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**FINAL REPORT OF PHASE 2 OF THE  
COMMITTEE ON THE RATIONALISATION  
OF AREAS UNDER THE JURISDICTION  
OF THE DIVISIONS OF THE HIGH COURT  
OF SOUTH AFRICA AND JUDICIAL  
ESTABLISHMENTS**

**CHAIRPERSON:** Honourable Mr. Justice D. Moseneke

**MEMBERS:** Madam Justice J. Traverso | Ms. R. Subban | Dr S. Ramaite

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## INTRODUCTION

[1] Our Constitution, in item 16(6)(a) of schedule 6, directs that, as soon as practical, the structure, composition, functioning and jurisdiction of all courts must be rationalised with a view to “establishing a judicial system suited to the requirements of the Constitution”.<sup>1</sup> The constitutional rationalisation process is underpinned by the compelling need to enhance access to justice for all our people.

[2] It is within this constitutional framework that we undertake our work as the Committee for the Rationalisation of Areas under the Jurisdiction and the Judicial Establishments of the Divisions of the High Court (“**the Committee**”).<sup>2</sup>

[3] Under its terms of reference,<sup>3</sup> the Committee is working 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**”).<sup>4</sup>

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

<sup>2</sup> The Committee was established on 10 June 2021, by the Minister of Justice and Correctional Services (“**the Minister**”). The Committee is chaired by Justice Dikgang Moseneke. The additional members of the Committee are Judge Jeannette Traverso, former Deputy Judge President of the Western Cape Division of the High Court; Ms Renuka Subban, retired Chief Magistrate of Verulam Magistrate’s Court, KwaZulu-Natal; and Mr Silas Ramaite SC, retired Deputy National Director of Public Prosecutions.

The Committee appointed researchers to assist with its work: Ms Faathima Mahomed, an admitted advocate of the High Court of South Africa; Mr Thabang Mabina, an admitted attorney of the High Court of South Africa; Ms Catherine Krüyer, an admitted advocate of the High Court of South Africa.

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

<sup>4</sup> 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**”).<sup>5</sup>

[4] Phase 1 of our work has been completed. The final report was delivered to the Minister of Justice and Correctional Services (“**the Minister**”) during July 2023.<sup>6</sup> In our written final report on phase 1, we made recommendations, about the areas over which the main seat and local seats of every Division of the High Court must exercise jurisdiction. As part of our recommendations, we also proposed that new local seats be created in certain Divisions. We elaborate on this below.<sup>7</sup>

[5] Under phase 2, we are required to evaluate the judicial establishment of each Division of the High Court to ensure an equitable distribution of judicial posts across all Divisions.

[6] We released an interim report on phase 2, and received numerous submissions from key stakeholders. All submissions received are available on the Department of Justice’s website.<sup>8</sup> The Committee has carefully considered these submissions and engages with them below. This is the final report on phase 2.

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<sup>5</sup> Paragraph 2.1.2 of the terms of reference.

<sup>6</sup> A copy of the electronic version of the report is available at [Phase 1 Report](#).

<sup>7</sup> See paragraphs [19]–[29].

<sup>8</sup> [www.justice.gov.za](http://www.justice.gov.za)

## THE WORK OF THE COMMITTEE IN PHASE 2

[7] The terms of reference<sup>9</sup> for phase 2 require the Committee to conduct an assessment of the judicial establishment of each Division of the High Court and local seat under the Division for the purpose of “*ensuring an equitable distribution of judicial posts*” across all Divisions and local seats.

[8] The Committee is required to:

“2.1.2 assess the judicial establishment of every Division of the High Court and local seat under any such Division, with a view to ensuring equitable distribution of judicial posts across all the Divisions and local seats of any such Division, taking into consideration: -

- (a) the numerical strength of each Division and its local seat where such local seat exists;
- (b) the caseload trends and projected future workload trends of each Division;
- (c) the population served by each main seat or local seat of each Division;
- (d) number of magisterial districts, sub-districts and places of sitting of the lower court and the work load trends of such districts, sub-districts and places of sitting which are under the jurisdiction of the main seat and local seat of the Division concerned;
- (e) the knock-on effects of any proposed adjustment of the judicial establishment on the other human resource components that support judicial processes and the administration of justice;
- (f) the economic situation and affordability of the proposed rationalisation outcome.”

[9] “Judicial establishment” is not a term of art. We could find no definition of the meaning of the term in legislation or case law. The term is not employed in the Constitution or in legislation. The only place where the term “judicial establishment” is employed is in Regulations promulgated under the Superior Courts Act.<sup>10</sup>

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<sup>9</sup> Above n 5.

<sup>10</sup> Section 6(2)(b) of the Superior Courts Act 10 of 2013 (“**Superior Courts Act**”).

[10] Section 6(2) of the Superior Courts Act provides:

“Each Division of the High Court consists of-

(a) a Judge President and one or more Deputy Judges President, as determined by the President, each with specified headquarters within the area under the jurisdiction of that Division; and

(b) so many other judges as may be determined in accordance with the prescribed criteria and approved by the President.”

[11] The Regulations on the Criteria for the Determination of the Judicial Establishment of the Supreme Court of Appeal and Divisions of the High Court of South Africa, 2015<sup>11</sup> deal with “the determination of the number of judges” of any Division of the High Court, as envisaged in section 6(2)(b) of the Superior Courts Act.

[12] The number of judges to be allocated to a Division of the High Court is to be determined in accordance with prescribed criteria in the Regulations. These criteria closely mirror the factors that the Committee must take into its assessment, in accordance with its terms of reference, to achieve an equitable distribution of judicial posts.

[13] The outcome of phase 2 is for the Committee to make recommendations on how judicial posts are to be equitably allocated to the various Divisions of the High Court across the country. Phase 2 is narrowly tailored to focus on judicial posts across all Divisions of the High Court. The Committee is required to conduct the phase 2 assessment by having regard to the factors listed in paragraph 2.1.2 of the terms of reference.<sup>12</sup>

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<sup>11</sup> Regulations on the Criteria for the Determination of the Judicial Establishment of the Supreme Court of Appeal and Divisions of the High Court of South Africa, 2015, published in GN R26 in GG 39595 dated 14 January 2016.

<sup>12</sup> As quoted above in para [9].

[14] Mindful that it was required to undertake an assessment of the judicial establishment of each Division of the High Court and local seat under the Division, the Committee developed a questionnaire requesting pertinent information from key stakeholders. Critical questions were posed to different stakeholders with the object of obtaining information that would be essential to the Committee performing the assessment required of it under phase 2.

[15] The questionnaire<sup>13</sup> was sent to the Judges President and Registrars of the nine Divisions of the High Court; the Office of the Chief Justice of South Africa; Legal Aid South Africa; the National Prosecuting Authority; the Magistrates Commission and the Legal Practice Council. We believe that the Legal Practice Council distributed the questionnaire to legal practitioners, for their input.

[16] We received responses from the Judges President of the nine Divisions of the High Court; the Office of the Chief Justice; the Magistrates Commission; and the Supreme Court of Appeal.<sup>14</sup> We are appreciative of the responses received and the support shown towards the Committee's work.

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<sup>13</sup> The questionnaire is available at [www.justice.gov.za](http://www.justice.gov.za)

<sup>14</sup> All responses are available at [www.justice.gov.za](http://www.justice.gov.za)

[17] The responses received are self-explanatory and we do not seek to repeat every response here. We analyse the responses below. At this stage we provide a high-level summary of the main themes arising. First, the responses unequivocally speak to the need for more permanent judges to be appointed. Second, the concern is raised that appointing acting judges in both the civil and criminal courts has caused delays in the finalisation of trials. Part-heard matters become drawn out because it is not possible to freely reschedule the next hearing date. The continued availability of acting judges is limited due to their work commitments as legal practitioners in private practice. Moreso, there have been delays with acting judges finalising judgments. Third, most Divisions of the High Court are using a manual system to record and track cases. There appears to be no standardised and uniform method or system to track cases as they progress from date of issue until judgment is delivered.

## **OVERVIEW OF PHASE 1 RECOMMENDATIONS: NEW JUDICIAL ESTABLISHMENTS**

[18] For ease of reference we restate here the final recommendations the Committee has made under phase 1, in relation to the areas of jurisdiction of the nine Divisions of the High Court:

### **EASTERN CAPE DIVISION OF THE HIGH COURT**

[19] 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 Hanani 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.

[20] 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**

- [21] 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**

[22] 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**

- [23] 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**

- [24] 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**

[25] 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**

- [26] 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**

- [27] 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**

- [28] 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 Thembaletu 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 Thembaletu.
  - d. The Committee does not recommend the establishment of a local seat at Worcester.

## **REVISED FINAL RECOMMENDATION IN RELATION TO THE FREE STATE DIVISION OF THE HIGH COURT**

[29] After the Committee released its final report on phase 1, Judge President Musi noted that, by making our preliminary recommendations final, we made an error by recommending that the main seat at Bloemfontein should exercise jurisdiction over the town of Lejweleputswa.<sup>15</sup> Musi JP noted that Welkom falls under the magisterial district of Lejweleputswa. He accordingly recommended that:

- a. The main seat at Bloemfontein will exercise jurisdiction over the magisterial districts of Mangaung, Thabo Mofutsanyana and Xhariep;

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<sup>15</sup> A copy of Musi JP's letter dated 29 August 2023 is available at [www.justice.gov.za](http://www.justice.gov.za).

- b. The new seat at Welkom ought to exercise jurisdiction over the magisterial districts of Lejweleputswa and Fezile Dabi.

[30] We have reconsidered our recommendations in relation to the areas of jurisdiction for the Free State Division, and make the following revised final recommendations in relation to the Free State Division.

[31] Paragraph 264 and paragraph 4 of the Executive Summary of our final report on phase 1 are to be deleted and replaced by the following.

“The Committee makes the following final recommendations in relation to the Free State Division:

- 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, Thabo Mofutsanyana and Xhariep;
- b. A new local seat will be established at Welkom which shall exercise jurisdiction over the magisterial districts of Lejweleputswa and Fezile Dabi.”

## **DISTRIBUTION OF JUDICIAL RESOURCES**

### ***Overview***

[32] Section 34 of the Constitution guarantees everyone the right of access to courts, more particularly “*the right to have any dispute that can be resolved*

*by the application of law decided in a fair public hearing before a court...".*  
Access in this setting means "meaningful access".<sup>16</sup>

[33] Meaningful access requires that courts are staffed by an adequate number of competent and experienced judicial officers, capable of resolving the vast number of disputes before the court, otherwise the concept of access to justice would be rendered nugatory. Ensuring access to justice for all requires adequately staffed courts capable of efficiently handling caseloads without undue delays or backlog accumulation.

[34] This is, moreover, required by the rule of law – a founding value of the Constitution. From the rule of law arises "*the obligation of the state to provide the necessary mechanisms for citizens to resolve disputes that arise between them*". This necessarily includes adequately staffed courts.<sup>17</sup> Insufficient judicial capacity undermines the rule of law by eroding public confidence in the legal system's ability to provide fair and timely justice.

[35] By bolstering the capacity of our courts to handle caseloads effectively and timeously, the State should enhance access to justice, uphold the rule of law, and promote social justice and equality before the law.

## COMPARATIVE INTERNATIONAL PRACTICES

[36] The method of using the caseloads of courts as a means for estimating the number of judges required is considered to be highly inaccurate. This is because it does not take into account the differences in the number and

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<sup>16</sup> *South African Human Rights Commission v Standard Bank of South Africa Ltd and Others* [2022] ZACC 43; 2023 (3) BCLR 296 (CC); 2023 (3) SA 36 (CC),

<sup>17</sup> *President of the Republic of South Africa and Another v Modderklip Boerdery (Pty) Ltd* 2005 (5) SA 3 (CC), at para 39.

complexity of issues in the case and the amount of time required to process the case to finality. This can lead to inadequate judicial resources being allocated.

[37] It is considered, and we are of the view, that a case-weighting system is the best practice followed within many countries for determining the allocation of judicial resources.<sup>18</sup> It provides a more accurate estimate of the number of judges and other staff needed.

[38] It must be mentioned at the outset that a case-weighting system is different from systems that are designed to assess the performance of judges. The purpose of a case-weighting system is solely to assess how time-consuming a case is likely to be in comparison with other cases so that judicial resources can be appropriately allocated.

[39] A case-weighting system recognises that different types of cases differ in complexity and the amount of judicial time required to process the case to finality. A case-weighting system assigns different weights to different case-types, which indicates how much time the type of case will require as compared to other types of cases.

[40] There is also increasing recognition that a true reflection of workload is required in order accurately to estimate the number of judges needed. Workload is the entirety of work performed by judges, which comprises handling cases as well as non-case related work.

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<sup>18</sup> See the study on Case Weighting in Judicial Systems adopted by the European Commission for the Efficiency of Justice in July 2020; and the study on Estimating Staffing Needs in the Justice Sector in the Justice and Development Working Paper Series produced by the World Bank and the International Bank for Reconstruction and Development dated 2012.

[41] Below, in our recommendations, we discuss whether a case-weighting system can be applied in South Africa at present in light of the information regarding caseload and workload that is currently recorded and available.

