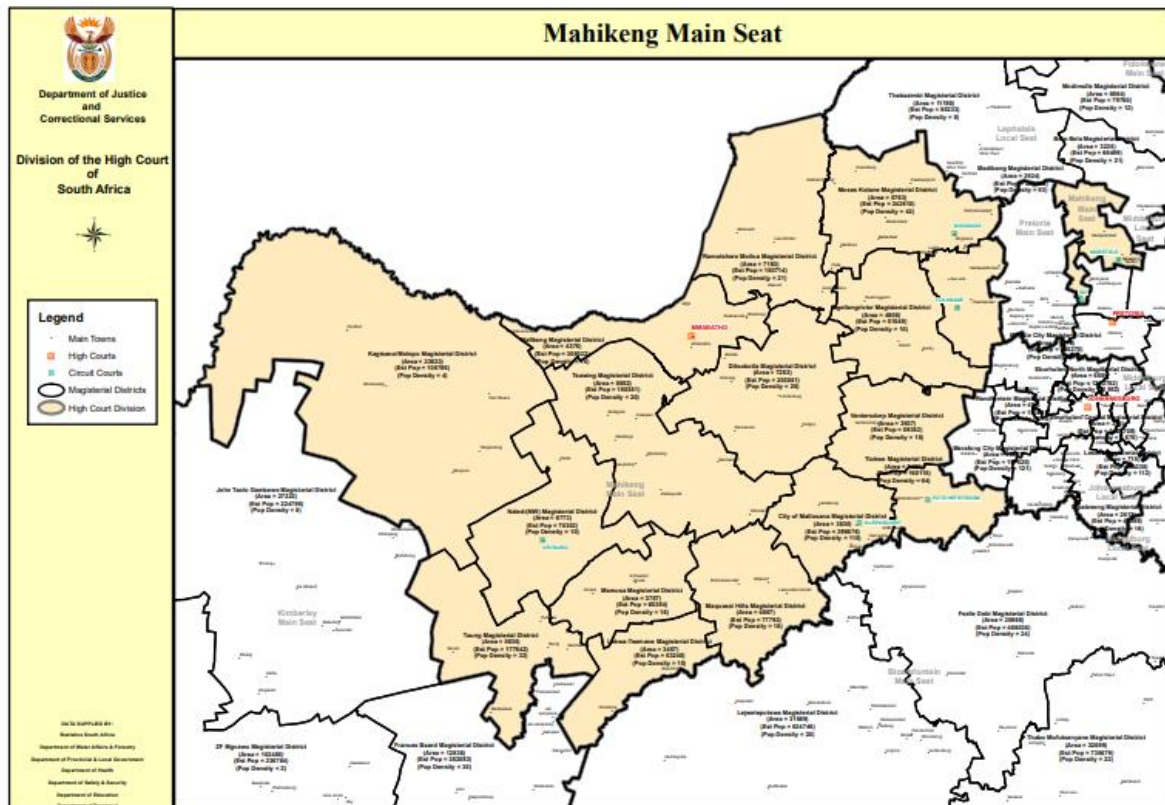
Status Quo of the North West Division

[419] 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.²⁰⁸ 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.

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

²⁰⁷ 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.

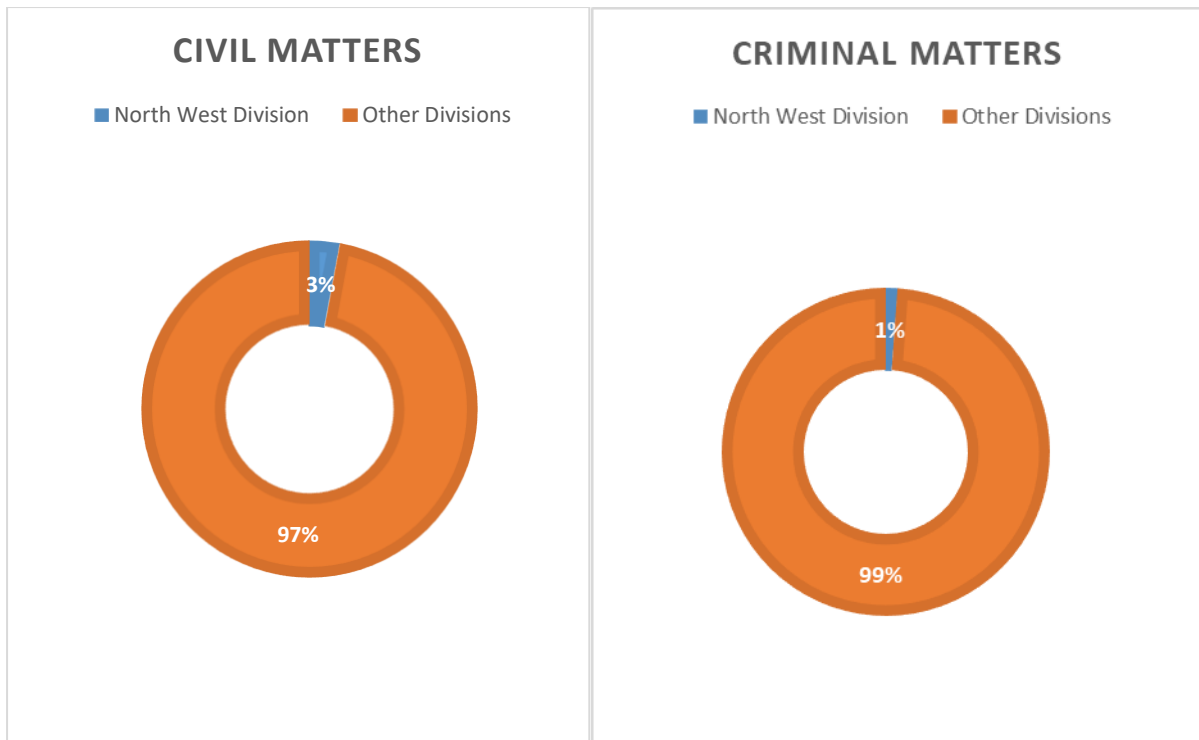
²⁰⁸ GN 30 published in GG 39601 dated 16 January 2016. The notice provides that Madibeng magisterial district falls under the Gauteng Division, excluding Ga-Rankuwa.



