

GENERAL COUNCIL OF THE BAR OF SOUTH AFRICA

*Admitted at The Hague on 21 August 1948
as a full member of the International Bar Association*

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GCB CIRCULAR NO 06/2014

TO : THE CHAIRMAN : ALL CONSTITUENT BARS

**RE : CREATION OF NEW MAGISTERIAL DISTRICTS AND RE-
ESTABLISHMENT OF DISTRICT COURTS FOR GAUTENG AND NORTH
WEST PROVINCES**

Please find attached for the information of your members a letter, received from the Minister of Justice and Constitutional Development, regarding the new magisterial districts created and the re-establishment of district courts for Gauteng and North West Provinces with effect from 1 August 2014.


.....
ELIZE VAN DEN HEEVER
EXECUTIVE OFFICER



**MINISTER
JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA**

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Enq: Adv JB Skosana

Adv. Ishmael Semanya
Chairperson, General Council of the Bar of South Africa,
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Dear Adv Semanya

**CREATION OF NEW MAGISTERIAL DISTRICTS AND RE-ESTABLISHMENT OF
DISTRICTS COURTS FOR GAUTENG AND NORTH WEST PROVINCES**

As you are aware, it is a constitutional imperative that the composition, structures and jurisdiction of courts must be rationalised with a view to establish a judicial system suited to the requirements of the Constitution. This imperative finds reflection in item 16(1) and (6) of Schedule 6 to the Constitution of the Republic of South Africa, 1996, which provide as follows:

"Courts

16(1) Every court, including courts of traditional leaders, existing when the new Constitution took effect, continue to function and to exercise jurisdiction in terms of legislation applicable to it, and anyone holding office as a judicial officer continues to hold office in terms of the legislation applicable to that office, subject to:

- (a) and amendment or repeal of that legislation; and
- (b) consistency with the new Constitution

(2) ...

- 6(a) As soon as is practical after the new Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalized with a view to establishing a judicial system suited to the requirements of the new Constitution.
- (b) The Cabinet member responsible for the administration of justice acting after consultation with the Judicial Service Commission must manage the rationalisation envisaged under paragraph (a)".

During October 2013, I consulted with the Judicial Service Commission as I am required to do so by the Constitution and section 6(3) of the Superior Courts Act, 2013 (Act No. 10 of 2013), regarding the approach to the rationalization of courts as outlined in this letter.

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Magisterial districts are the building blocks of our court system as they constitute the jurisdictional boundaries in respect of which courts, in their hierarchal order, exercise their territorial jurisdiction. The rationalisation of magisterial districts is our first phase of a laborious rationalisation process required by the Constitution. In view of the magnitude of this process, the rationalisation of magisterial districts for the Gauteng and North West will happen first as a pilot phase. After the completion of the latter provinces focus will shift to Eastern Cape, KwaZulu-Natal, Limpopo and Mpumalanga Provinces. The remainder of the Provinces, namely Free State, Northern Cape and Western Cape which are to be implemented last and do not pose any major challenges due to the little impact that the defunct Transkei, Bophuthatswana, Venda and Ciskei (TBVC's) territories, self-governing states and the RSA territory had on their territories.

By way of a background, the Republic is divided into 387 magisterial districts and each of these magisterial districts is served by a Magistrate' Court created for the district concerned. The current 387 magisterial districts reflect the magisterial districts of the defunct TBVC's, self-governing states and the RSA territory. As it can be deduced from the Schedules to the attached Notice that seeks to withdraw pre-1994 magisterial districts, most of the districts were established when the Union of South Africa was formed in 1909. There are few magisterial districts which were created even earlier during the colonial era, amongst them are Vryburg and Potchefstroom which were created in 1896 and 1902 respectively. When South Africa adopted constitutional democracy in 1994 the areas of jurisdiction of Magistrates' Courts were not rationalised to be consistent with the provincial and municipal boundaries but retained their pre-1994 character. The rationalisation of courts did not happen as quick as was anticipated due to the long time it has taken to enact the Superior Courts Act, among other reasons.

