

**Report to the Portfolio Committee on Justice and Constitutional Development following the submission by the Judicial Officers Association of South Africa (JOASA) on 11 March 2008**

**1. Background**

- 1.1 Following its written submission to the Portfolio Committee on Justice and Constitutional Development faxed to the Chairperson of the Committee 22 February 2008, JOASA was given the opportunity to present its submission to the Committee on 11 March 2008. During its briefing of the Committee JOASA submitted that the latest proposed amendments brought into the Bill have addressed the concerns it initially had regarding the Bill and that it was no longer opposed to the Bill. In its initial submission JOASA had objected to the Bill and had raised concerns, among others, that the Bill would not increase access to justice and that the LLB requirement for appointment as regional magistrate was intended to disadvantage its membership from progressing to the senior Regional Court Bench. JOASA explained to the Committee that the impasse between itself and the Department relating to the Bill has been addressed. The Chairperson of the Committee asked both JOASA and the Department to jointly discuss the operational plan drafted by the Department with a view to address the concerns raised by JOASA regarding the implementation of the Bill.
- 1.2 In its submission JOASA, which purports to represent the majority of the judicial officers (1300 of the 1912 magistrates), argued that it was not adequately consulted on the Bill. In its response the Department stated that the matter of the civil jurisdiction to the Regional Court had been on the agenda of the Magistrates Commission for the past two years and that both JOASA and the Association of Regional Magistrates (ARMSA) are represented in the 23-member Commission. Adv Skosana explained that the drafting of the Bill and its subsequent discussion at the Magistrates Conference held in September 2007 was the culmination of this protracted debate in the Commission.
- 1.3 After hearing both sides the Committee made the following remarks:
  - 1.3.1 That both the Department and JOASA are not blameless for the impasse which surrounded this Bill, and that the Department takes the greatest share of the blame as it should have ensured that it consult thoroughly on the matter, especially with a body that represent the majority of the judicial officers.
  - 1.3.2 That consultation must not only be confined to publication of the Bill and subsequent receipt of comments on the published Bill, but that it must be clear that the submissions of the stake holders and interest groups received were considered in the final Bill.
  - 1.3.3 That the Department must submit a report explaining its extensive consultation it alleges on the Memorandum of Objects accompanying the Bill and that this report should be seen as lessons for the future regarding the constitutional requirement for consultation and public participation in policy and law making.

## **2. Department's consultation on the Bill**

- 2.1 The Magistrates Act No.90 of 1993 read with the Magistrates Courts Act No. 32 of 1944 enjoins the Minister to consult with the Magistrates Commission on any matter pertaining to magistrates and the lower courts. The Jurisdiction of Regional Court Amendment Bill affects the lower courts and magistrates. In particular it has greater impact on the regional court magistrates and presiding officers of the Divorce Courts than it has on the magistrates of the district courts. Firstly, the regional court magistrates are affected in the sense that the Bill increases their scope of work than it was a condition of their appointment to the Regional Court. The Bill addresses the added responsibility by committing the Magistrates Commission and the Judicial Education Institute to implement a specially designed training programme to equip regional magistrates for the increased responsibility. The enhanced training of the existing regional magistrates to deal with civil matters will be incremental over a long term and in the immediate term new posts of 53 regional magistrates will be created to appoint civil law orientated practitioners to assume the civil law adjudication of civil and family law cases justiciable in the Regional Court. Secondly the presiding officers, of which there are 2 permanent and 7 part time, will be targeted to occupy the newly created posts. The permanent presiding officers will be absorbed into the regional court structures while the part time presiding officers will, upon application and subject to them meeting the requirements for the posts, receive preference to be appointed to these positions. Lastly, the district magistrates are affected in a positive way as they will have the opportunity for appointment to the senior Regional Court bench. The Bill takes nothing away from the current jurisdiction of district court, and it does not prevent any attempt to increase its jurisdiction from the current R100 000 monetary limit for causes of action.
- 2.2 The extension of civil jurisdiction to the Regional Court has been a standing item in the Magistrates Commission's agenda since 2005. (Refer to the Annexures A, B, C and D which reflect the JOASA and ARMSA representatives at the Commission, the correspondence of the Secretary of the Commission regarding the matter and the extract of the minutes of the meeting of the Commission of 23 November 2006). Pursuant to the commitment by the Department that it will consult broadly on the matter once it has drafted the envisaged Bill conferring civil jurisdiction to the Regional Court, the Bill (which was later introduced) was drafted and formed part of the documents for discussion at the Magistrates Conference held on 15 – 16 September 2007.
- 2.3 The Magistrates' Conference which was co-hosted by the Minister and the Chief Justice, registered 550 participants who included representatives from JOASA, ARMSA, Senior judges, magistrates, the Magistrates Commission, the Judicial Service Commission, Justice Portfolio Committee, practicing Advocates and Attorneys, Traditional Leaders and the media. More than half of the Conference participants were JOASA nominees. A single judiciary concept was one of the sub theme of the Conference under which aspects relating to the streamlining of