The Caseload of the North West Division

[421] 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.²⁰⁹

²⁰⁹ See The Judiciary Annual Report 2020/2021 at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.



Anomalies

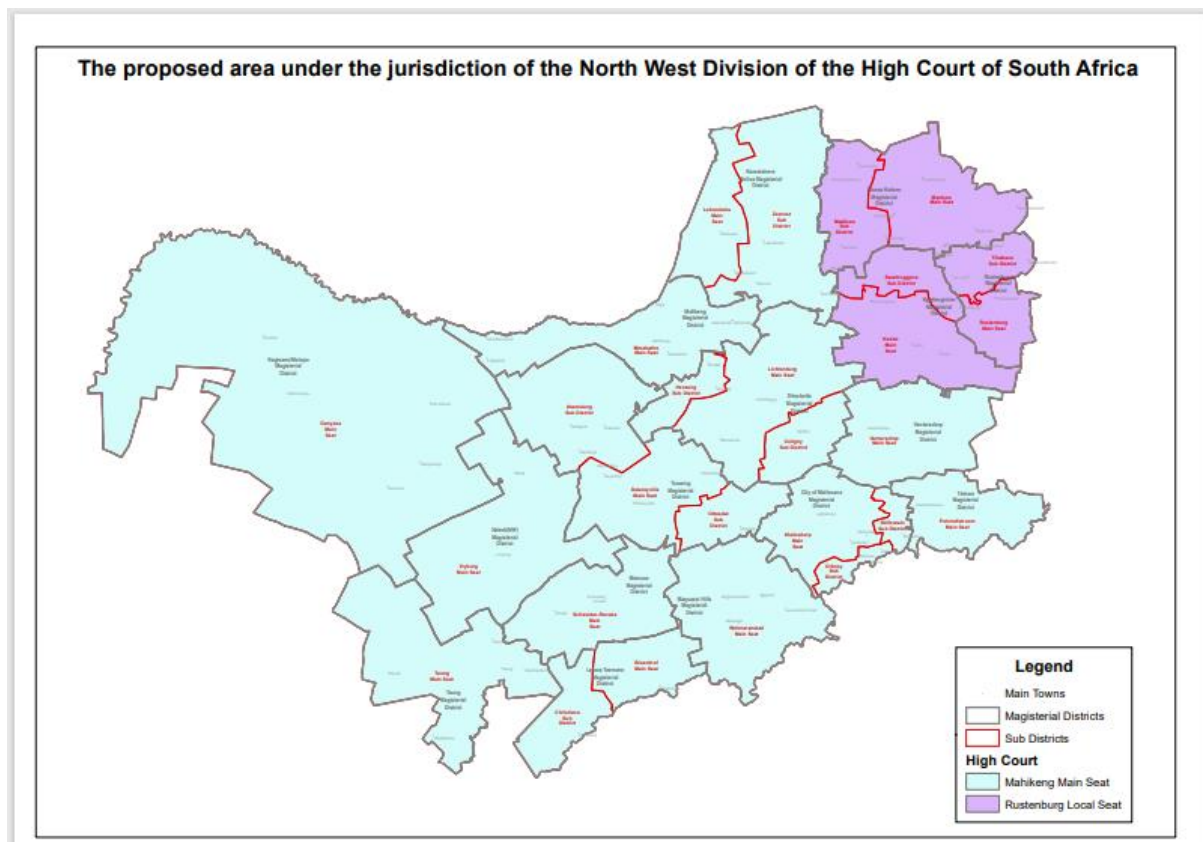
[422] One anomaly identified in relation to the North West Division is that Ga-Rankuwa, which falls within the Madibeng magisterial district in the North West province, currently does not fall under the jurisdiction of the North West Division. Even so, the notice establishing the areas under the jurisdiction 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.²¹⁰

²¹⁰ 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.