## COMPARATIVE DOMESTIC MODEL – THE LOWER COURTS

[42] Apart from the case-weighting practices considered above, the Department of Justice and Constitutional Development (“**the Department**”) proffered the Committee with a report on a domestic model developed by the Council for Scientific and Industrial Research (“CSIR”) on behalf of the Committee on the Rationalisation of Judicial Establishments of the Magistrates’ Courts (“the Magistrates’ Courts Committee”). Although the Committee acknowledges the fact that the CSIR model is developed for the Magistrates’ Courts, the Committee deems it relevant and helpful for the purposes of this Committee.

[43] The CSIR was one of two consulting groups contracted by the Department to provide quantitative modelling and analysis support to the Magistrates’ Court Committee. The CSIR study was undertaken in line with the Terms of Reference of the Magistrates’ Courts Committee, which required that committee to: make recommendations with specific reference to assessing the judicial establishment of each Regional Court Division, Magistrate’s Court District, Sub-district and Places of Sitting for the Magistrates’ Courts in order to ensure equitable distribution of judicial capacity. As with this Committee, the Magistrates’ Courts Committee was required to consider, in its analysis:

- (a) the numerical strength of each Regional Division, Magisterial District, Sub-district and Places of Sitting for the Lower Court;
- (b) the caseload trends and projected future workload trends for each Regional Division, Magisterial District, Sub-district and Places of Sitting for the Lower Courts;
- (c) Infrastructure needs;

- (d) the population served by courts, taking into account the impact of migration and urbanisation trends;
- (e) the knock-on effects of any proposed adjustment of the judicial establishment; and
- (f) the economic situation and affordability of the proposed rationalisation outcome.

[44] The work of the CSIR therefore aimed to deliver the following outputs to the Magistrates' Court Committee based on the Terms of Reference of that committee:

- (a) to provide an analysis and summary of workload of all courts, as related to current workload patterns and potentially expected future workloads;
- (b) to determine how the workload relates to the number of judicial officers required at lower court level; and
- (c) to provide recommendations on how to plan judicial resources, as well as where to make adjustments to the current establishment.

[45] The CSIR produced a report in which it describes a quantitative modelling methodology used to translate workload into time estimates and from that into recommended magisterial posts by focusing on gathering and analysis of numerical data to find patterns and predict outcomes, to provide conclusions using facts, tables, graphs and even maps. Through this approach, judicial resources are matched to the workload by using data on workload as the basis of the resource allocation. More resources are objectively placed where there is a high workload so that a workload can be evenly distributed between the allocated resources. According to CSIR, by using this approach, it is assured that the types of workload requiring more court time are given more weight in resource allocation. In determining these the CSIR used statistical regression models to determine how many outputs would be required given a certain input.

[46] The regression model is compiled from data on the patterns of input and output values and determines the mathematical model that best describes the relationship between inputs and outputs. The CSIR concludes that a regression model is the most appropriate model to use for determining the time required by a magistrate to deal with caseloads of different types of cases.

[47] The quantitative approach also uses weighted caseloads as the basis for resource planning. To this end statistical regression models were selected to translate the caseload numbers into court time estimates. In conclusion, the CSIR developed and recommended a “planning process” for determining the number of magisterial posts. Thus, to determine the number of magisterial posts required, the magistracy must:

- (a) quantify the workload of a court by studying past patterns of a court caseload to determine how much the workload is per month, or by forecasting a potential future workload size;
- (b) use the workload size and type of a case to classify a court which provides a rough measure of the size of the caseload as well as the types and complexity of cases handled by the court;
- (c) translate the court workload into the amount of time required to deal with the workload, i.e. determine a type of “weighted caseload” in terms of hours, by using the recommended regression models developed per court class;
- (d) adjust the estimated time required by adding time for “other” activities that are not case-related; and
- (e) aggregate the estimated times for criminal, civil and family court-related work and “other” activities to obtain an estimate for the total time required for magisterial work at court level. Use the estimated total time to determine how many magistrate positions are required to deal with the court’s workload.

[48] Apart from the above reasons, we note that the Terms of Reference of the Magistrates' Court Committee appear to be four square with the Terms of Reference of this Committee. The criteria used by the CSIR include factors or the criteria imposed by the Department in respect of this Committee. The Committee considers the target of the Report by the CSIR comparable to the mandate of this Committee, and its findings and recommendations most helpful and instructive even for purposes of the Divisions of the High Court.

## **RESPONSES FROM KEY STAKEHOLDERS**

[49] Several questionnaires were issued to stakeholders within the justice sector and the legal practice in an endeavour to obtain data relevant for the purposes of the mandate of this Committee. The questionnaires were specifically crafted for each different stakeholder in the justice sector including the Office of the Chief Justice, the Magistrates Commission and the Judges President of the nine Divisions.

### **Magistrates Commission**

[50] The Magistrates Commission was required to provide the Committee with, amongst others: statistics on the caseload of each magisterial district; the criteria used to determine the number of magisterial posts; views on the desirability of the system of permanent and acting appointments in the High Court; and statistics on the time required to finalise appeals and reviews from Magistrates' Courts in a Division of the High Court.

[51] On 16 February 2024 the Magistrates Commission made submissions in terms of which it emphasised the importance and need to have the right number of permanent judges in each Division. The Magistrates Commission states that acting appointments should strictly be utilised when permanent judges are on annual or sick leave, or engaged in other judicial duties because

with acting appointments, particularly if it is for a short period, acting judges are not allocated bail appeals, automatic reviews, and preservation orders, thus creating more work for permanent judges.

[52] The Magistrates Commission further states that the time within which appeals and reviews are finalised differ from Division to Division depending on the workloads of the court. In Divisions with higher workloads such as Gauteng it may take some time for an appeal to be finalised whereas in a Division with lower workloads it may be finalised within a reasonable time. This, it states, makes it rather difficult to determine the time required for appeals and reviews.

[53] According to the Magistrates Commission there is no particular criteria used to determine the number of magisterial posts. However, in a study conducted in 2010 the average court time recorded by magistrates during the preceding two years was used to determine the number of courts required for places of sitting of the lower court. In turn the average court time per year was divided by 1 134 hours (4 hours 33 minutes per day) per court to determine the total number of judicial posts.

### **Judges President**

[54] Judges President are a major stakeholder in the justice sector and in particular their submissions are relevant to the mandate of this Committee. During December 2023 the Committee issued a questionnaire to the Judges President of the nine Divisions of the High Court seeking relevant information on what the status quo is in the Divisions. Their submissions have been received, considered at great length and found to be helpful. What appears below is an analysis of common themes drawn from the submissions.

[55] Although the submissions received were inconsistent in some respects, they do depict an inadequacy of judicial resources in some Divisions. The number of permanent judges in all nine Divisions has not changed for the past three years despite population growth, increased caseloads and backlogs. For the past three years, the data reveals that all Divisions have experienced huge increases in caseloads. The comparable increase is evident on case backlogs.

[56] Divisions with higher caseloads appear to have a higher number of judges compared to those with lower caseloads. For instance, the Gauteng Division with relatively higher caseloads has more permanent judicial posts than the Northern Cape Division which has relatively lower caseloads. However, even with such higher judicial posts, all nine Divisions have resorted to regularise the appointment of acting judges.

[57] Data reveals that in the past three years all Divisions have appointed many acting judges. In some Divisions over 20 acting judges were appointed and in others over 40 acting judges were appointed. There is, however, no uniform criteria for the appointment of acting judges. It appears acting judges are appointed for varied reasons including existing vacancies, reduction of backlogs and workload, and permanent judges on other duty or long leave. The highest number of appointments of acting judges is indicative of the inadequacy of judicial resources.

[58] Some Judges President state that for the past three years caseloads and backlogs of each Division have increased exponentially and that this calls for the appointment of more permanent judges.

[59] While there is a general consensus among the Judges President that the existence and use of circuit courts reduce caseloads in the Divisions, some Divisions submit that circuit courts at times increase caseloads as judges have

to leave the main or local seat to attend circuit court, thereby increasing the workload and delaying finalisation of matters.

[60] Data received also reports that there is an inconsistent appointment of judges' additional support staff in the Divisions. In some Divisions, it is indicated that only one additional support staff is required to support one new judicial post. In other Divisions, three, four and even nine additional support staff are required to support one judicial post.

[61] There is no uniformity or consistency in the internal systems of Divisions. For instance, the Divisions appoint numerically different additional support staff; categorise cases differently; and track and collect data in varied manners. Some Divisions track and compile data manually by court rolls and statistical reports, some use actual file verification, chronological registers, while others simply do not track categories of cases nor capture data at all. To date, none of the Divisions have an electronic case management system.

[62] It is evident that there is an inadequacy of resources across the Divisions. Judges President speak with one voice on the inadequacy of judicial resources.

### **National Prosecuting Authority**

[63] We sent the questionnaire to the National Prosecuting Authority and invited their feedback. We did not receive a response.

### **Legal Aid South Africa**

[64] We sent the questionnaire to the Legal Aid South Africa and invited their feedback. We did not receive a response.

## **Office of the Chief Justice**

[65] The Office of the Chief Justice has also made submissions to the Committee in response to the questionnaires issued by the Committee. The Office of the Chief Justice was required to provide, amongst others, statistics on the caseloads and workloads of each Division of the High Court as well as caseloads and workloads of each magisterial district, sub-district and places of sitting of the Magistrates' Courts.

[66] In its response the Office of the Chief Justice states that there are relatively fewer judges compared to the workload and the general population, and that this affects the speedy finalisation of matters and in some instances, the mental health of judges.. To this end the Office of the Chief Justice provided us with statistical data on each Division of the High Court, for which the Committee is thankful.

[67] The statistical data of each Division of the High Court provided by the Office of the Chief Justice has much in common with that provided to the Committee by the Judges President. In actual fact, the submissions of the Judges President appear to be those provided to the Office of the Chief Justice by the Judges President. The Committee has already discussed the submissions of the Judges President above.<sup>19</sup>

[68] The Office of the Chief Justice was unable to provide the caseloads and workloads of each magisterial district, sub-district and places of sitting of the Magistrates' Courts and suggested that the Department would be best placed to provide this information. This is particularly so because it is the Department that provides support to the Magistrates' Courts.

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<sup>19</sup> See submissions by the Judges President at paragraphs 54 to 63.

## RESPONSES FOLLOWING THE PUBLIC PARTICIPATION PROCESS

[69] We produced an interim second phase report and invited additional responses from stakeholders. We took the additional responses<sup>20</sup> into account in our final report. The thrust of the responses were the following:

- a. There was an overwhelming need urgently to appoint more permanent judges. The existing backlogs across all Divisions demand that the number of permanent judges be increased with haste.
- b. The Judicial Service Commission should not play an oversight role in the appointment of acting judges. The involvement of the Judicial Service Commission is likely to slow down the appointment of acting judges. The delays that may flow, will not suit the urgency with which acting appointments are often made. The Minister for Justice has consulted the judiciary and draft guidelines have been developed to deal with the appointment of acting judges. This process should run its natural course. Once the finalised guidelines are adopted, the appointment of acting judges will be better regulated. There is no need to change the current situation.
- c. There was no support for the recess periods to be reviewed and possibly abolished. Judges' President emphasised that during recess, judges prepare for work in the next court term, write judgments and

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<sup>20</sup> Copies of the additional responses are available at [www.justice.gov.za](http://www.justice.gov.za).

finalise part-heard matters. No functional advantage would be gained by abolishing recess. It may happen that if recess is abolished or reduced, this will impact negatively on the delivery of judgments.

- d. There was no need for judges to record their hours. Judges are already overburdened and cannot carry additional administrative duties. Timesheets reflecting judges' hours will show what is already known: judges are already overburdened with case work and more permanent judges need to be appointed.
- e. There was no need for judges to record their hours because the hours of their actual sittings are recorded.

[70] Having considered the additional responses, our reasoning and final recommendations follow.

## **THE ASSESSMENT OF THE PRESCRIBED CRITERIA**

[71] In this section, we outline the number of magisterial districts currently falling within the area of jurisdiction of each Division. We consider the changes recommended in respect of each Division's area of jurisdiction in our first report and discuss the likely impact that this may have on the workload of the courts within the Division and on the allocation of judicial resources within the Division.

[72] We turn next to consider the numerical strength of each Division. We discuss the number of posts currently on the establishment for each Division as well as any increases in the number of posts that have occurred over time. The number of posts is based on the most recent information, which was collated in February 2024.

[73] Thereafter we consider three critical factors that have a considerable impact on the workload of each Division: These are the number of cases handled by the Division; the population served by the Division; and the level of economic activity in the area served by the Division.

