

AMENDED NOTICE

SELECT COMMITTEE ON SECURITY AND CONSTITUTIONAL DEVELOPMENT



PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

Select Committee on Security and Constitutional Development

Chairperson: Mr T M H Mofokeng (ANC)

Members:

Eastern Cape Mazosiwe, Mr S\* (ANC) Nesi, Mr B (ANC)

Free State Bloem, Mr DV\* (COPE) Mofokeng, Mr TMH (ANC)

Gauteng Matila, Mr AG (ANC)

KwaZulu-Natal Nzimande, Mr LPM (ANC) Prince Zulu, MMM\* (IFP)

Limpopo Province Makhubela, Mr MW (COPE) Mokgobi, Mr MH (ANC)

Mpumalanga Manzini, Mr VM (DA)

Northern Cape Gunda, Mr JJ (ID)

North West Chaane, Mr TE\* (ANC) Plaatjie, Mr SH (COPE)

Western Cape Joseph, Mr D (DA)

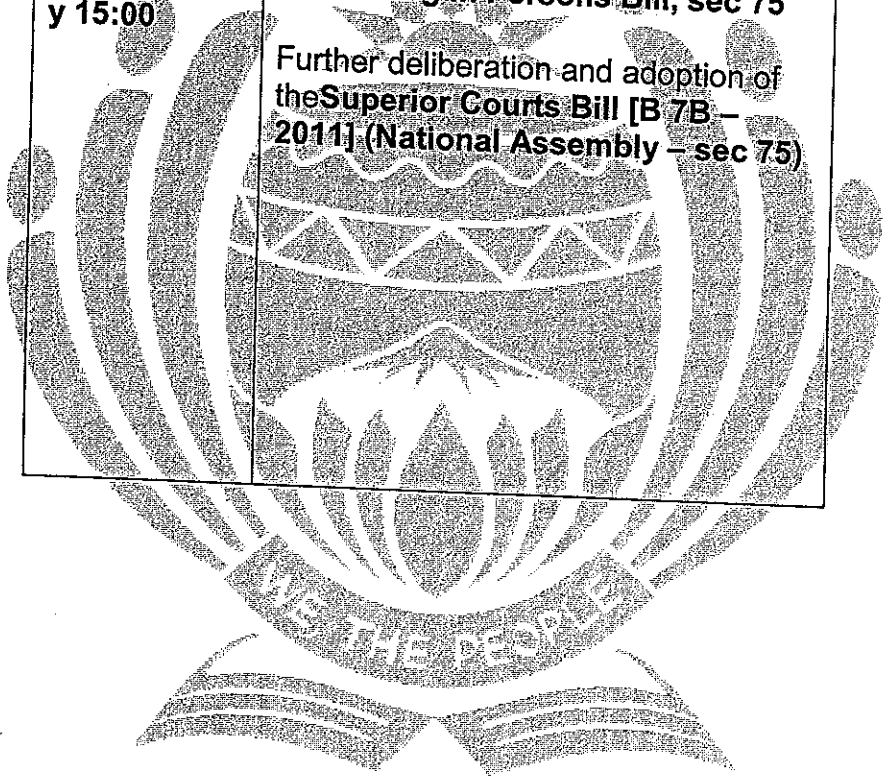
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Date: Tuesday, 19 March 2013 Venue: Old Assembly Chamber, Ground Floor, Old Assembly Building Time: after NCOP Sitting approximately 15:00

Table with 2 columns: Time, Agenda. Row 1: after NCOP sitting approximately 15:00, Further deliberation and adoption of the Prevention and Combating of Trafficking in Persons Bill, sec 75. Row 2: Further deliberation and adoption of the Superior Courts Bill [B 7B - 2011] (National Assembly - sec 75)



the Chief Justice with the financial responsibility to function independently to the directives of the executive.

**The Superior Courts Bill aims to:**

(a) to consolidate and rationalise the laws pertaining to Superior Courts as contemplated in item 16(6) of Schedule 6 to the Constitution;

(b) to bring the structure of the Superior Courts in line with the provisions of Chapter 8 and the transformation imperatives of the Constitution; and

(c) to make provision for the administration of the judicial functions of all courts, including governance issues, over

The Bill makes provision for consolidating various laws dealing with the functioning of Superior Courts (CC, SCA and the High Court of SA) to be consolidated into a single piece of legislation.