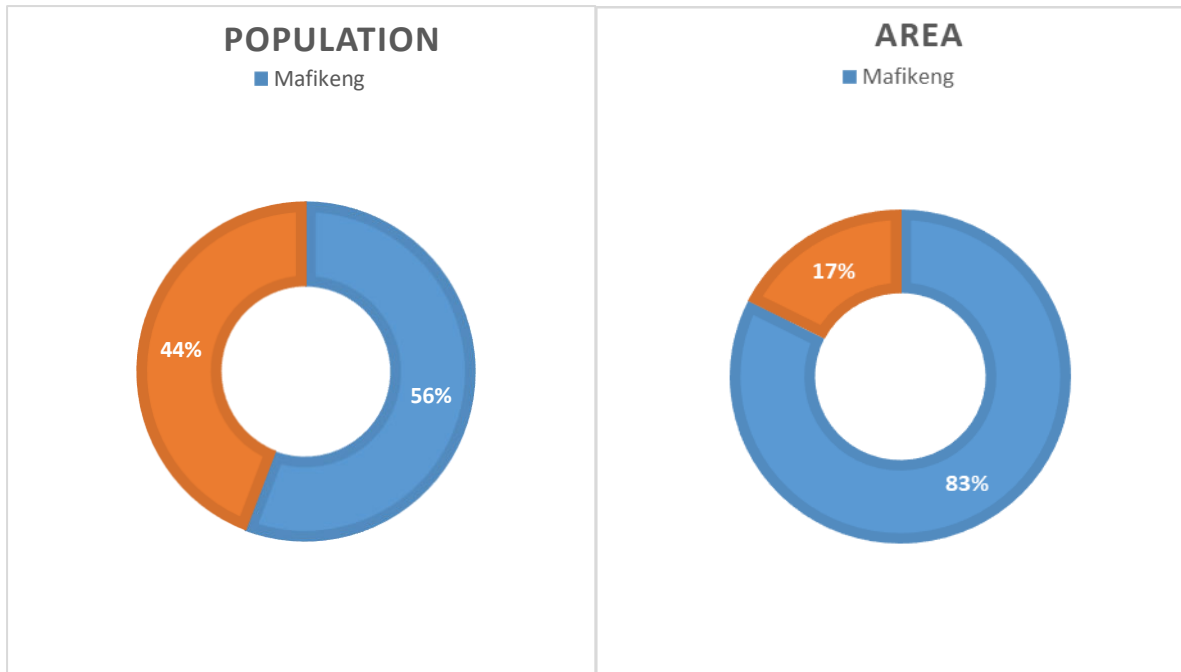
GN 30 published in GG39601 dated 16 January 2016 provides that Madibeng magisterial district falls under the Gauteng Division excluding Ga-Rankuwa.

Submissions received from the Department

[423] 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, Ventersdorp. 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.



[424] 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.



[425] 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

[426] 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.

Submissions received from the NPA

[427] 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 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

[428] The Committee made 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 Ventersdorp.
- 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.

Comments received through the Public Participation Process

[429] From the North West province the Committee received submissions from Legal Aid SA, North West and a member of the public, Ms Adrina Frith. Legal Aid is in support of Judge President Hendricks' submissions that a local seat be established at Rustenburg, a second local seat be considered at Klerksdorp and that cross provincial jurisdictions should be avoided for the North West. Legal Aid submits that all these

measures will enhance access to justice, since many people are currently unable to access courts for financial reasons.

[430] Ms Adrian Frith submits, on the other hand, that the establishment of a local seat at Rustenburg only partly resolves boundary anomalies around Madibeng magisterial district (Brits and Ga-Rankuwa). She therefore suggests the reconfiguration of districts in this area to ensure that each district falls entirely within the jurisdiction of the North West division.

The Committee's Final Recommendations

[431] The Committee has considered the submissions received from all the stakeholders in the North West province, those of the public and those of the Department. There is general consensus about the establishment of a local seat at Rustenburg. The Committee notes that this establishment will, in more ways than one, open up access to justice to the residents.

[432] First, it will reduce the amount of work currently undertaken by the main seat in Mahikeng. The Committee acknowledges that this may lead to less congested court rolls and ultimately the timeous finalisation of matters. Second, costly distances travelled by the many residents of Bojanala magisterial district will be substantially reduced. Over a third of the province's population currently travel long distances to access the court in Mahikeng. This will be resolved by the establishment of a local seat in Rustenburg.

[433] The Committee concludes that Rustenburg is better suited to enhance access to justice in the North West. This is so because of its centrality to the majority of the provinces' population. Also, the economic development of Rustenburg suggests that there is a need for a local seat in this area. The establishment of a local seat at Rustenburg will also rectify the anomaly around the Madibeng magisterial district. The Committee notes that this approach will avoid cross-provincial jurisdictions between North West and Gauteng.

[434] The Committee acknowledges the submissions received in support of the establishment of a second local seat at Klerksdorp. However, the Committee concludes that the amount of work currently undertaken by the court in Mahikeng do not justify a second local seat in the North West province. The establishment of a second local seat at Klerksdorp may be considered at a later stage in the event that circumstances change.

[435] Having carefully considered all of the submissions received, the Committee's preliminary recommendations in paragraph 428 in relation to the North West division are made final