[74] We draw the information for this analysis from various studies:

- a. The information on caseloads is based on information contained in the Annual Judiciary Reports, produced and published by the South African Judiciary.<sup>21</sup>
- b. The population statistics are drawn from the national censuses conducted by Statistics South Africa in 1996, 2001, 2011 and 2022.
- c. We utilised each province's Gross Domestic Product ("GDP") as a measure of the level of economic activity within the province. We consider that GDP provides a comprehensive measure of the total value of goods and services produced within the province's borders, capturing overall economic activity. The information on provincial GDP is contained in a report prepared and published by Statistics South Africa in 2023.<sup>22</sup>

[75] We analyse these three key criteria in determining whether there are an adequate and equitable number of judicial posts on the establishment for each Division. This is in line with the criteria identified in the Terms of Reference and in the Regulations on the Criteria for the Determination of the Judicial Establishment. We engage in a comparative analysis and draw conclusions therefrom.

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<sup>21</sup> The Annual Judiciary Reports are available at: <https://www.judiciary.org.za/index.php/documents/judiciary-annual-reports>

<sup>22</sup> The report is available at [https://www.statssa.gov.za/?page\\_id=1854&PPN=D0441.1&SCH=73625](https://www.statssa.gov.za/?page_id=1854&PPN=D0441.1&SCH=73625).

[76] Thereafter, we consider the costing, knock-on effects and affordability generally in relation to all Divisions. We are unable, at this stage, to consider the full implications of the costing, knock-on effects and affordability as it applies to each Division. The Department may consider undertaking this exercise at a later stage, with input from experts who are better placed to evaluate the recommendations we make and to prepare the costing models for each Division.

### ***Overview of each Province***

#### ***Eastern Cape Division of the High Court***

[77] The Eastern Cape Division of the High Court has its main seat at Makhanda and three local seats at Bhisho, Mthatha and Gqeberha.

[78] There are currently 8 magisterial districts in the Eastern Cape.<sup>23</sup> The current areas of jurisdiction of each seat of the Eastern Cape Division are set out in the Committee's first Report.

[79] The Committee recommended significant changes to the area of jurisdiction of the seats of the Eastern Cape Division. The Committee further recommended that the main seat of the Division be moved to Bhisho.

[80] The Committee's recommendation, if implemented, will require a re-allocation of judicial resources amongst the four seats of the Eastern Cape Division.

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<sup>23</sup> 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: [Maps of Magisterial Districts](#).

[81] The Eastern Cape Division of the High Court currently has 31 posts on the establishment, comprising of:

- a. The Judge President and 10 posts at the Makhanda main seat;
- b. A Deputy Judge President and seven posts at the Gqeberha local seat;
- c. Four posts at the Bhisho local seat; and
- d. A Deputy Judge President and seven posts at the Mthatha local seat.

[82] The number of posts on the establishment for the Eastern Cape increased from 30 to 31 in 2010.

[83] The Eastern Cape province has an estimated population of 7 230 204, which amounts to 12% of the total population of the country.

[84] The province contributed 7.6% to the national GDP in 2022. Its economy is dominated by personal services (27%), followed by finance (18%) and trade (17%).

[85] The table below shows the caseload of the Division over a four year period.

	2022/2023	2021/2022	2020/2021	2019/2020
<b>Criminal</b>	816	924	838	1 123
<b>Civil</b>	8 889	10 477	8 393	11 103
<b>Total</b>	9 705	11 401	9 231	12 226

### ***Free State Division of the High Court***

[86] The Free State Division of the High Court has its seat at Bloemfontein. There are currently 5 magisterial districts within the Free State Province, all of which fall within the area of jurisdiction of the main seat, as set out in the first Report.

[87] The Committee recommended the establishment of a local seat at Welkom.

[88] The Committee's recommendation, if implemented, will require that some of the posts allocated to the main seat at Bloemfontein be re-allocated to the new local seat at Welkom.

[89] The Free State Division of the High Court currently has 16 posts on the establishment, comprising of the Judge President, the Deputy Judge President and 14 posts.

[90] There has been no change in the number of posts on the establishment for the Free State since 2009.

[91] The Free State province has an estimated population of 2 964 412, which amounts to 4% of the total population of the country.

[92] The province contributed 4,9% to the national GDP in 2022 and is the second smallest provincial economy in the country. Its economy is dominated by finance (19%), personal services (18%) and trade (13%).

[93] The table below shows the caseload of the Division over a four year period.

	<b>2022/2023</b>	<b>2021/2022</b>	<b>2020/2021</b>	<b>2019/2020</b>
<b>Criminal</b>	1 018	1 000	406	673
<b>Civil</b>	6 529	4 980	3 493	3 965
<b>Total</b>	7547	5 980	3 899	4 638

### *Gauteng Division of the High Court*

[94] The Gauteng Division of the High Court has its main seat at Pretoria and a local seat at Johannesburg.

[95] There are currently 17 magisterial districts within Gauteng province.<sup>24</sup> The main seat and the local seat currently have concurrent jurisdiction over magisterial districts in Gauteng, as set out in the first Report.

[96] The Committee recommended the establishment of an additional local seat at Palm Ridge. The Committee further recommended that the area of jurisdiction of the Johannesburg local seat be delimited so that it will no longer have concurrent jurisdiction with the main seat.

[97] The Committee's recommendations, if implemented, will require a re-allocation of judicial resources in the Gauteng Division, as the workload of the Johannesburg local seat should decrease, and posts will need to be allocated to the new local seat at Palm Ridge.

[98] The Gauteng Division of the High Court currently has 86 posts on the establishment, comprising of:

- a. The Judge President, a Deputy Judge President and 44 posts at the Pretoria main seat; and
- b. A Deputy Judge President and 39 posts at the Johannesburg local seat.

[99] There has been no change in the number of posts on the establishment for the Gauteng Division since 2009.

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<sup>24</sup> 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.

[100] Gauteng has the largest population of all the provinces with 15 099 422 people living in Gauteng. This is 26% of people in South Africa.

[101] Gauteng is the largest provincial economy in South Africa and contributed 33,1% to the national GDP in 2022. It has significant representation of nearly all economic activity, but finance (31%), manufacturing (17%) and trade (13%) are the largest industries in the Gauteng economy.

[102] The table below shows the caseload of the Division over a four year period.

	<b>2022/2023</b>	<b>2021/2022</b>	<b>2020/2021</b>	<b>2019/2020</b>
<b>Criminal</b>	1 620	1 031	1 063	1 744
<b>Civil</b>	47 048	55 578	36 057	70 043
<b>Total</b>	4 8668	56 609	37 120	71 787

### ***KwaZulu Natal Division of the High Court***

[103] The KwaZulu Natal Division of the High Court has its main seat at Pietermaritzburg and a local seat at Durban.

[104] There are currently 10 magisterial districts within the Kwa-Zulu Natal province.<sup>25</sup> The current areas of jurisdiction of each seat of the Division are set out in the Committee's first Report.

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<sup>25</sup> The magisterial districts are Amajuba, Harry Gwala, iLembe, King Cetshwayo, Ugu, uMgungundlovu, Umkhanyakude, uMzinyathi, Uthukela and Zululand.

[105] The Committee recommended the establishment of a new local seat at Richards Bay, and the removal of Matatiele from the area of jurisdiction of the Kwa-Zulu Natal Division.

[106] The Committee's recommendations, if implemented, will require a re-allocation of judicial resources in the Kwa-Zulu Natal Division, as posts will need to be allocated to the new local seat.

[107] The Kwa-Zulu Natal Division of the High Court has 30 posts on the establishment, comprising of:

- a. The Judge President, the Deputy Judge President and 13 posts at the Pietermaritzburg main seat; and
- b. 15 posts at the Durban local seat.

[108] The number of posts on the establishment for Kwa-Zulu Natal increased from 27 to 30 in 2013.

[109] KwaZulu-Natal is the second highly populated province after Gauteng with an estimated population of 12 423 907 people, 19% of the country's total population.

[110] KwaZulu-Natal is the second biggest contributor to the country's GDP. It contributed 15,9% to the national GDP in 2022. The province is fairly represented in varied industries such as personal services (21%), finance (19%) and manufacturing (16%).

[111] The table below shows the caseload of the Division over a four year period.

	<b>2022/2023</b>	<b>2021/2022</b>	<b>2020/2021</b>	<b>2019/2020</b>
<b>Criminal</b>	1 735	1 178	1 306	838
<b>Civil</b>	11 914	12 215	10 689	12 208

<b>Total</b>	13 649	13 393	11 995	13 046
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***Limpopo Division of the High Court***

[112] The Limpopo Division of the High Court has its main seat at Polokwane and two local seats at Thohoyandou and Lephalale.

[113] There are currently 22 magisterial districts within the Limpopo province.<sup>26</sup> The current area of jurisdiction of each seat is set out in the Committee's first Report.

[114] The Committee recommended the disestablishment of the local seat at Lephalale.

[115] The Committee's recommendation will not require any re-allocation of judicial posts within the Division, as no posts are allocated to the local seat at Lephalale.

[116] The Limpopo Division of the High Court has nine posts on the establishment, comprising of:

- a. The Judge President, the Deputy Judge President and four posts at the Polokwane main seat; and
- b. Three posts at the Thohoyandou local seat.

[117] The number of posts on the establishment for Limpopo increased substantially in 2016 from 2 to 9. Although there was a court in the Limpopo province with jurisdiction over the former homeland, much of the area of the Limpopo province continued to fall within the area of jurisdiction of the

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<sup>26</sup> 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.

Gauteng High Court until the Minister determined the area of jurisdiction of the Limpopo Division in 2016. This led to an increase in the number of posts on the establishment for the Limpopo Division in 2016.

[118] Limpopo has a population of 6 572 721 people, which means that 11% of people in South Africa live in Limpopo.

[119] Limpopo is among the smaller economies in South Africa. In 2022, Limpopo contributed 7,7% to the national GDP. The main drivers of the economy are mining (25%), personal services (24%) and finance (14%).

[120] The table below shows the caseload of the Division over a four year period.

	<b>2022/2023</b>	<b>2021/2022</b>	<b>2020/2021</b>	<b>2019/2020</b>
<b>Criminal</b>	1 484	984	1 105	652
<b>Civil</b>	9 731	9 250	7 595	8 070
<b>Total</b>	11 215	10 234	8 700	8 722

### ***Mpumalanga Division of the High Court***

[121] The Mpumalanga Division of the High Court has its main seat at Mbombela and a local seat at Middelburg.

[122] There are currently 18 magisterial districts within the Mpumalanga province.<sup>27</sup> The current area of jurisdiction of each seat is set out in the Committee's first Report.

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<sup>27</sup> 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.

[123] The Committee recommended that the *status quo* with respect to the Mpumalanga Division be maintained. The Committee's recommendation does not require any re-allocation of resources within the Division.

[124] The Mpumalanga Division of the High Court currently has nine posts on the establishment, comprising of:

- a. The Judge President, the Deputy Judge President and four posts at the Nelspruit main seat; and
- b. Three posts at the Middleburg local seat.

[125] There were no posts on the establishment for Mpumalanga until 2019 because there was no court in Mpumalanga prior to the establishment of the Mpumalanga Division of the High Court. The entire area of the Mpumalanga province continued to fall within the area of jurisdiction of the Gauteng Division until the determination of the areas of jurisdiction of the Mpumalanga Division by the Minister in 2019.<sup>28</sup> This led to the creation of posts on the establishment for the Mpumalanga Division in 2019.

[126] Mpumalanga has a population of 5 143 324 people, which means that 9% of people in South Africa live in Mpumalanga.

[127] Mpumalanga is among the smaller economies in South Africa. In 2022, it contributed 8% to the national GDP. Mining (23%) is the largest industry in Mpumalanga, followed by personal services (16%) and finance (15%).

[128] The table below shows the caseload of the Division over a four year period.

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<sup>28</sup> GN615 published in GG 42420 dated 26 April 2019.

	<b>2022/2023</b>	<b>2021/2022</b>	<b>2020/2021</b>	<b>2019/2020</b>
<b>Criminal</b>	340	335	338	404
<b>Civil</b>	3 344	4 993	2 568	4 659
<b>Total</b>	3 684	5 328	2 906	5 063

***Northern Cape Division of the High Court***

[129] The Northern Cape Division of the High Court has its main seat at Kimberley.

[130] There are currently five magisterial districts in the Northern Cape province,<sup>29</sup> all of which fall within the area of jurisdiction of the main seat, as set out in the first Report.

[131] The Committee recommended the establishment of a new local seat at Upington. The Committee’s recommendation, if implemented, will require a re-allocation of judicial resources within the Division, as posts will need to be allocated to the new local seat.

[132] The Northern Cape Division of the High Court currently has seven posts on the establishment comprising of the Judge President, the Deputy Judge President and five posts.

[133] The number of posts on the establishment for the Northern Cape increased from six to seven in 2020.

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<sup>29</sup> The magisterial districts are: Francis Baard, John Taolo Gaetsewe, Namaqualand, Pixley ka Seme and ZF Magcawu.

[134] The Northern Cape province has an estimated population of 1 355 945, which amounts to 2% of South Africa's total population.

[135] It has the smallest provincial economy in the country. It contributed 2,2% to the national GDP in 2022. The province's economy is dominated by mining (22%), followed by personal services (17%), and finance (14%).

[136] The table below shows the caseload of the Division over a four year period.

	2022/2023	2021/2022	2020/2021	2019/2020
<b>Criminal</b>	159	228	241	168
<b>Civil</b>	2 395	2 043	1 624	1 642
<b>Total</b>	2 554	2 271	1 865	1 810

#### ***North West Division of the High Court***

[137] The North West Division of the High Court has its main and only seat in Mahikeng.

