

**COMMISSION OF INQUIRY INTO THE
RATIONALISATION OF THE
PROVINCIAL AND LOCAL DIVISIONS
OF THE SUPREME COURT**

FIRST INTERIM REPORT

VOLUME I

Mr President

We, the undersigned, appointed by you as members of the Commission of Inquiry into the Rationalisation of the Provincial and Local Divisions of the Supreme Court, have the honour to submit to you this first interim Report.

.....
G.G. Hoexter (Chairman)
Pretoria March 1997

.....
R.N. Leon (Member)
Durban March 1997

.....
A.N. Jappie (Member)
Durban March 1997

.....
G.S.S. Maluleke (Member)
March 1997

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CHAPTER 1

INTRODUCTION

1.1 THE APPOINTMENT OF THE COMMISSION

The Commission was appointed by the President on 31 March 1995.

1.2 THE MEMBERSHIP OF THE COMMISSION AND ITS SECRETARIAT

1.2.1 The persons originally appointed to the Commission on 31 March 1995 were:-

The Hon. Mr. Justice Gustav Gerhardus Hoexter (Chairman)
The Hon. Ramon Nigel Leon
Adv. Shiraz Desai
Mr. Fikile Bam

1.2.2 Both Adv. Desai (who on 1 July 1995 was appointed to the Bench of the Cape of Good Hope Provincial Division) and Mr. Bam (who on 10 August 1995 was appointed as President of the Lands Claim Court) were obliged to relinquish their membership of the Commission. In their stead the President appointed as members of the Commission:-

Adv. Achmat Naaim Jappie ; and
Mr. George Sammy Shane Maluleke, an attorney.

On 17 February 1997 Mr G.S.S. Maluleke was appointed to act as a Judge of the Venda High Court until 31 March 1997. He continues, however, to be a member of the Commission.

1.2.3 The Researcher originally appointed to the Commission, Mr. Cornelius Bezuidenhout, was at the end of September 1995 replaced by Mr. Robert August O'Connell. The Secretary to the Commission is Mr. Daniel Gouws Marais.

1.3 **THE COMMISSION’S TERMS OF REFERENCE**

1.3.1 The complete Terms of Reference are set forth in APPENDIX “A” at pages 123 - 124 of VOLUME I.

1.4 **THE OVERALL SCHEME OF THE COMMISSION’S REPORTS**

1.4.1 The Commission proposes to set forth its findings and recommendations in three separate Reports to the President. The subject-matter of each individual Report is indicated hereunder.

1.4.2 The Commission’s most pressing task relates to sub-paragraph (1)(b) of its Terms of Reference. Read together with the preamble contained in the introductory words of paragraph (1), sub-paragraph (1)(b) enjoins the Commission to report upon and to make recommendations regarding the rationalisation of the provincial and local divisions of the Supreme Court as envisaged by sec. 242 read with sec. 241 of Act No. 200 of 1993 [“the previous Constitution”], with more specific reference to :-

- (i) the desirability of creating within each of the nine provinces established under sec. 124(1) of Act No. 200 of 1993 a provincial and/or local division or divisions of the Supreme Court; and should the Commission advise the creation of such divisions, its recommendations regarding :-
 - (a) the seat of each such proposed division ;
 - (b) the area of jurisdiction of each such proposed division ;
 - (c) the numerical strength of the bench in each such proposed division ; and
 - (d) the name of each such proposed division.

1.5 THE SCOPE OF THE COMMISSION'S FIRST INTERIM REPORT

1.5.1 The First Interim Report deals exclusively with the Commission's findings and recommendations in regard to sub-paragraph (1)(b) of the Terms of Reference.

1.5.2 Translated into practical terms the inquiry here focuses primarily on what should be done : -

- (i) to rationalise those courts falling within the area of the Eastern Cape Division (i.e. the High Court at the seat of the Division at Grahamstown and the Courts at Port Elizabeth, Bisho, East London and Umtata) ; and
- (ii) to rationalise those High Courts falling within the area of jurisdiction of the Transvaal Provincial Division (i.e in the provinces of Gauteng, Mpumalanga, the Northern Province and North West).