WESTERN CAPE DIVISION OF THE HIGH COURT

The Western Cape province

[436] 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.²¹¹

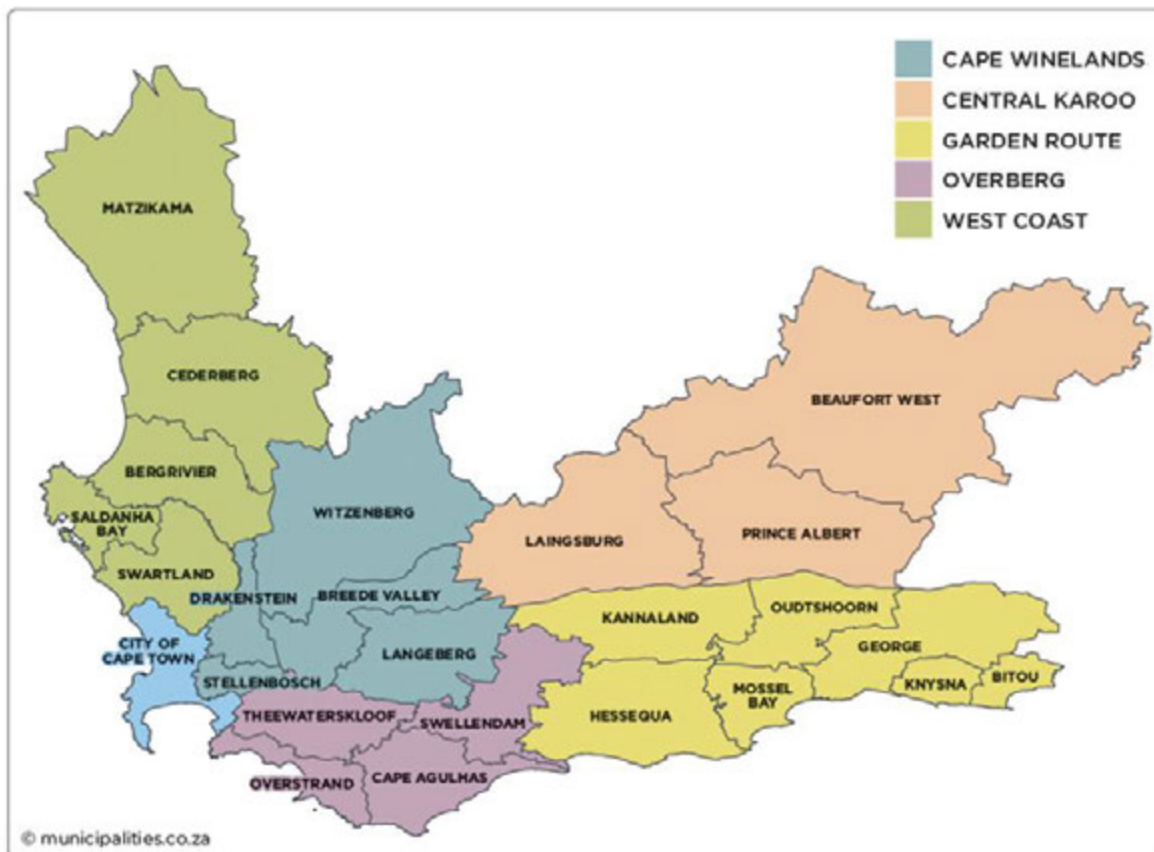
[437] The biggest contributors to the economy of the Western Cape includes agriculture (3.9%), government services (11.5%), trade (17.1%) and manufacturing (15.3).²¹² It is the third largest contributor to the country's economy contributing 14% to the GDP.²¹³

[438] 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.

²¹¹ STATS SA 2021 mid-year population estimates, available at <https://www.statssa.gov.za/publications/P0302/P03022021.pdf>.

²¹² 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/>.

²¹³ 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

[439] 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 Cape²¹⁴ and Northern Cape Divisions of the Supreme Court exercised jurisdiction.²¹⁵

Constitutional Era

[440] 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.

[441] 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.²¹⁶

[442] In 2008, the Cape of Good Hope Provincial Division was renamed the Western Cape High Court, Cape Town.²¹⁷

[443] With the establishment of the unitary High Court, the Western Cape Division of the High Court, Cape Town was established.²¹⁸ The Western Cape Division continues

²¹⁴ Schedule 1 to the Supreme Court Act. These areas were Humansdorp, Steyt•Jerville, Jansenville, Aberdeen, Murraysburg, Graaff-Reinet, Middelburg, Hanover and Colesberg.

²¹⁵ Schedule 1 to the Supreme Court Act. These are Namaqualand, Williston, Sutherland, Calvinia, Fraserburg, Noupoot, Colesberg and Hanover.

²¹⁶ GN 937 published in GG 25141 dated 27 June 2003.

²¹⁷ Section 1 of the Renaming of the High Courts Act.

²¹⁸ 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

[444] 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.²¹⁹ The rationalisation of magisterial districts in the Western Cape established one metropolitan municipality and five magisterial districts.²²⁰

[445] 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.²²¹

Status Quo of the Western Cape Division

[446] 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

²¹⁹ GN 932 published in GG 46132 dated 30 March 2022.