[138] There are currently 18 magisterial districts in the North West.<sup>30</sup> The Division exercises jurisdiction over the entire province except the Madibeng magisterial district, which is served by the Gauteng Division.<sup>31</sup>

[139] The Committee recommended the establishment of a new local seat at Rustenburg.

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<sup>30</sup> 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.

<sup>31</sup> 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.

[140] The Committee’s recommendations, if implemented, will require a re-allocation of judicial resources in the North West Division, as posts will need to be allocated to the new local seat.

[141] The North West Division of the High Court currently has seven posts on the establishment comprising of the Judge President, the Deputy Judge President and five posts.

[142] The number of posts on the establishment for the North West increased from six to seven in 2019.

[143] The North West province is occupied by approximately 6% of the country’s population, 3 804 548 people.

[144] The North West contributed 6,6% to the national GDP in 2022. Although personal services (17%) and finance (16%) 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 nearly a third of revenue for the provincial economy (30%).

[145] The table below shows the caseload of the Division over a four year period.

	<b>2022/2023</b>	<b>2021/2022</b>	<b>2020/2021</b>	<b>2019/2020</b>
<b>Criminal</b>	99	152	131	88
<b>Civil</b>	5 544	4 223	2 474	3 064
<b>Total</b>	5 643	4 375	2 605	3 152

### ***Western Cape Division of the High Court***

[146] The Western Cape Division has only the main seat in Cape Town.

[147] The rationalisation of magisterial districts in the Western Cape established one metropolitan municipality and five magisterial districts.<sup>32</sup> The Western Cape Division has jurisdiction over the entire Western Cape province except certain areas specifically excised from the Western Cape province.

[148] The Western Cape Division of the High Court currently has 33 posts on the establishment, comprising of the Judge President, the Deputy Judge President and 31 posts.

[149] The number of posts on the establishment for the Western Cape has not changed since 2009.

[150] The population of the Western Cape is about 7 433 020 people, 12% of the total population of South Africa. The Western Cape is the third largest provincial economy in the country. It contributed 13,9% to the national GDP in 2022.

[151] The biggest contributors to the economy of the Western Cape include finance (30%), manufacturing (16%) and trade (15%).

[152] The table below shows the caseload of the Division over a four year period.

	<b>2022/2023</b>	<b>2021/2022</b>	<b>2020/2021</b>	<b>2019/2020</b>
<b>Criminal</b>	4 494	5 266	5 985	5 650
<b>Civil</b>	14 993	14 816	10 187	16 006
<b>Total</b>	19 487	20 082	16 172	21 656

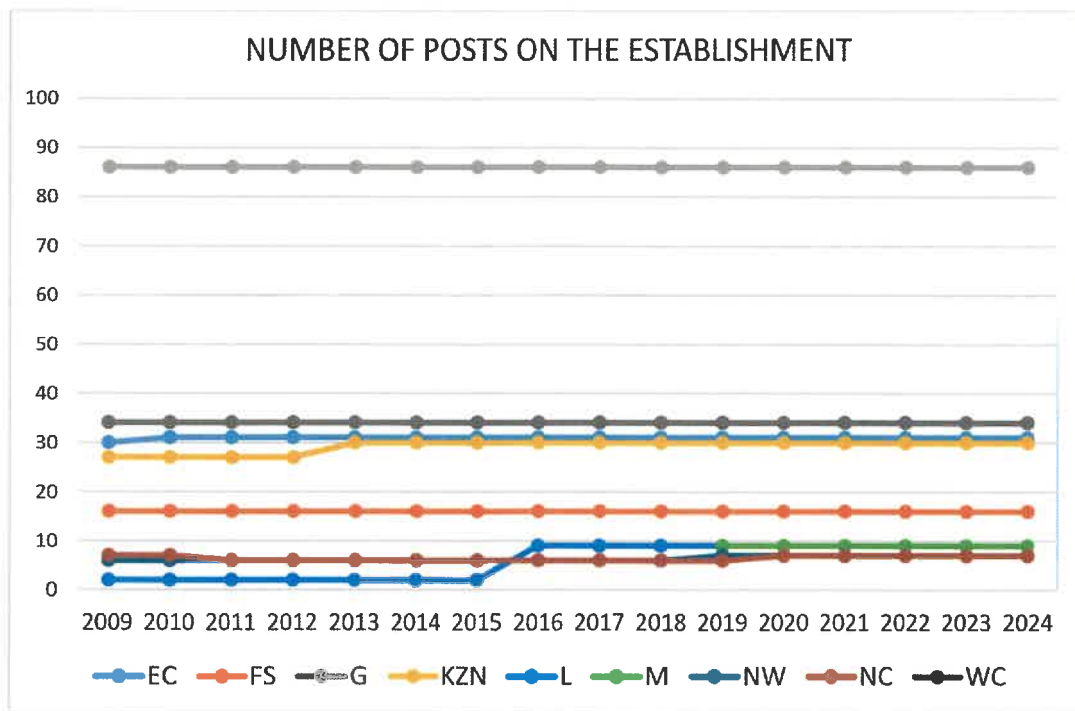
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<sup>32</sup> The metropolitan municipality is the City of Cape Town and the magisterial districts are Cape Winelands, Central Karoo, Overberg, West Coast and Garden Route.

## ANALYSIS

### *Increases in posts over time*

[153] The Department only provided information on the number of judicial posts going back to 2009. It is unclear what changes there have been in the number of judicial posts between 1994 and 2009. The increase in the number of judicial posts on the establishment since 2009 is shown in the graph below.



[154] As is apparent from the graph, most Divisions have retained the same number of judicial posts for the entire period under consideration. In the instances where there have been increases in the number of posts, these have been marginal.

[155] The limited increases in the number of judicial posts stands to be considered as against the significant increase in the number of cases handled by the Divisions, the populations served by the Divisions and the levels of economic activity within the areas served by the Divisions.

## *Caseloads*

### **Overview**

[156] In this section, we analyse the caseloads of each Division of the High Court over a period of four years.

[157] It must be mentioned upfront that the Annual Judiciary Reports only contain information on the caseloads of each of the Division of the High Court for the years 2019/2020; 2020/2021; 2021/2022 and 2022/2023. This is an insufficient period from which to draw conclusions on caseload trends across Divisions over time or to predict future caseload trends.

[158] It must further be mentioned that the period for which caseload information is provided in the Annual Judiciary Reports may be characterised as a-typical in that it overlaps with the period during which the Covid-19 pandemic and lockdowns occurred. This explains the significant decrease in the total number of cases in 2020/2021. This too, to an extent, diminishes the ability of the Committee to draw conclusions from the information.

[159] Furthermore, the Annual Judiciary Reports contain no information on the categorisations of cases (other than as civil or criminal), the nature of cases (that is whether trial or motion proceedings), the length of time each case requires or the complexity of the case. Without this critical information, caseload is a poor indicator of the amount of work that judges are required to do.

[160] The Committee sought this kind of detailed information regarding caseloads from each Division of the High Court. However, such information is largely not recorded or, where information is recorded, the type of

information recorded is not consistent across Divisions precluding comparisons from being drawn.

### **Analysis**

[161] The table below shows the total number of cases (criminal and civil) heard by each Division per annum and the ratio of cases per judicial post over a period of four years.

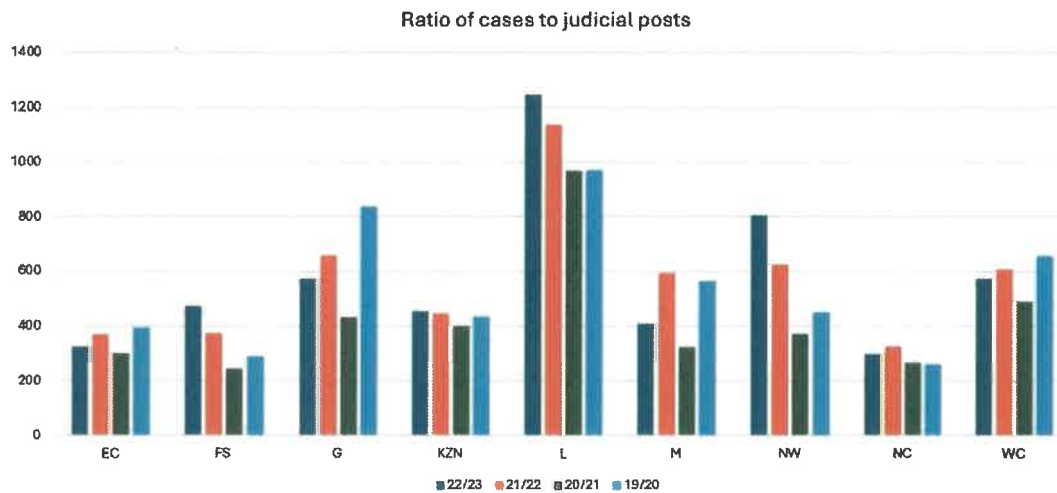
[162] As can be seen from the table, the Gauteng Division consistently has the highest caseload, followed by the Western Cape and Kwa-Zulu Natal. The Northern Cape, the North West and Mpumalanga consistently have the lowest caseloads.

[163] The ratio of cases to judicial posts has been calculated by dividing the total number of cases per annum (civil and criminal) by the number of judicial posts on the establishment for each Division.

[164] The ratios represent the approximate number of cases per judicial post in each Division and provide an indication of the caseload distribution among judges. This does not take into account the number of acting judges appointed to the Division.

	Eastern Cape	Free State	Gauteng	KwaZulu-Natal	Limpopo	Mpumalanga	North West	Northern Cape	Western Cape
Number of judicial posts	30	16	85	30	9	9	7	7	34
<b>2022/2023</b>									
Criminal	816	1 018	1 620	1 735	1 484	340	99	159	4 494
Civil	8 889	6 529	47 048	11 914	9 731	3 344	5 544	1 916	14 993
<b>Total</b>	<b>9 705</b>	<b>7 547</b>	<b>48 668</b>	<b>13 649</b>	<b>11 215</b>	<b>3 684</b>	<b>5 643</b>	<b>2 075</b>	<b>19 487</b>
Ratio of cases	324	472	573	455	1 246	409	806	296	573
<b>2021/2022</b>									
Criminal	924	1 000	1 031	1 178	984	335	152	228	5 266
Civil	10 477	4 980	55 578	12 215	9 250	4 993	4 223	2 043	14 816
<b>Total</b>	<b>11 401</b>	<b>5 980</b>	<b>56 609</b>	<b>13 393</b>	<b>10 234</b>	<b>5 328</b>	<b>4 375</b>	<b>2 271</b>	<b>20 082</b>
Ratio of cases	380	373	666	446	1 137	592	625	324	591
<b>2020/2021</b>									
Criminal	838	406	1 063	1 306	1 105	338	131	241	5 985
Civil	8 393	3 493	36 057	10 689	7 595	2 568	2 474	1 624	10 187
<b>Total</b>	<b>9 231</b>	<b>3 899</b>	<b>37 120</b>	<b>11 995</b>	<b>8 700</b>	<b>2 906</b>	<b>2 605</b>	<b>1 865</b>	<b>16 172</b>
Ratio of cases	308	244	437	400	967	323	372	266	476
<b>2019/2020</b>									
Criminal	1 123	673	1 744	838	652	404	88	168	5 650
Civil	11 103	3 965	70 043	12 208	8 070	4 659	3 064	1 642	16 006
<b>Total</b>	<b>12 226</b>	<b>4 638</b>	<b>71 787</b>	<b>13 046</b>	<b>8 722</b>	<b>5 063</b>	<b>3 152</b>	<b>1 810</b>	<b>21 656</b>
Ratio of cases	408	290	845	435	969	563	450	259	637

[165] The bar graph below shows the ratio of cases to posts for each Division per annum for a period of four years.