1.6 THE SCHEME OF THE FIRST INTERIM REPORT

1.6.1 The First Interim Report consists of four volumes.

1.6.2 Some of the broad guidelines used by the Commission in approaching the problems of rationalisation of the provincial and local divisions in the Eastern Cape Division and in the Transvaal Provincial Division are discussed in Chapter 6 at pages 64 - 82 of VOLUME I. In this Chapter reference is also made to certain differences of opinion between individual members in regard to the critical questions **when** and **how** provincial divisions should be achieved in Mpumalanga, Northern Province, and North West.

1.6.3 The findings and recommendations of the Commission in regard to sub-paragraph (1)(b) of the Terms of Reference are set forth in Chapters 7, 8, 9 and 10 at pages 83 to 122 of VOLUME I.

1.6.4 The remaining three volumes contain extracts from oral representations made to the Commission by interested parties at public sittings of the Commission. These extracts relate chiefly to oral representations bearing on sub-paragraph (1)(b) of the Terms of Reference.

1.6.5 VOLUME II contains extracts from oral representations made by interested parties in the Eastern Cape Province.

1.6.6 VOLUME III contains extracts from oral representations made by interested parties in the following three provinces : KwaZulu-Natal; Western Cape and Northern Cape.

1.6.7 VOLUME IV contains extracts from oral representations made by interested parties in the following four provinces: Gauteng; Mpumalanga; Northern Province and North West.

1.7 THE SCOPE OF THE COMMISSION'S SECOND INTERIM REPORT

1.7.1 The Commission will deal in its Second Interim Report with its findings and recommendations in regard to the nature and extent of the appellate jurisdiction of provincial and local divisions of the High Court.

1.7.2 Except for the Witwatersrand Local Division no local division has appeal or review jurisdiction in respect of inferior courts within its area of jurisdiction.

1.7.3 Except for the Witwatersrand Local Division no local division has appellate jurisdiction in respect of the judgment or order given by a single Judge within its area of jurisdiction.

1.7.4 Certain interested parties in the Eastern Cape Province have submitted to the Commission that within the Eastern Cape Division all local divisions should be invested with appellate jurisdiction in respect both of inferior courts and the decisions of a single Judge within their respective areas of jurisdiction. Interested parties in KwaZulu-Natal have made similar submissions with regard to the Durban and Coast Local Division.

1.7.5 The Second Interim Report will further deal with the appellate jurisdiction of a Full Court in the provincial divisions. This was a matter which in the written responses and the oral representations before the Commission gave rise to protracted debate and sharp differences of opinion between the various interested parties.

1.7.6 The problem in regard to the appellate jurisdiction of the provincial Full Court is complex and has many facets. Suffice it to say for present purposes that some of the important questions which have emerged in the debate are the following :-

- a) Should the Full Court be invested with an enlarged jurisdiction to make it the **primary** appellate court from which any further appeal to the Supreme Court of Appeal will lie **only with leave of the Supreme Court of Appeal itself** ?
- b) Should the Bench sitting in the Full Court with such enlarged jurisdiction not be drawn from the full national complement of some 150 High Court Judges in order:-
 - (i) to harness the entire pool of available judicial talent across provincial borders ;
 - (ii) to overcome the problem presented by convening a Full Court in a small division ; and
 - (iii) to dispel a possible public perception, however unfounded, that a Full Court constituted from a small group of the immediate colleagues of the Judge whose decision is on appeal may not be completely impartial?
- c) Should the system of provincial Full Court appeals be scrapped and replaced by a three-Judge Intermediate Appeal Court: the President being a Judge of the Supreme Court of Appeal or a Judge President or a Deputy Judge President and the other two members being Judges drawn from the provincial divisions?