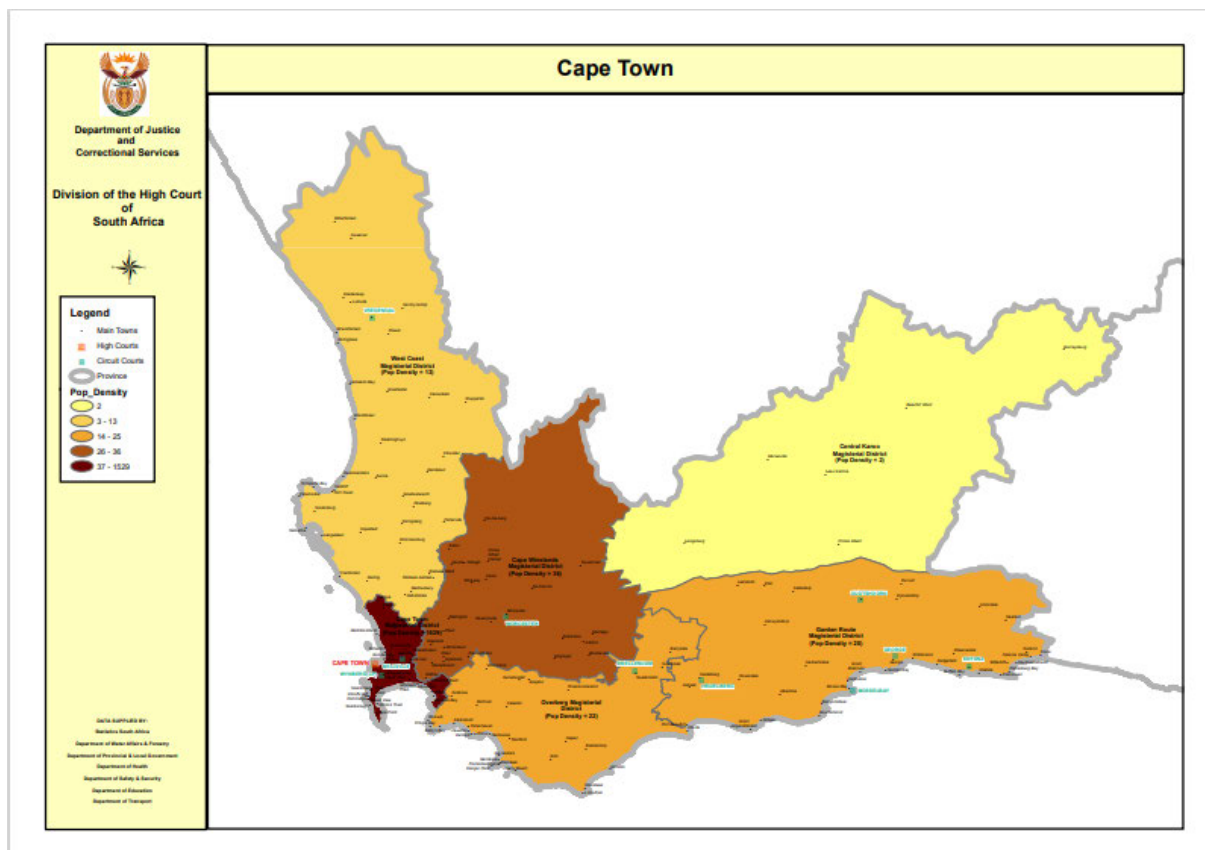
²²⁰ The metropolitan municipality is the City of Cape Town and the magisterial districts are Cape Winelands, Central Karoo, Overberg, West Coast and Garden Route.

²²¹ See section 51 of the Superior Courts Act.

excised from the Western Cape province. There are 33 judges at the court and also two vacant posts.

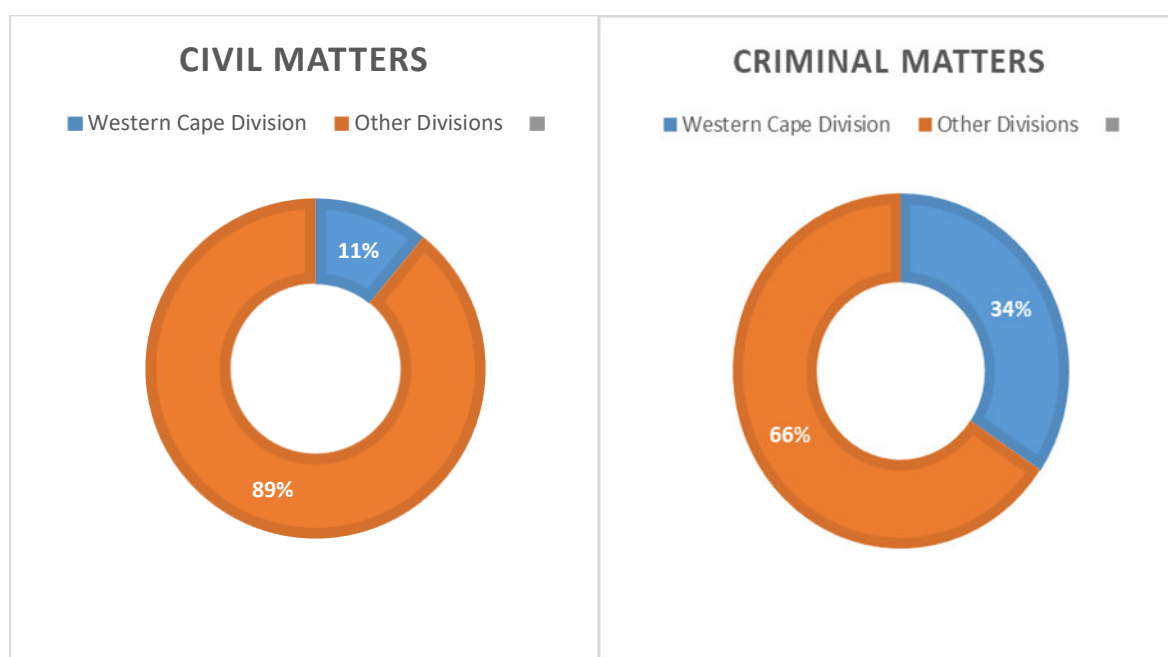
[447] There are 15 circuit courts established under the Western Cape Division of the High Court, including one civil circuit court at Thembaletu (George) and 14 criminal circuit courts at George, Oudtshoorn, Mossel Bay, Knysna, Swellendam, Worcester, Beaufort West, Ceres, Vredendal, Tokai, Goodwood, Paarl and Malmesbury. The civil circuit court sits every term for five weeks, and the criminal circuit courts sit when a case is assigned to a particular circuit by the Director of Public Prosecutions.