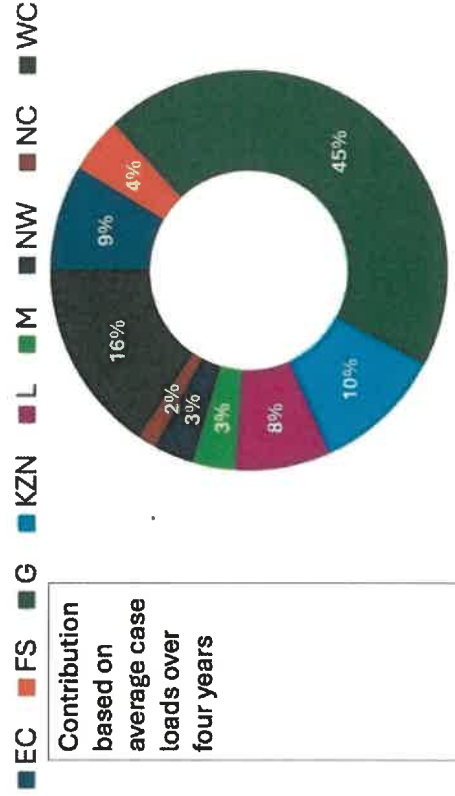
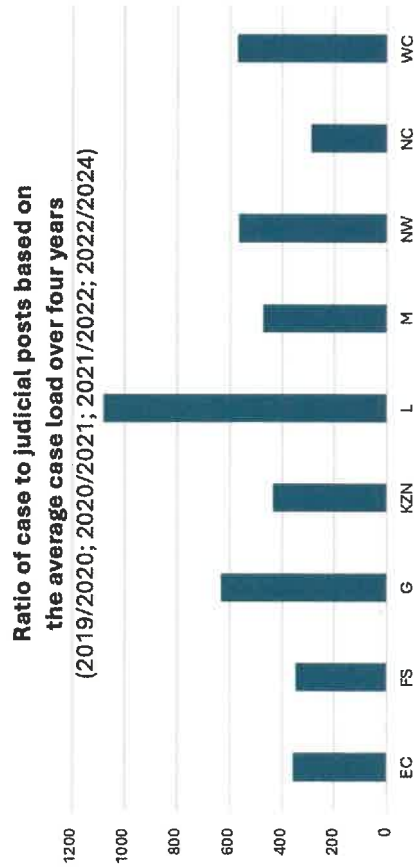


[166] The table on the next page shows the average caseload of each Division over a four year period as well as the ratio of cases to judicial posts in each Division based on each Division’s average caseload.

[167] The pie chart shows the contribution of each Division to the total national caseload based on each Division’s average caseload over four years.

[168] The bar graph shows the ratio of cases to judicial posts in each Division based on the Division’s average caseload over four years.

	Eastern Cape	Free State	Gauteng	KwaZulu-Natal	Limpopo	Mpumalanga	North West	Northern Cape	Western Cape
Number of judicial posts	30	16	85	30	9	9	7	7	34
<b>Average case load over four years (2019/2020; 2020/2021; 2021/2022; 2022/2023)</b>									
Crim + civil	10,641	5,516	53,546	13,021	9,718	4,245	3,944	2,005	19,349
Ratio of cases per judicial post	355	345	630	434	1,079	472	563	287	569



[169] As can be seen from the above, the Gauteng Division has the highest caseload both on average as well as consistently over the four-year period under consideration. The Gauteng Division contributes on average 45% of cases nationally. The Western Cape Division has the next highest caseload, contributing on average 16% of cases nationally. The Kwa-Zulu Natal, Eastern Cape and Limpopo Divisions also have significant caseloads.

[170] The Northern Cape, North West, Mpumalanga and Free State Divisions have the lowest caseloads on average. On average, they contribute respectively only 2%, 3%, 3% and 4% of cases nationally.

[171] The Limpopo Division has the highest ratio of cases to judicial posts both on average and consistently over the four-year period under consideration. This indicates that each judicial post in Limpopo is responsible for handling a very large number of cases relative to judicial posts in other Divisions. This suggests a significant workload for judges in the Division, which may pose challenges in effectively managing and adjudicating cases

[172] The Gauteng and Western Cape Divisions have the second and third highest ratios of cases to judicial posts respectively, indicating a substantial workload for judges in the Division.

[173] While the North West has a lower case load, it has a relatively high ratio of cases to judicial posts as a result of the low number of posts. This suggests significant workload pressures and potential challenges in ensuring timely and effective justice delivery.

[174] The Mpumalanga, KwaZulu-Natal and Eastern Cape Divisions have lower ratios of cases to judicial posts compared to other provinces, indicating lesser workloads.

[175] The Free State and Northern Cape Divisions have the lowest ratios among the provinces, indicating comparatively lighter workloads.

## ***Population***

[176] We consider the population of each province because the areas of jurisdiction of each Division of the High Court to a large extent overlap with the boundaries of the province in which the Division is located. While many provinces have experienced significant increases in population, the number of judicial posts to serve that population in most cases has not changed at all or has changed very little over the same time period.

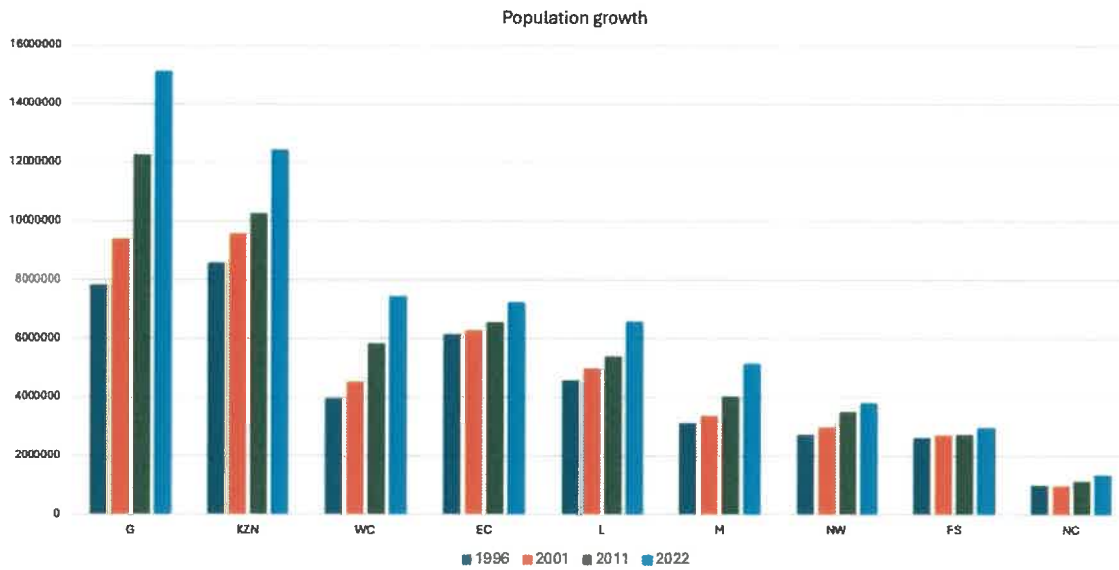
[177] The table on the next page shows the population of each province in 1996, 2001, 2011 and 2022. It shows the growth rate of each province between censuses as well as the growth rate between 1996 and 2022 and the increase in population of each province between 1996 to 2022.

[178] The table shows that Gauteng has had the largest population growth – nearly doubling its population since 1996. The Western Cape has also experienced a very significant population growth – overtaking the Eastern Cape to become the third most populous province.

[179] Kwa-Zulu Natal, Mpumalanga and Limpopo have had moderate population growth, while the Eastern Cape has had relatively slow population growth.

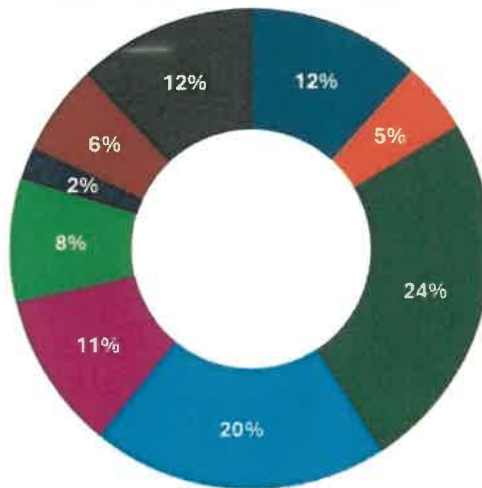
[180] The Free State and the Northern Cape have had the least population growth, considering the overall increase in population between 1996 and 2022, with periods of stagnation and decline.

	1996	2001	2011	2022	Population growth rate from 1996 to 2022	Population increase from 1996 to 2022
<b>Gauteng</b>	7 834 620	9 390 528 (19.88%)	12 272 263 (30.69%)	15 099 422 (23.04%)	92.98%	7 264 802
<b>KwaZulu-Natal</b>	8 572 302	9 584 129 (11.78%)	10 267 300 (7.14%)	12 423 907 (21.02%)	45.02%	3 851 605
<b>Western Cape</b>	3 956 875	4 524 335 (14.33%)	5 822 734 (28.67%)	7 433 020 (27.64%)	87.91%	3 476 145
<b>Eastern Cape</b>	6 147 244	6 278 651 (2.14%)	6 562 053 (4.51%)	7 230 204 (10.17%)	17.61%	1 082 960
<b>Limpopo</b>	4 576 133	4 995 462 (9.13%)	5 404 868 (8.20%)	6 572 721 (21.65%)	43.63%	1 996 588
<b>Mpumalanga</b>	3 124 203	3 365 957 (7.73%)	4 039 939 (20.01%)	5 143 324 (27.25%)	64.60%	2 019 121
<b>North West</b>	2 726 828	2 982 064 (9.36%)	3 509 953 (17.70%)	3 804 548 (8.41%)	39.49%	1 077 720
<b>Free State</b>	2 633 504	2 706 775 (2.78%)	2 745 590 (1.44%)	2 964 412 (7.98%)	12.56%	330 908
<b>Northern Cape</b>	1 011 864	991 876 (-1.97%)	1 145 861 (15.52%)	1 355 945 (18.32%)	34.02%	344 081



■ EC ■ FS ■ G ■ KZN ■ L ■ M ■ NC ■ NW ■ WC

**CONTRIBUTION  
TO NATIONAL  
POPULATION  
BASED ON 2022  
CENSUS RESULTS**



[181] The bar chart on the preceding page shows the increase in each province's population over time, as discussed above.

[182] The pie graph shows the contribution of each province to the total population of South Africa based on the 2022 census results.

[183] Gauteng has the largest population, contributing 24% of the national population. It is followed by Kwa-Zulu Natal, which contributes 20% of the national population. The Western Cape and Eastern Cape also have large populations, each contributing 12% of the national population.

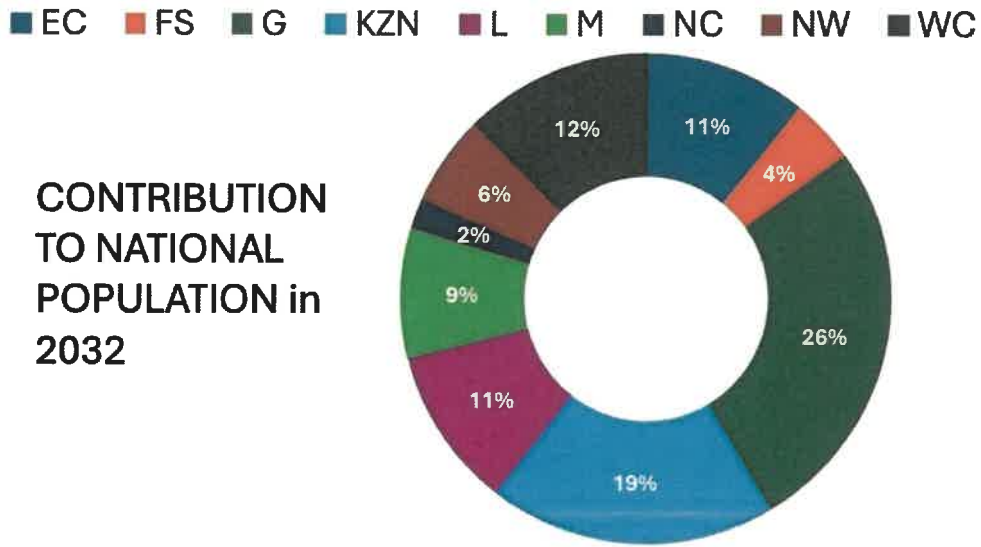
[184] The Free State and the North West have relatively much smaller populations, only contributing 5% and 6% respectively of the national population. The Northern Cape has the lowest population by far, accounting for only 2% of the national population.

[185] The table on the next page predicts the future population size of each province in 10 years' time. We have provided an estimation based on historical growth rates. To predict the population in 2032, we used the historical growth rates between 1996, 2001, 2011, and 2022, and used the average growth rate to estimate the population in 2032.

[186] However, predicting population growth accurately for each province over a decade is complex and depends on various factors such as birth rates, mortality rates, migration patterns, government policies, and socio-economic factors. These factors have not been taken into account in this analysis.

	1996	2001	2011	2022	Average growth rate	Estimated population in 2032
<b>Gauteng</b>	7 834 620	9 390 528 (19.88%)	12 272 263 (30.69%)	15 099 422 (23.04%)	24,37	18,715,620
<b>KwaZulu-Natal</b>	8 572 302	9 584 129 (11.78%)	10 267 300 (7.14%)	12 423 907 (21.02%)	9,23	13,565,174
<b>Western Cape</b>	3 956 875	4 524 335 (14.33%)	5 822 734 (28.67%)	7 433 020 (27.64%)	18,77	8,800,111
<b>Eastern Cape</b>	6 147 244	6 278 651 (2.14%)	6 562 053 (4.51%)	7 230 204 (10.17%)	5,63	7,634,951
<b>Limpopo</b>	4 576 133	4 995 462 (9.13%)	5 404 868 (8.20%)	6 572 721 (21.65%)	13,17	7,533,190
<b>Mpumalanga</b>	3 124 203	3 365 957 (7.73%)	4 039 939 (20.01%)	5 143 324 (27.25%)	18,83	6,090,126
<b>North West</b>	2 726 828	2 982 064 (9.36%)	3 509 953 (17.70%)	3 804 548 (8.41%)	12,26	4,266,541
<b>Free State</b>	2 633 504	2 706 775 (2.78%)	2 745 590 (1.44%)	2 964 412 (7.98%)	4,00	3,081,091
<b>Northern Cape</b>	1 011 864	991 876 (-1.97%)	1 145 861 (15.52%)	1 355 945 (18.32%)	11,07	1,429,020

[187] From the table, it can be seen that if the population of each province continues to grow at the rate at which they have been growing on average then Gauteng, Kwa-Zulu Natal and the Western Cape will continue to be the most populous provinces while the Northern Cape and Free State will remain the least populous.