The table below depicts the total number of the magisterial districts and sub districts across all Provinces:

PROVINCE	NUMBER OF MUNICIPALITIES	NUMBER MAGISTERIAL DISTRICTS BEFORE RATIONALISATION	SUB DISTRICTS
EASTERN CAPE	39	78	1
FREE STATE	20	53	0
GAUTENG	10	23	8
KWAZULU-NATAL	51	52	2

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PROVINCE	NUMBER OF MUNICIPALITIES	NUMBER MAGISTERIAL DISTRICTS BEFORE RATIONALISATION	SUB DISTRICTS
LIMPOPO	25	34	2
MPUMALANGA	18	32	1
NORTHERN CAPE	27	44	6
NORTH WEST	19	27	2
WESTERN CAPE	26	44	2
TOTAL	234	387	24

As may be noticed from the above table, the number of magisterial districts and subdistricts differs substantially with the number of Municipalities (metros, and local municipalities). This is attributed to the fact that Municipalities were rationalised from the initial number of 1126 to the current 284 Municipalities whilst magisterial districts were not.

One of the major constitutional reforms that became part of the transition into our new democratic dispensation in 1994 was the reconstitution of the Republic into a unitary state with 9 Provinces and Local Government made of a number of municipalities. In relation to the judicial system, the Superior Courts Act seeks to rationalise the current 13 High Courts into 9 Divisions of a single High Court in line with the 9 provinces. In turn each Division may have such local seats as are necessary to enhance access to justice.

Equally, the 387 magisterial districts must be aligned to municipalities consistent to their character (metro, district municipality and local municipalities), save where strict adherence to a provincial or municipal boundary will impede access to justice.

It is also important to note that as the Administration of Justice is a national legislative competence, the legislative framework allows that a portion of any part of a Province and include it in under the area of jurisdiction of a Division of the High Court in a different Province. Similarly, a portion or part of a Municipality may be included under the area of jurisdiction of a District or Regional Court situated in a different Municipality, if doing so will increase access to justice. However this must be done with great caution as it could have undesirable consequences in the course of adhering to our legal precedent or *stare decisis* rule.

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The alignment of magisterial districts with provincial and municipal boundaries will enhance access to court and ensure better co-ordination and integration of services within the three spheres of government, in particular within the Justice Crime Prevention and Security (JCPS) Cluster. It will promote cooperative governance amongst role-players within the justice sector and thereby enable them to coordinate their activities towards the attainment of the strategic objective of the Justice Crime Prevention and Security cluster of ensuring that "All in South Africa are and feel safe". The ability of citizens to access courts with ease without having to travel long distances and incur huge costs in connection therewith is at the heart of access to justice, hence the significance of the rationalisation of courts' project. It is in this context that the National Development Plan is of fundamental importance as it, amongst others, seeks to redress the racially-based spatial planning of the past which have resulted in huge inequalities between the privileged and disadvantaged communities.

The following principles are fundamental in undertaking the rationalisation of magistrates' Courts in particular:

- (a) access to justice, as an overriding principle;
- (b) magisterial districts to follow the boundaries of local municipalities as far as possible except where this will not enhance access to court;
- (c) every municipality to have a magistrate's court with the seat of the court in same area as the seat of the municipality. In respect of large municipalities (metros) more than one magisterial district to be proclaimed. The consequences thereof are that the 387 magisterial districts will be rationalised into approximately the 284 local municipalities;
- (d) subdistricts of the magisterial district to be established where desirable with a view to enhance access to justice. The local limits of the subdistricts to be described where this is desirable and necessary to bring full services of the court closest to communities;
- (e) periodical courts (local circuit courts) to be established to provide for trials to be held closest to local communities;
- (f) the rationalised districts to be aligned with judicial administrative regions for an effective governance framework. This will enable Judges President to coordinate judicial functions at the magistrates' courts effectively as contemplated in the Superior Courts Act;
- (g) Regional Courts, save for the seats for civil regional courts, must follow the jurisdictional boundaries of a Province. The seats of civil regional courts must be determined with due consideration of proximity of courts for the issue of processes to local communities.

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It is also important to note that magisterial districts must generally bear the same name as that of the municipality. This will ensure that names of the magisterial districts which are linked to the old dispensation are transformed and renamed in line with the values of new democratic order. This will ensure that the names of magisterial districts also synchronized with the names of municipalities to avoid confusion on the ground.

As is the case with Gauteng and North West Provinces, it is contemplated that all magisterial districts, including those in respect of which there will be no changes that are to be made, will be withdrawn and new magisterial districts created as part of a new dispensation under the new democratic dispensation. This is a necessary transformative imperative as it will remove, from the catalogue of our statutes and subordinate legislation, legislative instruments enacted during the apartheid and colonial era.