[448] The map below depicts magisterial districts over which the Western Cape Division of the High Court exercises jurisdiction with population density.



The Caseload of the Western Cape Division

[449] 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.²²²



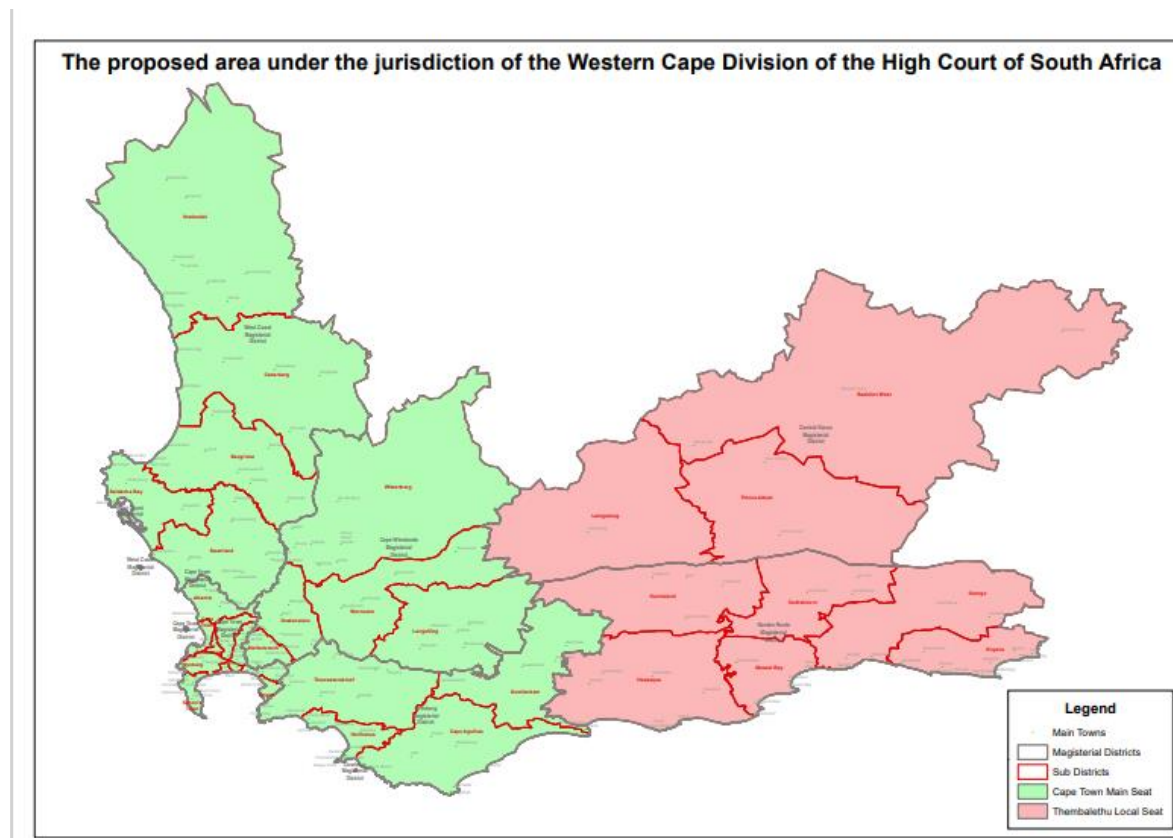
Submissions received from the Department

[450] 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

²²² The Judiciary Annual Report available at <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>.

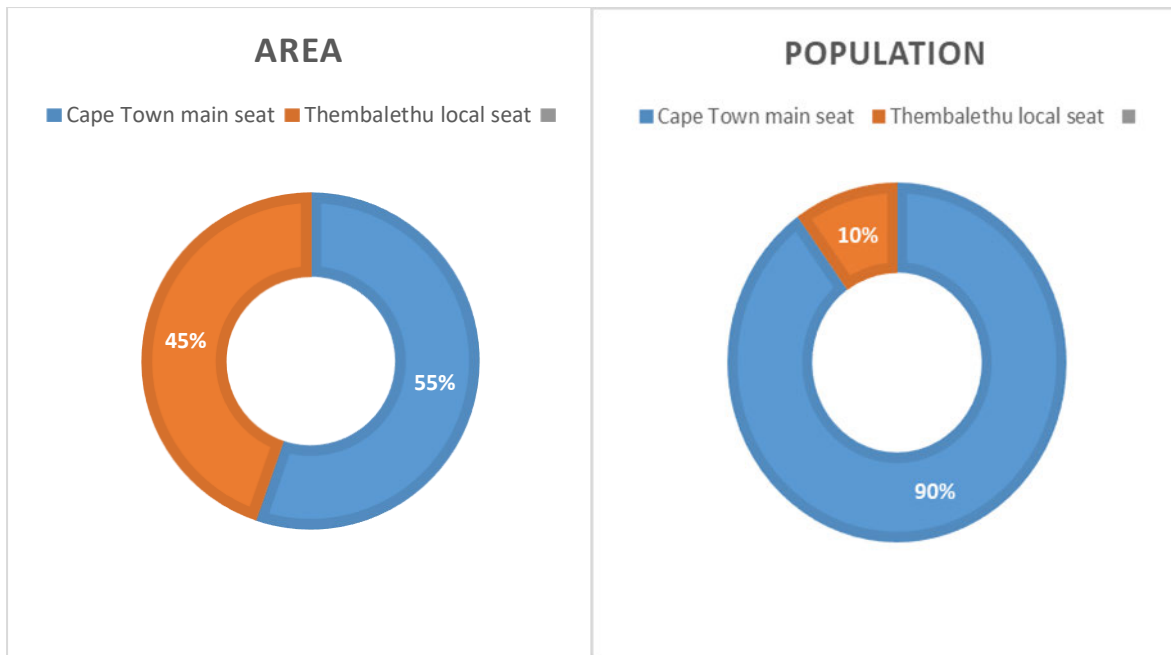
exclusive jurisdiction over City of Cape Town, the Cape Winelands, Overberg and the West Coast while the local seat at Thembalethu will exercise jurisdiction over Garden Route and Central Karoo.