[188] The pie graph above shows the contribution of each province to the national population based on population estimates for 2032. If Gauteng continues to grow at the rate at which it has been then it will likely account for more than a quarter of the total population of South Africa by 2032.

[189] Provinces whose population is growing at a slower rate on average, such as the Eastern Cape and Free State, will likely account for less of the national population by 2032.

### *Economic activity*

[190] The table on the next page shows the nominal GDP of each province from 2013 to 2022 in Rand millions. Nominal GDP measures the total value of all goods and services produced within a province's borders in current prices or current market values. It includes the effects of changes in prices over time, often referred to as inflation. Nominal GDP is accordingly not appropriate for assessing economic growth due to its susceptibility to inflation. Instead, it is suitable for measuring the size and the relative contribution of the provinces to the country's GDP.

[191] The hierarchy chart below shows the contribution of each province to the national GDP in 2022, while the figure on the following page shows the contribution of each province to the national GDP over time.

[192] Gauteng has consistently been far the largest contributor to national GDP, followed by KwaZulu-Natal and Western Cape. Free State and Northern Cape are consistently the smallest contributors to the national GDP.

**Table 12: Provincial GDP of South Africa (current prices, Rand millions), 2013–2022**

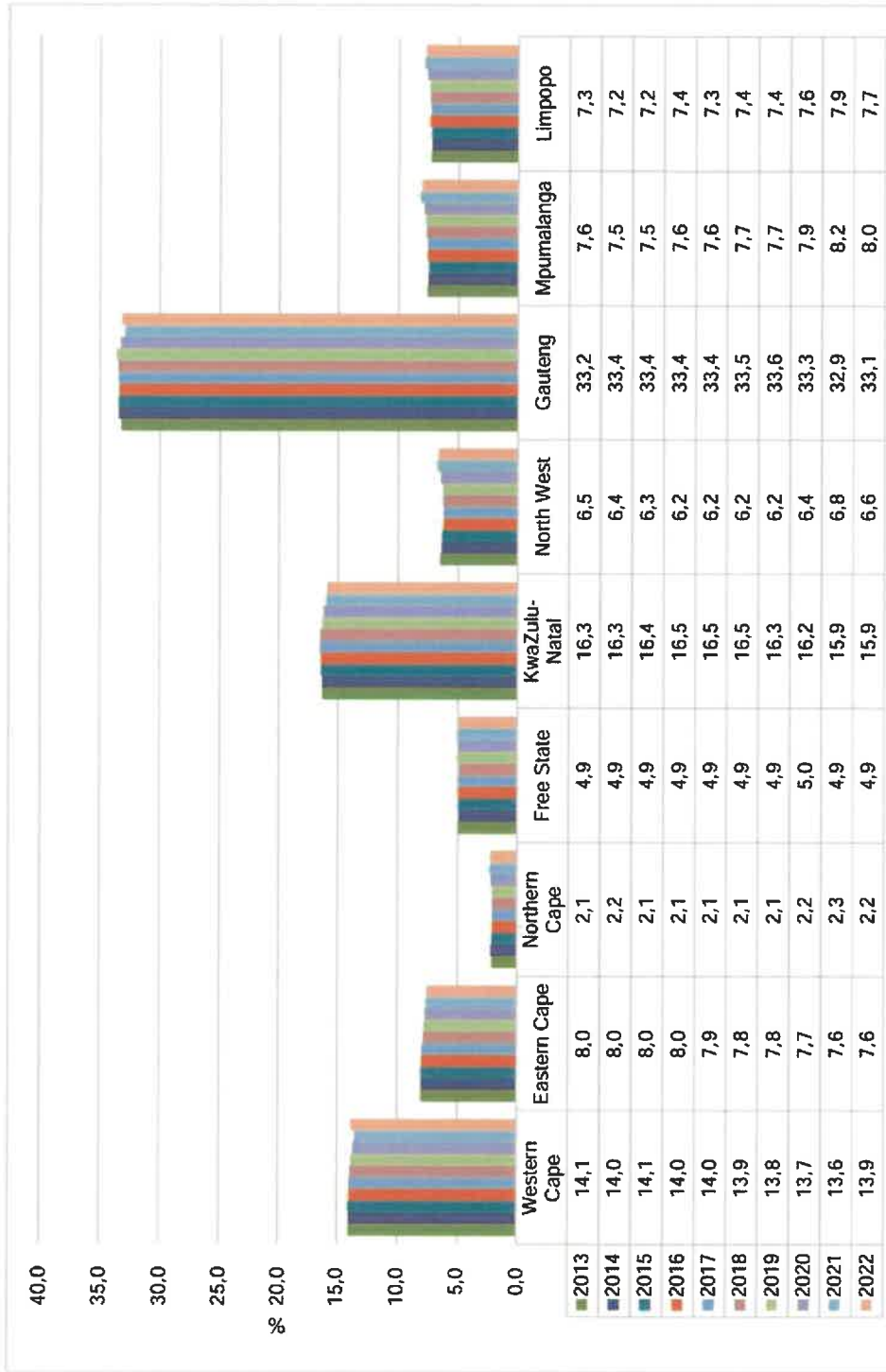
Province	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Western Cape	543 601	579 116	622 338	665 617	709 832	746 667	778 422	761 216	841 461	918 203
Eastern Cape	309 603	330 821	354 083	378 975	403 373	420 921	437 230	430 332	472 910	500 950
Northern Cape	83 095	90 391	94 941	100 891	106 442	112 942	119 347	122 894	140 678	147 939
Free State	191 277	202 114	216 772	233 650	248 945	260 673	277 104	275 778	306 439	326 929
KwaZulu-Natal	630 455	675 126	725 592	783 155	839 707	885 201	918 521	902 137	990 145	1 055 386
North West	251 399	264 011	279 379	294 703	314 571	333 465	351 229	358 806	419 106	438 878
Gauteng	1 284 362	1 382 727	1 478 351	1 590 712	1 697 395	1 795 260	1 891 292	1 854 110	2 042 194	2 197 104
Mpumalanga	293 183	310 538	329 528	359 929	386 605	411 868	433 408	437 449	507 103	531 771
Limpopo	281 656	299 031	319 808	351 922	371 320	396 194	418 654	425 251	488 749	511 391
<b>GDP at market prices</b>	<b>3 868 630</b>	<b>4 133 874</b>	<b>4 420 793</b>	<b>4 759 553</b>	<b>5 078 190</b>	<b>5 363 190</b>	<b>5 625 207</b>	<b>5 567 973</b>	<b>6 208 786</b>	<b>6 628 550</b>

Percentage contribution to South African GDP in 2022 (Total: R6,6 trillion)



Current prices Source: Provincial gross domestic product: experimental estimates, 2013–2022, Discussion document (D0441.1)

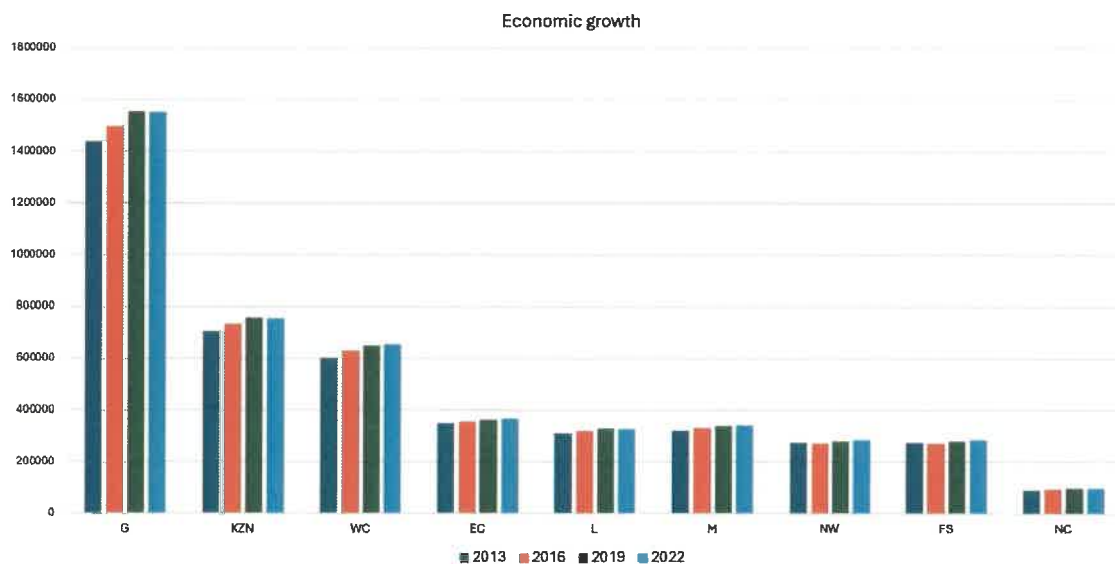
**Figure 1: Gross domestic product contribution by province (%)**



[193] The table on the next page shows the real GDP of each province from 2013 to 2022. Real GDP measures the total value of all goods and services produced within a province's borders, but it adjusts for changes in prices over time. Real GDP removes the effects of inflation, allowing for a more accurate comparison of economic output over different time periods.

[194] The table also shows the growth rate of each province's economy from year to year. While some provinces have had relatively steady growth, others had stagnated and even declined. All provincial economies shrunk in 2020 during the Covid-19 pandemic and lockdowns.

[195] The growth of each province's economy over time is depicted in the bar graph below.



# Real GDP

**Table 13: Provincial GDP of South Africa (constant prices, Rand millions and % changes), 2013–2022**

Province	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Western Cape	603 097	613 677	622 338	629 343	634 499	645 387	647 704	610 625	636 441	653 213
Eastern Cape	348 092	350 764	354 083	356 759	358 567	362 501	362 737	341 669	358 455	365 917
Northern Cape	90 905	93 122	94 941	94 644	96 469	97 628	97 422	92 420	97 419	98 093
Free State	213 389	217 362	216 772	216 682	220 013	221 566	221 439	208 455	216 418	219 724
KwaZulu-Natal	703 098	716 928	725 592	731 181	742 666	753 611	754 833	719 461	753 506	761 998
North West	274 492	268 416	279 379	272 471	276 326	279 393	278 918	264 264	282 627	284 252
Gauteng	1 437 070	1 461 034	1 478 351	1 497 236	1 512 450	1 543 405	1 552 611	1 444 802	1 506 855	1 549 527
Mpumalanga	321 770	328 094	329 528	331 621	335 919	339 897	339 420	321 392	338 054	340 142
Limpopo	310 377	313 722	319 808	320 235	324 792	328 400	328 585	307 239	323 267	326 393
<b>GDP at market prices</b>	<b>4 302 291</b>	<b>4 363 118</b>	<b>4 420 793</b>	<b>4 450 171</b>	<b>4 501 702</b>	<b>4 571 783</b>	<b>4 583 667</b>	<b>4 310 327</b>	<b>4 513 044</b>	<b>4 599 261</b>
<b>Province</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Western Cape	2,6	1,8	1,4	1,1	0,8	1,7	0,4	-5,7	4,2	2,6
Eastern Cape	1,4	0,8	0,9	0,8	0,5	1,1	0,1	-5,8	4,9	2,1
Northern Cape	2,4	2,4	2,0	-0,3	1,9	1,2	-0,2	-5,1	5,4	0,7
Free State	1,9	1,9	-0,3	0,0	1,5	0,7	-0,1	-5,9	3,8	1,5
KwaZulu-Natal	2,5	2,0	1,2	0,8	1,6	1,5	0,2	-4,7	4,7	1,1
North West	2,9	-2,2	4,1	-2,5	1,4	1,1	-0,2	-5,3	6,9	0,6
Gauteng	2,8	1,7	1,2	1,3	1,0	2,0	0,6	-6,9	4,3	2,8
Mpumalanga	2,0	2,0	0,4	0,6	1,3	1,2	-0,1	-5,3	5,2	0,6
Limpopo	2,7	1,1	1,9	0,1	1,4	1,1	0,1	-6,5	5,2	1,0
<b>GDPR at market prices</b>	<b>2,5</b>	<b>1,4</b>	<b>1,3</b>	<b>0,7</b>	<b>1,2</b>	<b>1,6</b>	<b>0,3</b>	<b>-6,0</b>	<b>4,7</b>	<b>1,9</b>