1.8 THE SCOPE OF THE COMMISSION'S FINAL REPORT

- 1.8.1 In its Third and Final Report the Commission will consider whether access to justice for civil litigants in the High Court could be improved by the : -
- a) establishment of a Circuit Court system for the adjudication of civil cases ;
 - b) creation of a specialist Commercial Court such as the Commercial Court functioning in Johannesburg ;
 - c) creation of a specialist Family Court of comprehensive jurisdiction ;

- d) creation of a specialist Court for the adjudication of Intellectual Property Law matters ;
- e) creation of a specialist Insolvency Court ;
- f) implementation of caseflow management systems in order to achieve the effective supervision by the court of every stage involved in the progress of a trial action from its commencement to its conclusion ;
- g) creation of court-annexed Alternative Dispute Resolution mechanisms ;
and
- h) extension of the original civil jurisdiction of each provincial and local division of the High Court by empowering it to entertain all causes, wherever arising, in those matters in which the defendant or respondent is an *incola* of South Africa as a whole.

CHAPTER 2

THE HISTORICAL AND LEGISLATIVE BACKGROUND TO THE QUESTIONS POSED IN SUB- PARAGRAPH (1)(b) OF THE TERMS OF REFERENCE

- 2.1 The structure of the High Court in South Africa has its genesis in the establishment of Union in 1910. The South Africa Act created an Appellate Division to exercise appellate jurisdiction and in addition thereto provincial divisions to correspond with the four constituent provinces of the Union.
- 2.2. The present position of the High Court is governed by the Supreme Court Act. 59 of 1959 [“the Supreme Court Act”].
- 2.3 At the date of the appointment of this Commission of Inquiry on 31 March 1995 the legitimacy of the Supreme Court Act was governed by Act 200 of 1993 [“the previous Constitution”] which came into operation on 27 April 1994.
- 2.4 The previous Constitution was repealed by THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 (Act No. 108 of 1996) [“the new Constitution”] which, save for sec 160(1)(b) thereof, came into effect on 4 February 1997. The legitimacy of the Supreme Court Act now derives from the new Constitution.
- 2.5 In terms of sec 3(a) of the Supreme Court Act a provincial division shall consist of a judge president , one or more deputy judges president, each with specified headquarters within the area of jurisdiction of that Division , and so many judges as the President may from time to time determine. In terms of sec 1 of the Supreme Court Act “provincial division” includes the Eastern Cape Division and the Northern Cape Division.

2.6 In terms of sec 4(1) read with the First Schedule to the Supreme Court Act the SEATS of the various provincial and local divisions are as follows :-

Cape of Good Hope Provincial Division [”CPD”]	.....	<u>Cape Town</u>
Eastern Cape Division [”ECD”]	.....	<u>Grahamstown</u>
Northern Cape Division [”NCD”]	.....	<u>Kimberley</u>
Natal Provincial Division [”NPD”]	.....	<u>Pietermaritzburg</u>
Orange Free State Provincial Division [”OPD”]	.....	<u>Bloemfontein</u>
Transvaal Provincial Division [”TPD”]	.....	<u>Pretoria</u>
Durban and Coast Local Division [”DCLD”]	.....	<u>Durban</u>
Witwatersrand Local Division [”WLD”]	.....	<u>Johannesburg</u>
South-Eastern Cape Local Division [”SECLD”]	.....	<u>Port Elizabeth</u>

2.7 Schedule 1 of the Supreme Court Act defines the area of jurisdiction of each of the provincial and local divisions mentioned in 2.6 above. Concurrent jurisdiction is exercised by :-

- (a) the ECD in the area of jurisdiction of the SECLD ;
- (b) the NPD in the area of jurisdiction of the DCLD ; and
- (c) the TPD in the area of jurisdiction of the WLD.

2.8 Except for the WLD , a local division has no appeal or review jurisdiction from inferior courts within its area of jurisdiction. Such jurisdiction is exercised by the provincial division.

2.9 The full court of a provincial division has appellate jurisdiction in civil or criminal proceedings in respect of the judgment or order of a single judge of that division if the court granting leave to appeal is not satisfied that the appeal requires the attention of the Supreme Court of Appeal. Where the judgment or order is that of a local division , the appeal lies to the full court of the provincial division having concurrent jurisdiction , save that in the case of an appeal from the WLD the judge president of the TPD may direct it to be heard by a full court of the WLD.