Schedule 1 of the Bill repeals the following pieces of legislation:

1. The Supreme Court Act, No. 59 of 1959
2. Supreme Court Act, 2 Act No. 59 of 1959 (Venda)
3. Establishment of the Northern Cape Division of the Supreme Court of South Africa Act, Act No. 15 of 1969
4. Republic of Transkei Constitution Act, Act No. 15 of 1976 (Transkei)
5. Republic of Bophuthatswana Constitution Act, Act No. 18 of 1977 (Bophuthatswana)
6. Republic of Venda Constitution Act, No. 9 of 1979 (Venda)
7. Supreme Court of Bophuthatswana Act, Act No. 32 of 1982 (Bophuthatswana)
8. Supreme Court Act, Act No. 5 of 1983 (Transkei)
9. Supreme Court Decree, Constitution Decree No. 43 of 1990 (Ciskei)
10. Republic of Ciskei Constitution Decree No. 45 of 1990 (Ciskei)
11. Constitutional Court Complementary Act, Act No. 13 of 1995
12. Interim Rationalisation of Jurisdiction of High Courts Act, Act No. 41 of 2001
13. Renaming of High Courts Act, 13 Act No. 30 of 2008

**Definitions**

Included in the definitions are references to the **Secretary-General** who is the head of office of the Chief Justice. It is the office of the Secretary-General (which was established in 2011) who bears the financial responsibility to receive and disburse funding.

**“Superior Court”** means the Constitutional Court, the Supreme Court of Appeal, the High Court and any court of a status similar to the High Court

**Chapter 1(3)**

This section makes provision for the process of introducing legislation dealing with court structures. It allows the Minister to be consulted by any person prior to tabling a Bill in Parliament.

Mpumalanga Divisions respectively until seats for those Divisions have been formally established. The Committee understands that the building of a High Court for Limpopo, at Polokwane, is near completion but that the building of a High Court for Mpumalanga at Nelspruit is still at the planning/tender stage.

**Seat of Gauteng Division:** The Bill also provides for the seat of the Gauteng high court to be in Pretoria. Earlier versions of the Bill retained Johannesburg as the seat of the South Gauteng division and Pretoria as that of the North Gauteng division.

Clause 7(1) makes provision for the establishment of Circuit Courts which is established by the Judge President of the Division. The Circuit Court meets at least twice per year

### Chapter 3

#### Governance and Administration of all Courts

Clause 8 allows for the governance and administration of all courts to be administered by the Chief Justice. This section makes the Chief Justice accountable for managing the judicial processes in courts around the country. He is able to do this through convening a forum of judicial officers he deems appropriate.

Clause 8(2) makes the Chief Justice responsible for establishing the monitoring of norms and standards for the exercise of judicial functions in all the courts.

The Chief Justice can also issue directives, protocols and give guidance and advice to judicial officers in respect of norms and standards and on any matter affecting the dignity, accessibility, effectiveness and efficiency of the functioning of courts.

The Judge President is also responsible for the co-ordination of all the work in Magistrates Courts falling in that Division terms of section 8(4)(c). He should also compile a single court roll for the entire Division.

It is important to note that in terms of clause 8(5)(a), any protocol or directive in terms of subsection (3) may only be issued by the Chief Justice if it enjoys the majority support of the heads of courts on which it would be applicable.

The Judicial functions referred to in sub-section 2 and subsection 4(b) include the:

- (a) determination of sittings of the specific courts;
- (b) assignment of judicial officers to sittings;
- (c) assignment of cases and other judicial duties to judicial officers;
- (d) determination of the sitting schedules and places of sittings for judicial officers;
- (e) management of procedures to be adhered to in respect of—
  - (i) case flow management;
  - (ii) the finalisation of any matter before a judicial officer, including any outstanding judgment, decision or order; and
  - (iii) recesses of Superior Courts.

## **CHAPTER 6**

### **Provisions applicable to High Court only**

Persons over whom and matters in relation to which Divisions have jurisdiction

Clause 21 provides for a Division the jurisdiction to have the power to hear matters and appeals over any matter in its area of jurisdiction. The Division provides for it:

- (a) to hear and determine appeals from all Magistrates' Courts within its area of jurisdiction;
- (b) to review the proceedings of all such courts;
- (c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.

It also provides for grounds for review of proceedings of Magistrates Courts; judgement by default; time allowed for appearance; circumstances in which security costs shall not be required; disposal of records and execution of judgments of Circuit Courts; removal of proceedings from one Division to another or from one seat to another in same Division and prohibition on attachment to found jurisdiction within Republic.

## **Chapter 7**

### **Rules of Court**

Clause 29 spells out the rules of the Constitutional Court. It notes that the Chief Justice after consultation with the Minister may make rules for the Constitutional Court and any matter in which it engages. The Minister has 30 days in which to table any amendment, rule or repeal thereof prior to publication in Parliament. The rules with the leave of the court must allow any person to bring any matter directly to court and appeal directly to the Court from any other court.

The Rules of Supreme Court of Appeal and High Court and the Lower Courts are made in accordance with the Rules Board for Courts of Law Act. 107 of 1985 and must be submitted to Parliament by the Minister. The provisions relating to tabling before publication found in clause 29 applies, as does the provision relating to bringing a matter directly to court and for direct appeals from one court to another.

## **Chapter 8**

### **General provisions applicable to all Superior Courts**

Part 1 (Clause 31) provides for every Superior Court to be a Court of Record and use a seal that must be kept in the custody of the Registrar. Clause 32 provides for all sittings of the Court to open and public, while clause 33 provides for the Supreme Court of Appeal and any Division to sit in as many courts constituted as in the manner contemplated in the Act.