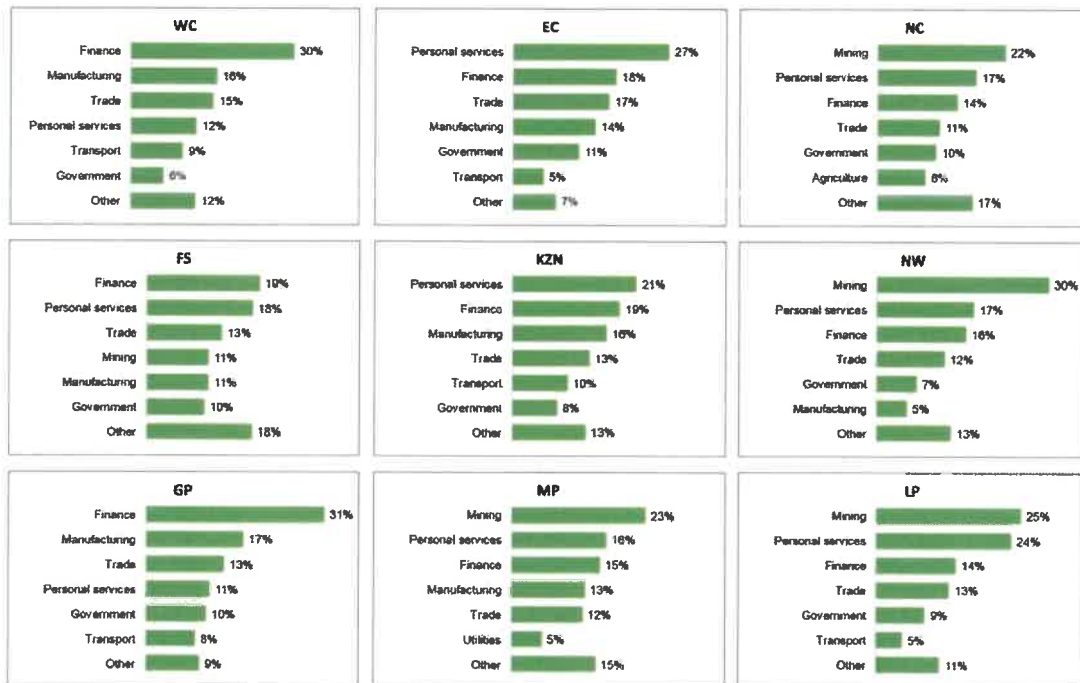
[196] The figure below shows industry composition across provinces for 2022.

[197] Finance was the largest contributor in Gauteng (31%), Western Cape (30%) and Free State (19%).

[198] Personal services was the largest contributor in Eastern Cape (27%) and KwaZulu-Natal (21%).

[199] Mining was the largest contributor in North West (30%), Limpopo (25%), Mpumalanga (23%) and Northern Cape (22%).

**Figure 13: Industry contribution to provincial value added in 2022 (%)**



### *Analysis based on caseloads, population and economic activity*

[200] A bubble chart is a visual representation of the relationship between up to four variables in a single graph. The bubble chart below represents four variables.

[201] The horizontal (X) and vertical (Y) axes represent two variables: The horizontal (X) axis represents the province's real GDP 2022 and the vertical (Y) axis represents the province's population in 2022. Each data point is plotted according to its values on these axes.

[202] The size of each bubble represents a third variable: The average caseload of Divisions from 2019 to 2023. Larger bubbles correspond to higher caseloads, while smaller bubbles represent lower caseloads.

[203] The colour of the label of the bubble represents a fourth variable: The number of posts on the establishment for the Division. Divisions with a number of posts within a similar range have the same colour.

[204] From the bubble chart it is possible to detect the following patterns and anomalies:

[205] The Gauteng Division is an outlier with the highest average caseload, population, and level of economic activity. This justifies a higher allocation of judicial resources to the Gauteng Division as compared to other Divisions.

[206] There is an anomaly in that the Eastern Cape and Limpopo Divisions have similar caseloads, population and levels of economic activity. Yet, there is a considerable difference in the number of posts for each Division, with the

Eastern Cape Division having 31 posts and the Limpopo Division only having 9 posts. There appears to be no justification for this.

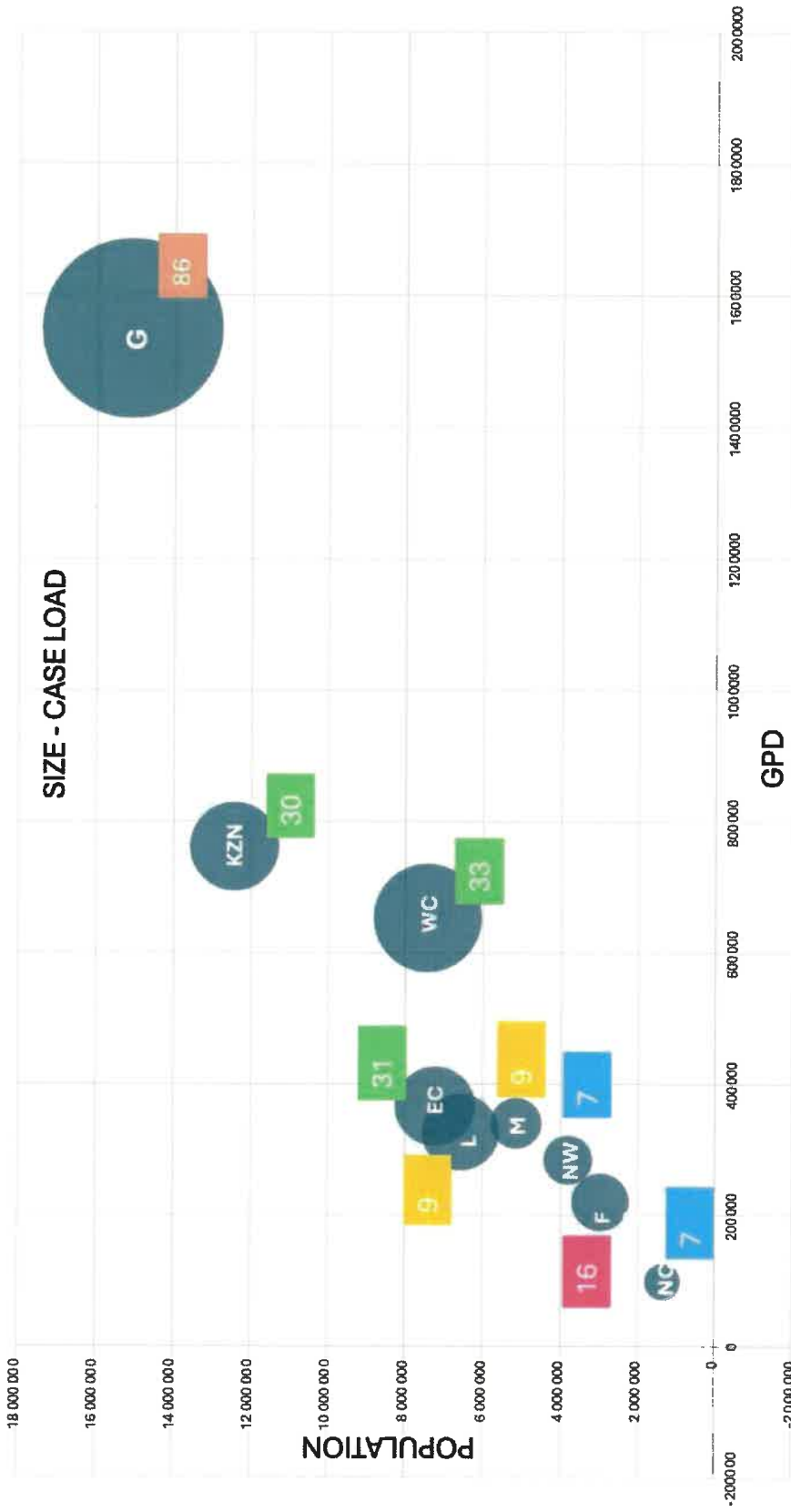
[207] Nor does there appear to be any justification for the Eastern Cape Division to have a similar number of posts to the Western Cape and Kwa-Zulu Natal Divisions, which have higher caseloads, larger population sizes and higher levels of economic activity. This anomaly may have arisen because of there being four courts established within the Eastern Cape prior to democracy as well as the low growth rate of the population of the Eastern Cape.

[208] Limpopo has a low allocation of judicial posts considering its relatively high caseloads and population size as compared to the Northern Cape, North West and Free State Divisions. This would indicate that Limpopo should receive priority in the allocation of additional judicial resources.

[209] The Free State Division has a high allocation of judicial posts relative to its caseload, population and level of economic activity. This appears to be an anomaly resulting from the historical importance of the Free State Division, which is not justified by the current circumstances.

[210] The North West Division should have a higher allocation of posts than the Northern Cape Division in light of its higher caseloads, population and level of economic activity.

[211] The Divisions in the bottom left quadrant – the Northern Cape, Free State and North West – all have relatively low caseloads, populations and levels of economic activity. This would indicate that these Divisions should not receive priority in the allocation of additional judicial resources.



*Costing and knock- on effects and affordability*

[212] The remuneration and conditions of employment of judges, including High Court judges, are regulated by the Judges Remuneration and Conditions of Employment Act<sup>33</sup> (“Judges Remuneration Act”). The annual salary of a High Court judge is determined by the President by proclamation in the Gazette.<sup>34</sup> In addition to his salary, a High Court judge whether in an acting or permanent capacity shall, in addition to his salary, receive an allowance of R 3 500 and any amounts set out in section 13 of the Judges’ Remuneration Act. The amount of a judge’s salary and the allowance payable shall be paid as a direct charge against the National Revenue Fund.<sup>35</sup>

[213] Judges who are discharged from active service continue to be paid a salary in terms of a prescribed formula.<sup>36</sup> The annual salary component in the prescribed formula is adjusted whenever the annual salary applicable to the High Court judge, is increased. A High Court judge who is discharged from active service is also entitled to a non-taxable gratuity, which is to be paid in addition to his annual salary.<sup>37</sup>

[214] When a High Court judge dies, his surviving spouse is entitled to two thirds of the salary which was payable to the judge.<sup>38</sup> The surviving spouse

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<sup>33</sup> Judges Remuneration and Conditions of Employment Act no. 47 of 2001.

<sup>34</sup> Section 2(1) of the Judges’ Remuneration Act.

<sup>35</sup> Section 2(5) of the Judges’ Remuneration Act.

<sup>36</sup> Section 5(1) of the Judges’ Remuneration Act.

<sup>37</sup> Section 6(1) of the Judges’ Remuneration Act.

<sup>38</sup> Section 9(1) of the Judges’ Remuneration Act.

is paid this amount until her death.<sup>39</sup> A motor vehicle owned by the State may be made available to a permanent or an acting High Court judge for use in the course of his official duties as well as private purposes.<sup>40</sup>

[215] The President has determined that for the period 2022/2023,<sup>41</sup> the total remuneration package for judges shall include the following elements:

- a. A cash annual salary component of 72.24%; and
- b. A non-cash component of 27.76% (which includes a motor vehicle allowance and employer medical aid contribution).

[216] The President has proclaimed that for the period 2022/2023, the annual salary for a High Court judge is R 1 997 130.00. According to the records held by the Department, with effect from 1 April 2022, the High Court judges were paid an annual remuneration of R 1 997 130.00, which comprised a 72.24% cash annual salary component of R 1 442 726.71<sup>42</sup> and a 27.76% non-cash component of R 554 403.29, which includes a motor vehicle allowance and the employer's medical aid contribution. An amount of R 3500.00<sup>43</sup> is also paid as an annual non-taxable allowance. The total cash remuneration for a High Court judge with effect from 1 April 2022 is R 2 000 630.00.

[217] The appointment of every permanent judge attracts a charge against the National Revenue Fund. On the appointment of at least one permanent High Court judge, the annual cost to the national fiscus will be R 2 000 630.00.

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<sup>39</sup> Section 9(2) of the Judges' Remuneration Act.

<sup>40</sup> Section 12 of the Judges' Remuneration Act.

<sup>41</sup> Government Gazette no. 49369, published on 26 September 2023.

<sup>42</sup> Payable in terms of section 2(1)(a) of the Judges' Remuneration Act.

<sup>43</sup> Payable in terms of section 2(1)(b) of the Judges' Remuneration Act.

This excludes the non-cash component that has to be paid to the new permanent High Court judges.

[218] We could not discern how many additional staff are required to support the appointment and work of one permanent judge. The responses received from the Judges' President and the Registrars were varied:

- a. The Eastern Cape Division indicated that for 1 new judicial post, one Judge's secretary will need to be appointed. The Division also noted that there would be a need for other administrative staff over and above the Judge's secretary to be considered. The support staff would include registrars, registrars' clerks, typists, data capturers, interpreters and stenographers.
- b. The Free State Division responded that 1 judge's secretary, 1 court clerk, 1 interpreter and law researcher would be needed to support one new judicial post within the Division.
- c. The Gauteng Division conveyed that it will require the following additional staff to support the creation of one new judicial post within the Division: 1 Judge's secretary; 1 law researcher; 1 administrative clerk DCRS, 1 Registrar's clerk; 1 Registrar and 1 Data Capturer.
- d. The KwaZulu-Natal Division replied that 1 Judge's secretary will be needed and if more courts are to be established, there will be a need to appoint additional court staff – CRT clerk, interpreter, usher and additional typist and law researchers.
- e. The Limpopo Division recorded that it requires 4 additional judges. It indicated that for every 1 new judicial post, each judge will require a Judge's secretary, 1 CRT clerk and 1 interpreter.