- 2.10 In terms of sec 7 of the Supreme Court Act the judge president of a provincial division may by notice in the Government Gazette divide the area under the jurisdiction of that division into circuit districts. In each such district [”circuit local division”] a circuit is held at least twice a year. A circuit local division is deemed to be a local division.
- 2.11 When the Transkei became independent in 1976 its former High Court became the Transkei Supreme Court with a right of appeal to the South African Appellate Division [”the AD”]. Through further legislation there was constituted in 1978 a new Transkei Supreme Court comprising a general division and an appellate division.
- 2.12 Immediately before Bophuthatswana gained independence in 1977 there was created the Bophuthatswana Supreme Court with a right of appeal to the AD. Through further legislation there was constituted in 1982 a Bophuthatswana Supreme Court comprising a general division and an appellate division.
- 2.13 When Venda became independent in 1979 the Venda High Court was established with appeals lying to the AD.
- 2.14 When Ciskei gained independence in 1981 the Ciskei High Court was established. Through further legislation there was constituted in 1984 the Ciskei Supreme Court comprising a general division and an appellate division.
- 2.15 The areas of the former TBVC states now form part of the national territory of the Republic of South Africa ; and the courts mentioned in paragraphs 2.11 to 2.14 above have been incorporated afresh into the South African judicial hierarchy.
- 2.16.1 In the previous Constitution, **the Judicial Authority and the Administration of Justice** were dealt with in secs 96 to 109 in Chapter 7.
- 2.16.2 In the previous Constitution, **Transitional Arrangements for the Judiciary** were dealt with in sec 241 and **Rationalisation of Court Structures** in sec 242.
- 2.16.3 In the new Constitution, **Courts and the Administration of Justice** are dealt with in secs 165 to 180 in Chapter 8.
- 2.16.4 In the new Constitution, **Transitional Arrangements for the Courts** are dealt with in item 16 of Schedule 6.

2.17.1 Sec 101(1) of the previous Constitution read as follows -

“ There shall, subject to sections 241 and 242, be a Supreme Court of South Africa, which shall consist of an Appellate Division and such provincial and local divisions, and with such areas of jurisdiction, as may be prescribed by law.”

2.17.2 Subject to certain provisos, which are here not quoted, sec 241(1) of the previous Constitution read as follows -

“ Every court of law existing immediately before the commencement of this Constitution in an area which forms part of the national territory, shall be deemed to have been duly constituted in terms of this Constitution or the laws in force after such commencement, and shall continue to function as such in accordance with the laws applicable to it until changed by a competent authority...”

2.17.3 Subsections (1) and (2) of sec 242 of the previous Constitution read as follows -

“(1) All jurisdictional areas and court structures appropriate thereto existing immediately before the commencement of this Constitution, shall as soon as possible after such commencement be rationalised in accordance with an Act of Parliament with a view to establishing the jurisdictional areas and court structures contemplated in Chapter 7.

(2) The rationalisation of the jurisdictional areas and court structures referred to in subsection (1) shall be the responsibility of the national government after consultation with the Judicial Service Commission.”

2.17.4 Sec 166 of the new Constitution reads as follows -

“ 166. The courts are -

- (a) the Constitutional Court;*
- (b) the Supreme Court of Appeal;*
- (c) the High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts;*

- (d) *the Magistrates' Courts; and*
- (e) *any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the High Courts or the Magistrates' Courts."*

2.17.5 Subitem 16(1) of Schedule 6 to the new Constitution reads as follows -

- “ 16(1)** *Every court, including courts of traditional leaders, existing when the new Constitution took effect, continues to function and to exercise jurisdiction in terms of the 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. *any amendment or repeal of that legislation ; and*
 - b. *consistency with the new Constitution."*