Following an investigation by the Department relating to the required rationalisation of courts which was undertaken in conjunction with the Judiciary and other stakeholders within the Justice sector, I have deemed it appropriate to effect the changes indicated in the tables below in respect of the Gauteng and North West Provinces:

GAUTENG PROVINCE

COLUMN A	COLUMN B	COLUMN C
Municipalities	District created	Seat of the magistracy
City of Johannesburg	Johannesburg Central	Johannesburg
City of Johannesburg	Johannesburg North	Randburg
City of Johannesburg	Johannesburg West	Roodepoort
City of Tshwane	Tshwane Central	Pretoria
City of Tshwane	Tshwane North	Pretoria North
City of Tshwane East	Tshwane East	Ekangala
Ekurhuleni	Ekurhuleni Central	Palm Ridge
Ekurhuleni	Ekurhuleni North ^A	Kempton Park
Ekurhuleni	Ekurhuleni East	Springs
Ekurhuleni	Ekurhuleni South East	Benoni
Emfuleni	Emfuleni	Vanderbijlpark
Lesedi	Lesedi	Heidelberg
Merafong	Merafong	Oberholzer
Midvaal	Midvaal	Meyerton
Mogale City	Mogale City	Krugersdorp
Randfontein	Randfontein	Randfontein
Westonaria	Westonaria	Westonaria

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NORTH WEST PROVINCE

COLUMN A	COLUMN B	COLUMN C
Municipalities	Magisterial district created	Seat of the magistracy
City of Matlosana	Matlosana	Klerksdorp
Ditsobotla	Ditsobotla	Lichtenburg
Greater Taung	Taung	Taung
Kagisano-Molopo	Ganyesa	Ganyesa
Kgetlengrivier	Kgetlengrivier	Koster
Lekwa-Teemabane	Lekwa-Teemane	Bloemhof
Madibeng	Madibeng	Brits
Mahikeng	Mahikeng	Mmabatho
Mamusa	Mamusa	Schweizer-Reneke
Maquassi-Hills	Maquassi-Hills	Wolmaranstad
Moretele	Moretele	Temba
Moses Kotane	Moses Kotane	Mankwe
Naledi	Naledi	Vryburg
Ramotshere Moiloa	Ramotshere Moiloa	Lehurutshe
Rustenburg	Rustenburg	Rustenburg
Tlokwe	Tlokwe	Potchefstroom
Tswaing	Tswaing	Delarayville
Ventersdorp	Ventersdorp	Ventersdorp

The date of effect of the new magisterial districts and the re-establishment of district courts in Gauteng and North West Provinces is 1 August 2014. Scheduling a date later in 2014 will allow us sufficient time to make necessary preparations for the implementation of these important reforms across the entire Justice value-chain. An important part of the rationalisation exercise is the description of local limits of the areas of jurisdiction of each district and sub-district. As you may be aware, we have published draft maps for each of the new magisterial districts in Gauteng and North West provinces and have invited comments on these maps. (I have also attached a copy of the Government notice inviting comments on the maps for your ease of reference). The deadline for comments was 13 December 2013. I will apprise you of the final maps and point-to-point descriptions relating to the new districts before I publish same in the Gazette. We intend to finalise this aspect of the rationalisation exercise during the first quarter of the 2014.

It is inevitable that the changes to the magisterial districts will have consequential effects on the areas of jurisdiction of the Divisions and local seats of the High Courts in the Province concerned. This is attributed to the fact that the Divisions and local seats of the High Court derive their areas of jurisdiction from the magisterial districts. Similar to the rationalisation

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of magisterial districts, the rationalisation of the Divisions and local seats of the High Court including their areas of jurisdiction will be implemented on an incremental basis, concurrently with the changes effected to the magisterial districts. It is in this context that the rationalisation of the areas of jurisdiction of the Gauteng and North West Divisions and local seats of the High Court will be considered first, whilst other Divisions will be considered at the same time as the rationalisation of magisterial districts for the provinces concerned.

I am certain that the rationalisation of courts including the re-organisation of their territorial jurisdictions will have far-reaching consequences for our justice system as well as to the manner in which the legal profession interact with courts at operational level. I have therefore deemed it necessary to apprise you of measure and processes that will unfold as part of the rationalization process which I trust will assist your organization broadly in making necessary adaptations to such changes as are published in the Gazette.

Kind regards

J. Raeds
MR JT RADEBE, MP
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
DATE: 14/01/14