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



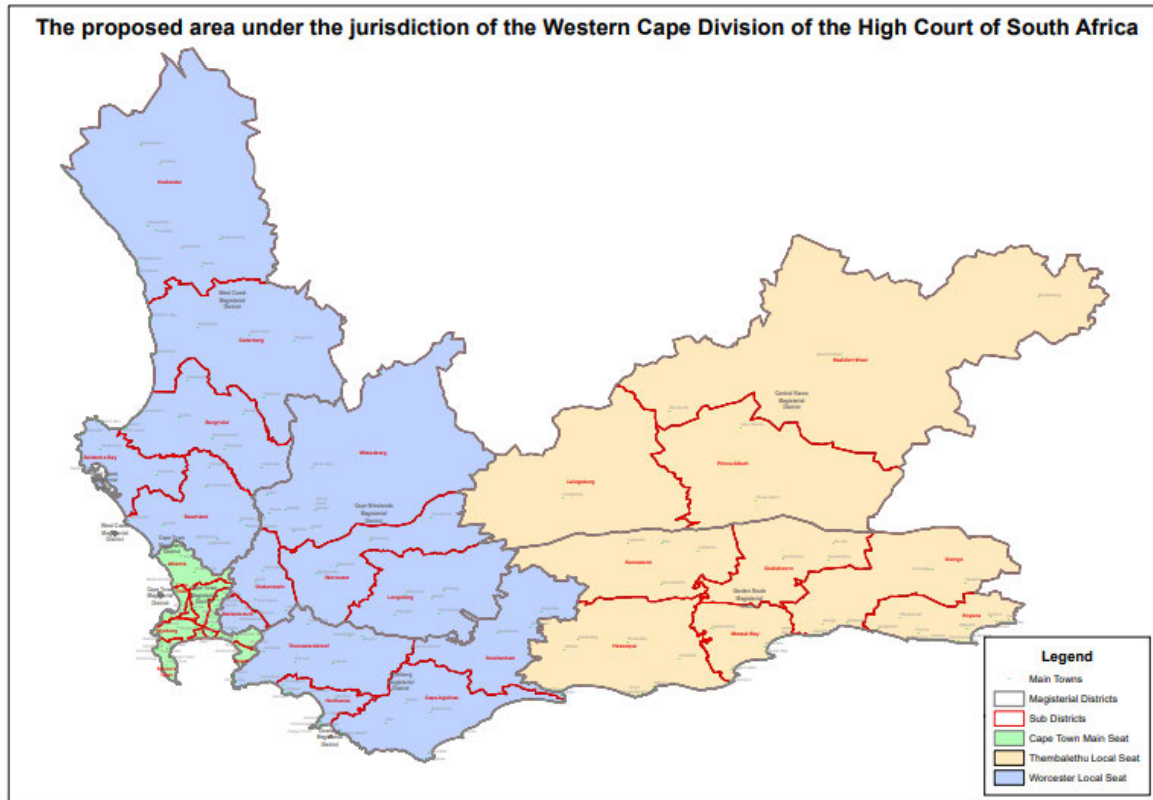
[452] Should the proposal come into effect, the main seat at Cape Town will cover an area of 67 277 km², 55% of the province's surface area and the local seat at Thembalethu will cover an area of 54 444 km², 45% of the province's surface area.

[453] 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.