2.17.6 Subitem 16(3) of Schedule 6 to the new Constitution reads as follows -

- “ (3)**
- a. *The Appellate Division of the Supreme Court of South Africa becomes the Supreme Court of Appeal under the new Constitution.*
 - b. *Anyone holding office as the Chief Justice, the Deputy Chief Justice or a judge of the Appellate Division when the new Constitution takes effect, becomes the Chief Justice, the Deputy Chief Justice or a judge of the Supreme Court of Appeal under the new Constitution."*

2.17.7 Subitem 16(4) of Schedule 6 to the new Constitution reads as follows -

- “ (4)**
- a. *A provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or a general division of such a court, becomes a High Court under the new Constitution without any alteration in its*

area of jurisdiction, subject to any rationalisation contemplated in subitem (6).

- b. Anyone holding office or deemed to hold office as the Judge President, the Deputy Judge President or a judge of a court referred to in paragraph (a) when the new Constitution takes effect, becomes the Judge President, the Deputy Judge President or a judge of such a court under the new Constitution, subject to any rationalisation contemplated in subitem (6)."*

2.17.8 Subitem 16(6) of Schedule 6 to the new Constitution reads as follows -

"(6)

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

2.18.1 Sec 124(1) of the previous Constitution established for the Republic of South Africa the following nine provinces whose respective areas were defined in Part 1 of Schedule 1 to the previous Constitution :-

(a) Eastern Cape; (b) Eastern Transvaal; (c) KwaZulu/Natal; (d) Northern Cape; (e) Northern Transvaal; (f) North-West; (g) Orange Free State ; (h) Pretoria-Witwatersrand-Vereeniging and (i) Western Cape.

2.18.2

Sec 103 of the new Constitution reads as follows -

“ 103(1) *The Republic has the following provinces:*

- a. Eastern Cape***
- b. Free State***
- c. Gauteng***
- d. KwaZulu-Natal***
- e. Mpumalanga***
- f. Northern Cape***
- g. Northern Province***
- h. North West***
- i. Western Cape***

(2) *The boundaries of the provinces are those that existed when the Constitution took effect.”*

2.19

Broadly speaking the increase from four to nine provinces was achieved :-

- (1) by dividing the former Cape of Good Hope Province into the three new provinces of **WESTERN CAPE, EASTERN CAPE and NORTHERN CAPE** ; and -
- (2) by carving up the former Transvaal Province into the following four new provinces :
 - (i) **GAUTENG**, consisting of the small central area of the old Transvaal in which both Pretoria and Johannesburg are situated ;
 - (ii) **MPUMALANGA**, consisting of the large territory lying to the east of Gauteng and previously known as the Eastern Transvaal ;
 - (iii) **NORTHERN PROVINCE**, consisting of the large territory lying to the North of Gauteng and previously known as the Northern Transvaal ; and
 - (iv) **NORTH WEST**, consisting of the large territory lying to the west of Gauteng and previously known as the Western Transvaal.

2.20

In what follows collective reference to the three new provinces of Mpumalanga,

Northern Province and North West will be made as “the three adjoining provinces”.

2.21 Both Pretoria (the seat of the Transvaal Provincial Division) and Johannesburg (the seat of the Witwatersrand Local Division) fall within the province of Gauteng. However, it is a consequence of the establishment of Gauteng and the three adjoining provinces that none of the three adjoining provinces has a provincial or local division of the High Court.

2.22 On the other hand, of the remaining five provinces:-

- (i) **Eastern Cape** has a division (with its seat at Grahamstown) and a local division (the South-Eastern Cape Local Division) with its seat at Port Elizabeth ;
- (ii) **KwaZulu-Natal** has a provincial division (with its seat at Pietermaritzburg) and a local division (the Durban and Coast Local Division) with its seat at Durban ;
- (iii) **Northern Cape** has a division with its seat at Kimberley ;
- (iv) **Free State** has a provincial division with its seat at Bloemfontein ; and
- (v) **Western Cape** has a provincial division with its seat at Cape Town.

2.23 Within the national territory of the Republic of South Africa there are High Courts (which are neither provincial nor local divisions of the High Court) in each of the territories which were respectively part of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei.