the lower courts (including the extension of civil jurisdiction to the Regional Court as part of the harmonization of adjudication process) was discussed. Papers presented by some of the magistrates and the discussion which ensued in the break-away commissions and plenary showed general support for the object of the Bill. Page 19 of the Conference Report contains a table where both JOASA and ARMSA expressed their different views on the matter and in the last column the following expression is reflected: "*Judicial Officers must stop focusing on protection of territories and admit that the current structure is not effective*".

- 2.4 The sentiments raised above may be indicative of a situation where lack of adequate consultation may be raised in relation to the areas where there are substantial differences of opinion.

### **3. Lessons learnt**

The Department has noted the comments and directives of the Committee as reflected under paragraph 1.3 above and will ensure that lessons learnt through this Bill will be factored in its broad policy making and law drafting responsibility.

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┐ Reference: 6/1(SMC)  
┘ Enquiries: Mr A D Schoeman

25 May 2006

Dear Sir

**APPOINTMENT OF MEMBERS OF THE MAGISTRATES COMMISSION: EXPIRY OF  
TERM OF OFFICE OF THE CHAIRPERSON AND OTHER MEMBERS OF THE  
MAGISTRATES COMMISSION**

I wish to remind you that the term of office of the following members of the Magistrates Commission will expire on the dates as indicated opposite their names:

<u>Name of member</u>	<u>Section of Magistrates Act</u>	<u>Date term ends</u>
Judge President B M Ngoepe	Section 3(1)(a)(i) [Chairperson of the Commission]	30 November 2006
Mr T W Levitt	Section 3(1)(a)(iii) [ARMSA representative]	30 September 2006
Mr T A Maumela	Section 3(1)(a)(v) [JOASA representative]	30 September 2006

Copies of the last designations in respect of the abovementioned persons are attached for your ease of reference.

You are kindly requested to promote the designation of new members with the relevant authorities.

Yours faithfully

**A.D. SCHOEMAN**

**A D SCHOEMAN**  
**SECRETARY: MAGISTRATES COMMISSION**  
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Reference: 6/5/1(SMC)

Enquiries: Mr A D Schoeman

28 September 2005

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For attention: Mr J B Skosana

Dear Sir

**ESTABLISHMENT OF REGIONAL CIVIL COURTS**

The following is an extract from the minutes of the meeting of the Magistrates Commission which was held on 25 August 2005 for your kind attention, please:

**“5.15 Establishment of Regional Civil Courts (Item 11.4 of previous minutes)**

The Secretary informs the meeting that a response from the Department of Justice and Constitutional Development as to what progress has been made in this regard is still outstanding.

It is resolved that the matter is to stand over until the next meeting for a written response from the Department.”

Your assistance to let me have the Department's written response before the next meeting of the Commission on 3 November 2005 would be appreciated.

Yours faithfully

**A D SCHOEMAN**  
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Reference: 6/5/1(SMC)

Enquiries: Mr A D Schoeman

12 September 2006

For attention: Mr J B Skosana

Dear Sir

**ESTABLISHMENT OF REGIONAL CIVIL COURTS**

As you are aware the Magistrates Commission at its meeting which was held on 30 and 31 March 2006 considered the abovementioned matter. The following is an extract from the minutes of the meeting for your ease of reference:

**"5.8 Establishment of Regional Civil Courts (Item 5.12 of previous minutes)**

The Secretary informs the meeting that a response from the Department of Justice and Constitutional Development as to what progress has been made in this regard is still outstanding.