- f. The Mpumalanga Division noted that the following additional staff will be needed: Judge's clerk, CRT operator, usher and interpreter. It was also noted that depending on the number of new judicial posts there may be a need for more typists, registrars, registrars' clerks and law researchers.
- g. The North West Division replied that 7 additional staff will have to be appointed to support the creation of 1 judicial post, namely a Judge's secretary, registrar, law researcher, interpreter, court clerk (CRT), Registrar's clerk and typist.
- h. The Western Cape Division responded that it will require the following additional staff to support the creation of 1 new judicial post: 1 Judge's secretary, 1 CRT clerk, 1 usher, 1 law researcher, 1 interpreter, 1 registrar, 1 typist, 1 Registrar's clerk and 1 IT technician.

[219] We do not have the salary scales for administrative staff and even if we did, we could not say with certainty which salary band a staff member would fall within. At this stage we only have details about the annual salary paid to a High Court judge. We are constrained in our ability to make any firm finding about the cost implications of the establishment of new local seats.

## **THE COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS**

[220] The Committee makes the following conclusions and final recommendations.

### *Appointment of permanent judges*

[221] Our work has revealed that the court system is facing a crisis. This results from the failure for many years to appoint more permanent judges to meet rising caseloads.

[222] The shortage of judges in the court system has led to significant delays in handling cases, resulting in backlogs that threaten to overwhelm the judiciary. This crisis severely affects access to justice, as litigants currently have to wait years for their cases to be heard, undermining the principle of timely justice. In Gauteng the next available trial dates are five years from now, and in other Divisions the wait is two to three years. In light of the present crisis in justice delivery, we cannot over-emphasise the need for the urgent appointment of more permanent judges.

[223] All the responses received from the Judges President and key stakeholders spoke in unison about the need for more permanent judges to be appointed. All the Judges President reported that a significant number of acting judges were appointed consistently over a period of three years. The number of acting appointments, in itself, demonstrates the need for more judges to be appointed.

[224] We cannot, at this stage, provide a conclusive formula to determine the number of new posts required in each Division. However, in recognition of the immediate need for new posts across all Divisions, we propose an increase of 20% in the number of posts across all Divisions as a starting point. However, this must take into account our above analysis in relation to caseloads, populations and levels of economic activity, which demonstrates that the distribution of judicial posts across the country is not equitable. Our analysis points to the Divisions which are in urgent need of a much higher number of new permanent appointments forthwith and some which appear to be comparatively well-resourced.

[225] We cannot emphasise enough the fact that there are Divisions that are in a real crisis regarding the caseload relative to the number of posts on the establishment. These Divisions should receive increases in the number of posts over and above the 20% proposed above.

[226] We conclude that more permanent judges ought to be appointed immediately. We are mindful that every new permanent appointment is costly as we have demonstrated above. However, the cost is unavoidable in order to achieve an adequate and equitable distribution of judicial resources across all Divisions. It is essential that funds be made available to deal with the present crisis. This is not a mere budgetary or fiscal matter because access to justice is foundational to our constitutional democracy.

#### *Appointing acting judges*

[227] Acting judges play an essential role in maintaining the functionality and efficiency of the judicial system, especially in times of judicial shortages or increased caseloads. These temporary appointments help prevent case backlogs by filling gaps left by permanent judges who may be on leave, handling specialised cases, or coping with high workloads. Acting appointments offer flexibility in responding to short-term demands. The appointment of acting judges may help to ensure that the justice system continues to operate smoothly, upholding the right to a fair and timely trial. Their contributions may help to promote access to justice and reinforcing public confidence in the system's capacity to deliver timely judgments.

[228] However, notwithstanding the important role played by acting judges, there is no legislative regime that deals with the actual appointment of acting judges. Section 175(2) of the Constitution empowers the Minister to appoint

acting judges in consultation with the Judges President. The practice that has evolved is for the Judge President to exercise her or his discretion to decide on the need to appoint acting judges, to decide when to issue the invitation calling for applications and to decide to whom to issue the invitations. The Judge President decides who should be appointed, the period of the acting stint, and other dynamics involved in appointing an acting judge. Ordinarily, the Minister plays no role in the processes, but appoints the candidate recommended by the Judge President.

[229] Submissions received reveal that the criteria for the appointment of acting judges vary from one Judge President to the other. And that there is no oversight and transparency over these appointments. This lack of oversight and transparency undoubtedly present the opportunity for potentially arbitrary and inconsistent approaches to acting appointments.

[230] We thus recommend that the system of appointing acting judges be reviewed. We recommend that regulations and guidelines be enacted to regulate the process of appointing acting judges. The regulations and guidelines be made publicly available to ensure a transparent process. The regulations and measures must seek to ensure oversight over acting appointments.

[231] The Judges President have drawn our attention to the discussions that they've had with the Minister of Justice and Constitutional Development in relation to the appointment of acting judges. Out of that interaction there appears to have been a draft Guidelines on the Appointment of Acting Judges in the Superior Courts that relates to the future appointment of acting judges. We have been advised that the Guidelines have not yet been formally adopted and / or converted into a binding instrument between the Minister and Judges President. Given the concerns that have surfaced in submissions to us by the Judges President and various stakeholders, it is urgent that the regulatory

position should be firmed up in ways that would bring certainty on the role of acting judges, their appointment and the applicable ethical code, as they will continue to be necessary and often useful in affording access to justice to many of our citizens.

### ***Workload and case-weighting***

[232] Above we have analysed data on caseloads provided in respect of each Division, and we have developed comparisons by way of charts and graphs to illustrate the differences to be found within respective Divisions and across Divisions taken as a whole. We have shown that these differences are also informed by external factors such as density of population, economic activity and the way that these interact with caseloads. From our analysis, we are confident to reach the conclusion that there is a need to formulate tools and formulae that will ensure an equitable distribution of judicial posts across all Divisions.

[233] However, we are of the view that a case-weighting system is the “gold standard” for determining the allocation of judicial resources. A case-weighting system provides a more accurate estimate of the number of judges and other staff needed. This is because a case-weighting system recognises that different types of cases differ in complexity and the amount of judicial time required to process the case to finality.

[234] A case-weighting system assigns different weights to different case-types, which indicates how much time the type of case will require as compared to other types of cases. A case-weighting system therefore depends on reliable information being available to adjust the caseload by case weights – information that will assist in weighing the complexity and time needed for specific case types. At present, this sort of information is not recorded or

made available by South African courts. Similarly, information on non-case related work undertaken by judges is also not recorded or available in South Africa presently.

[235] Regrettably we were unable to find data of sufficient precision to permit us to apply a case-weighting mechanism. That is so because the data is not capable of comparison within and across all Divisions.

### ***Uniform data collection***

[236] There appears to be no consistent method used to collect and report on cases, and time taken for matters to be finalised. Most courts reported that they captured information manually. The other challenge is that there is no proper categorisation of cases. There is a tendency for the cases to be generally categorised as being either civil or criminal. It becomes difficult to determine for example within the civil class of cases, how many cases are heard in unopposed motion court, either daily, weekly or monthly. The same applies for opposed motions. There is no indication of the number of trials that are run and no information about the number of court days on which the trial was heard and finalised. Another shortcoming is that there is no meaningful case-flow which tracks the time it takes for a case to be finalised from the date on which a case number is allocated until final outcome.

[237] We accordingly find that a project be undertaken with deliberate speed to induct an electronic system within and across all Divisions in order accurately to record and report on case data. There should be a uniformity and consistency in record-keeping within and across all Divisions in order to make comparisons meaningfully and to facilitate useful case-weighting.

### ***Recording “judge hours”***

[238] The Committee is acutely aware that judges often work outside of ordinary court hours, and sometimes work into the early hours of the morning to ensure that they are adequately prepared to hear matters allocated to them.

[239] Judges are not required to submit a record of how many hours they spend on case work. We called for judges to provide an indication about how many “judge hours” were spent on case work and other related judicial and administrative work, and responses were less than what we anticipated. Absent meaningful responses about actual time spent by judges on case work, it is impossible reasonably to engage in any discussion about the calculation or assessment of judicial resources actually used in every Division. The inadequate response on judicial time spent on cases, shows the need to enforce the requirement of minimum standards to be imposed for judges to record the actual time spent on cases.

[240] It is true that during the course of court sittings in the High Court proceedings are recorded. That means one can readily ascertain the number of hours any particular hearing would have taken. However, recordings at actual hearings do not cover the entire scope of the work that judges do. Judges perform other substantial judicial services outside actual court sittings. Here comes to mind judgment writing, review of cases and sentencing from Magistrates’ Courts, ample reading of a variety of records lasting many hours.

[241] We recommend that there should be a prescribed minimum standard for judges to record the time spent on case work and other related judicial and administrative work. This may be introduced through the authority granted

to the Chief Justice<sup>44</sup> to compose and make known minimum standards in the judicial function and performance.

[242] We are mindful that judges may not have the time to record their judge hours. We emphasise that this proposal should not place an additional weighty burden on judges. Manual and direct input from judges should be minimised. This may be achieved through the automated time-tracking systems that automatically track the time judges spend on case-related activities, as well as through integration with the case management systems proposed above. Additionally, the new system should permit the judge's secretary or a Registrar's clerk to assist the judge with this obligation.

[243] While some direct input from judges may still be required, this information is essential for proper case-weighting to be done and put to use in order to ensure rational allocations of judicial resources and an equitable distribution of posts across all Divisions.

#### *The review of the recess periods*

[244] We are required to consider judicial resources for the purpose of ensuring equitable allocation of resources. The enquiry ought also to consider whether the current "judges hours" can be increased or extended in order to maximise the existing resources.

[245] The High Court implements recess periods across the country. Ordinarily, during this time, the High Court is not fully in session and cases are heard intermittently and subject to a requirement of urgency. The recess period is a relic of our colonial past and is indeed outdated. On the current practice, often judges are also permitted sabbatical leave after approximately

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<sup>44</sup> Section 49(1)(a) of the Superior Courts Act.

every four years of continuous service. All this occurs at a time when judicial resources are required to meet an increasing demand of a growing population seen against an inadequate fiscus. Judicial resources remain absolutely necessary to ensure proper and adequate access to justice without which our democratic project will not be possible.

[246] A historical<sup>45</sup> and present search for practices and procedures of various comparable courts around the democratic world indicates consistent efforts at reforming the recess system and vacations of judges. The outcome of our search indicates, on the one end, reforms that have kept the recess system with reduced periods and, on the other, a complete abolishment of the recess system in favour of specified leave to which each judge is entitled. Our search also suggests that many judicial systems are striving towards having optimal use of their scarce judicial resources, as populations increase, caseloads get heavier and affording judicial resources gets continuously challenged at a fiscal level. For present purposes, we attach links to this research, as we neither have the time nor space to rehash all of it in the body of this report.<sup>46</sup>

[247] It is our considered view, having reviewed the literature on the recess systems and other processes in comparable court systems, that an urgent process be commenced with a view to alter, if not abolish, the court recess system. This, in our respectful view, would fall in line with the practice in several comparable jurisdictions where judges would be required to take an

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<sup>45</sup> A review of the recess system in the High Court was conducted at the behest of the then Minister of Justice and Constitutional Development in 2003. The report is available on the South African Government's website at [www.gov.za/sites/default/files/gcis\\_document/201409/courtrecess.pdf](http://www.gov.za/sites/default/files/gcis_document/201409/courtrecess.pdf)

<sup>46</sup> The research on recess periods of other judicial systems are available at: <https://lesotholii.org/akn/ls/act/ln/2024/65/eng@2024-06-21/source>; <https://judicial.gov.gh/index.php/about-the-judiciary/legalyear>; <https://www.hcourt.gov.au/about/visiting-the-high-court>; <https://www.fct-ct.gc.ca/en/pages/court-files-and-decisions/hearings/summer-recess>; <https://www.supremecourt.gov/about/procedures.aspx>; [https://en.wikipedia.org/wiki/High\\_Court\\_of\\_Justice#Sittings-](https://en.wikipedia.org/wiki/High_Court_of_Justice#Sittings-); <https://www.courts.ie/high-court-sittings>.

appropriate extent of leave within every period of twelve months rather than to have the entire court system shut down, barring urgent matters and certain unopposed disputes, in order to accommodate for recess periods.

[248] There is indeed much to be said for a court system that remains in full operation for 12 out of 12 months, subject to an appropriate, staggered individualised leave regime for judicial officers

*DIKGANG MOSENEKE*

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**JUSTICE DIKGANG MOSENEKE**

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**JUSTICE JEANNETTE TRAVERSO**

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**MR SILAS RAMAITE SC**

*RENUKA SUBBAN*

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**MS RENUKA SUBBAN**





**Committee on the Rationalisation of Areas under the Jurisdiction and  
Judicial Establishments of the Divisions of the High Court**