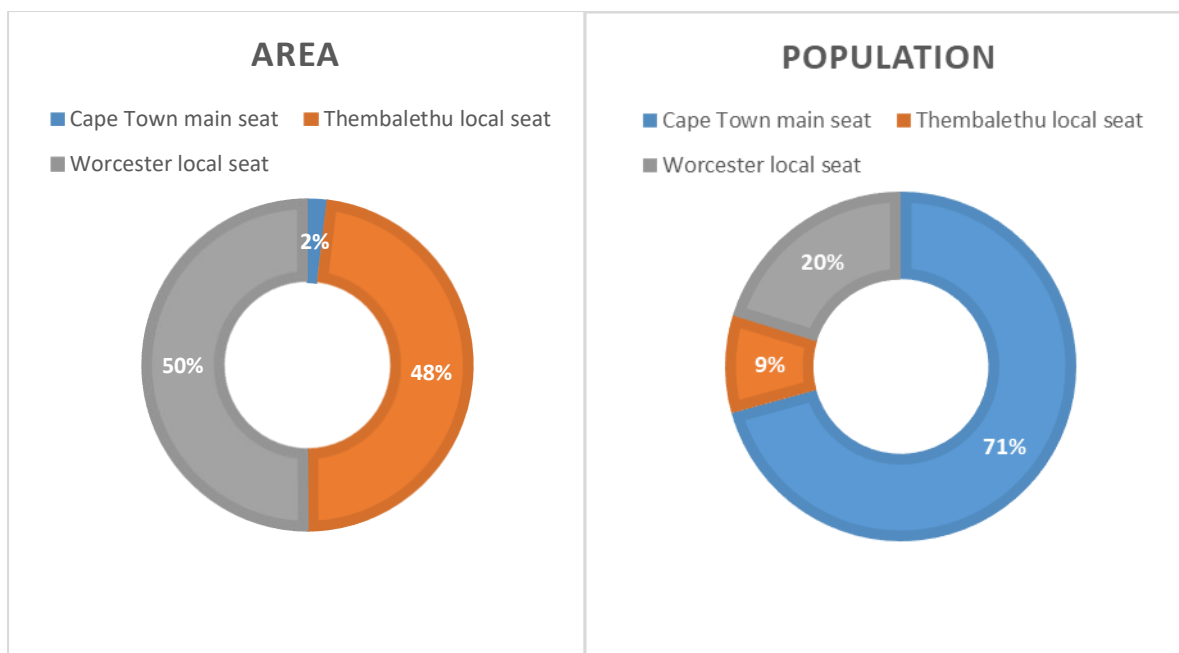
[454] Under the second proposal – that a second local seat be considered at Worcester – the main seat at Cape Town will exercise jurisdiction over the City of Cape Town, the local seat at Thembalethu will exercise jurisdiction over Garden Route and Central Karoo, and the local seat at Worcester will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

[455] The following map depicts the Department’s second proposal.



[456] 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%).

[457] 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

[458] 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.

[459] 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

[460] 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

[461] The Committee made 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 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 Themba lethu.
- d. The Committee does not recommend the establishment of a local seat at Worcester.

Comments From The Public Participation Process

[462] Through the public participation process, the Committee received submissions from Legal Aid South Africa and the provincial commissioner of SAPS, Western Cape, Lieutenant General TE Patekile, who is also an advocate.

[463] Although Legal Aid notes financial implications for its offices should a local seat be established, the establishment of a local seat is highly supported by Legal Aid. It submits that matters will increase substantially and that they will have to increase and re-allocate staff from its Cape Town Local Office to George Local Office.

[464] Lieutenant Patekile submits that the area of Murraysburg should be removed from the area of jurisdiction of the Eastern Cape Division, Makhanda, and be included under the area of jurisdiction of the Western Cape Division.

[465] The Committee acknowledges and recognises all the submissions received.

The Committee's Final Recommendations

[466] The Committee has considered the amount of work currently undertaken by the Western Cape Division, Cape Town, the population currently served by this seat, the distances travelled to access the court in Cape Town and the amount of work at Thembaletu which is currently a circuit court under this division. The Committee was informed during consultations that the case flow in the circuit court in Thembaletu is quite substantial and that there already is infrastructure at Thembaletu for a local seat. The Committee concludes that a local seat is justified at Thembaletu. Less costly distances will be travelled by litigants to access the court in Thembaletu. And the amount of work currently undertaken by the main seat will be reduced.

[467] After careful consideration of all the submissions including those of the Judge President of the division, the Committee concludes that a second local seat at Worcester is not justified. This is so because Worcester is relatively close to Cape Town and judges from the main seat already frequent the area on circuit. Also, the amount of work in Worcester does not justify the establishment of a local seat.

[468] Having carefully considered all of the submissions received, the Committee's preliminary recommendations in paragraph 461 in relation to the Western Cape division are made final.

ADDITIONAL OBSERVATIONS REGARDING POSSIBLE LEGISLATIVE DEVELOPMENTS

Introduction

[469] 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.

[470] In conducting its work, the Committee has made observations regarding certain rules that may be barriers to 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.

Rule that the plaintiff must follow the defendant

[471] 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.²²³ 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.

[472] 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",²²⁴ "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.²²⁵

[473] 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.

²²³ *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

²²⁴ *Chinatex Oriental Trading Co v Erskine* 1998 (4) SA 1087 (C) at 1093 and 1094.

²²⁵ *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.

[474] 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*.²²⁶ It thus places the burden on the plaintiff to seek to change the *status quo* at a court exercising territorial jurisdiction over the defendant's domicile or residence.²²⁷

[475] 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

[476] 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,²²⁸ the applicant or plaintiff may elect to institute proceedings in either the division of the High Court or the Magistrates' Court with jurisdiction.

²²⁶ 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.

²²⁷ Ibid.

²²⁸ See *Moosa v Moosa* 2014 JDR 2194 (GP) at para [19].

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

[478] 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). 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 of the main seat

[479] 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.

[480] 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.

[481] 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.

[482] 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 invite Parliament to consider these questions..

To this end, we have drawn attention to considerations on access to justice that have emerged from our interaction with stakeholders. 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] Here are our final recommendations in relation to the areas of jurisdiction of the nine divisions of the High Court.

EASTERN CAPE DIVISION OF THE HIGH COURT

[3] 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 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.

FREE STATE DIVISION OF THE HIGH COURT

[4] 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

[5] 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

[6] 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

[7] 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

[8] 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

[9] 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

[10] 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 Ventersdorp.

- 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

[11] 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.

[12] We further 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 through legislative developments to bring about change. To this end, we invite Parliament to ponder the additional observations made in this report.

DiKganga Moseneke

JUSTICE DIKGANG MOSENEKE

J Traverso

JUSTICE JEANNETTE TRAVERSO

R Ramaite

MR SILAS RAMAITE SC

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