Mr Skosana mentions that amendments are being considered to legislation which will deal with the restructuring of the lower courts. Once this has gone through the Parliamentary processes the next step would be to look into the current structure of the regional courts. The Minister's view is not to tamper with the jurisdiction of the lower and high courts until such time that there has been proper consultation. The consultation will be preceded by a discussion document which will spell out how the lower courts are to be restructured. It is expected that discussions will start before end May 2006. The Commission will be provided with a letter which will explain the process.

It is resolved that the matter is to remain on the agenda for the next meeting for the written response from the Department."

The matter was again considered by the Commission at its meeting held on 20 July 2006 and the following is an extract from the minutes:

Response from Mr J B Skosana, Chief Director:

"On the issue of the Regional Court it is a known factor that the question has not been "when is civil jurisdiction going to be conferred on the Regional Court", but rather "when is the Department establishing a Regional Civil Court Bench" as proposed by the Commission two years ago. This a matter of policy which I have alluded to in all the meetings that Government is not bent of replicating the current criminal-focused Regional Bench for a separate civil court bench but prefers that all judicial officers dispense with both criminal and civil matters. I believe that these are matters on which there will be broader public discourse to enable government to adopt appropriate and well informed policies. The debates on these matters are now very imminent."

The Chairperson mentions that the Director General of the Department is welcome to address the Commission at its next meeting if he deems it necessary.

**5.1.8 Use of official vehicles by magistrates (Item 5.1.8 of previous minutes)**

It is resolved to remove the matter from the agenda since there is no longer any need to amend the regulations for magistrates especially in view of the wording of the conditions pertaining to the motor vehicle financing benefit for all ranks of magistrates as contained in Proclamation No. 41 of 2006 as published in Government Gazette No. 29247 of 22 September 2006.

**5.1.9 Equality Court training for magistrates: Interpretation of section 16(2) of the Promotion of Equality and Prevention of Unfair Discrimination Act, No. 4 of 2000 (Item 5.1.9 of previous minutes)**

The contents of the response received from the Head of Justice College are noted.

The Chairperson mentions that the matter is still on the agenda since it has some time ago come to the attention of the Magistrates Commission that there is apparently uncertainty among some magistrates as to the interpretation of section 16(2) of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 which deals with training requirements. In terms of the Act .

The Chairperson mentions that magistrates are not like civil servants and it is not that simple to merely change the leave dispensation to that of civil servants. There are many other considerations. The Commission earlier supported a request by the Department not to deal with the matter in a piece meal fashion. It would probably be best to first workshop all the proposals and then to consider the proposals from the Service Conditions Committee.

It is resolved to await the final proposals for the amendment of the Regulations pertaining to leave of magistrates from the Service Conditions Committee after all inputs have been fully considered at the workshop. The workshop must be arranged as soon as the two vacancies of magistrate on the Commission have been filled and a new chairperson has been designated for the Service Conditions Committee.

**5.1.7 Establishment of Regional Civil Courts (Item 5.1.7 of previous minutes)**

The Secretary refers the meeting to the contents of responses received from the Department of Justice and Constitutional Development regarding the establishment of Regional Civil Courts.

It is resolved to note the contents of the following responses received from the Department:

Response from Mr S Jiyane, Deputy Director General: Court Services dated 31 October 2006:

"With regard to the creation of a civil chamber in the Regional Court, there are two processes that need to be explained and it transpires that an explanation was made by Mr Skosana during the previous meeting of the Commission. Firstly there is a directive from the Minister that any legislation intervention made should be informed by policy development. Presently the Department is still in the process of developing a policy that should inform transformation of the lower courts (and this include the restructuring of the Regional Courts) and once the draft policy is finalized, a consultation process with all relevant stakeholders including the public will commence. Secondly, the Legislation Branch of the Department is in the process of drafting legislation to introduce civil jurisdiction in the Regional Courts. Similarly, once the drafting process is completed, a consultation process will begin."