2.24 The **Transkei High Court** (with its seat at Umtata) and the **Ciskei High Court** (with its seat at Bisho) both fall within the territory of the Eastern Cape. Bisho is now the legislative and administrative capital of the Eastern Cape.

2.25 The **Bophuthatswana High Court** (with its seat at Mmabatho/Mafikeng) falls within the territory of the North West and the Free State. Mmabatho/Mafikeng is now the legislative and administrative capital of the North West.

2.26 The **Venda High Court** (with its seat at Thohoyandou) falls within the territory of the Northern Province.

- 2.27 The provincial territory of the **Orange Free State** as defined in Part 1 of Schedule 1 to the previous Constitution coincides with the area of jurisdiction of the Orange Free State Provincial Division as defined in Schedule 1 to the Supreme Court Act.
- 2.28 The respective provincial territories of the **Western Cape**, the **Eastern Cape** , the **Northern Cape** and **KwaZulu/Natal** as defined in Part 1 of Schedule 1 to the previous Constitution do not coincide with the areas of jurisdiction of the Cape of Good Hope Provincial Division, the Eastern Cape Division , the Northern Cape Division and the Natal Provincial Division as respectively defined in Schedule 1 to the Supreme Court Act .
- 2.29 The five magisterial districts of Namaqualand, Calvinia, Williston, Sutherland and Fraserburg which in terms of Schedule 1 to the Supreme Court Act fall within the area of jurisdiction of the Cape of Good Hope Provincial Division now belong territorially to the Northern Cape Province. The magisterial district of Willowmore which in terms of Schedule 1 to the Supreme Court Act falls within the area of jurisdiction of the Cape of Good Hope Provincial Division now belongs territorially to the Eastern Cape Province.
- 2.30 The magisterial district of Murraysburg which in terms of Schedule 1 to the Supreme Court Act falls within the jurisdiction of the Eastern Cape Division now belongs territorially to the Western Cape Province.
- 2.31 The three magisterial districts of Hanover, Colesberg and Noupoot which in terms of Schedule 1 to the Supreme Court Act fall within the area of jurisdiction of the Eastern Cape Division now belong territorially to the Northern Cape Province.
- 2.32 The magisterial district of Vryburg which in terms of Schedule 1 to the Supreme Court Act falls within the area of jurisdiction of the Northern Cape Division now belongs territorially to the North West Province.
- 2.33 The eastern segment of the magisterial district of Piet Retief, the whole of which district in terms of Schedule 1 to the Supreme Court Act falls within the area of jurisdiction of the Transvaal Provincial Division now belongs territorially to KwaZulu-Natal.
- 2.34 The magisterial district of Delmas, which in terms of Schedule 1 to the Supreme Court Act falls within the area of civil jurisdiction of the Witwatersrand Local

Division, now belongs territorially to the province of Mpumalanga.

CHAPTER 3

SUMMARY OF THE COMMISSION'S WORK TO DATE

3.1 INVITATION TO INTERESTED PARTIES TO MAKE WRITTEN SUBMISSIONS AND/OR ORAL REPRESENTATIONS TO THE COMMISSION

- 3.1.1 During April 1995 the Commission prepared and disseminated a written CALL FOR SUBMISSIONS. This document announced the appointment of the Commission and quoted its Terms of Reference. It also explained the background to the issues raised in sub-paragraph (1)(b) of the Terms of Reference.
- 3.1.2 The CALL FOR SUBMISSIONS invited interested parties to make submissions to the Commission by way of written responses to any or all of the matters set forth in sub-paragraphs (a) to (f) of paragraph (1) of the Terms of Reference. At the same time interested parties were requested to state in their written responses whether they wished to appear in person before the Commission in order to support or amplify their written responses by oral representations.
- 3.1.3 The deadline for written responses to reach the Commission was initially 30 June 1995. At the instance of various interested parties the deadline was extended to 30 August 1995.
- 3.1.4 A copy of the CALL FOR SUBMISSIONS is contained in APPENDIX "B" at page 125 of VOLUME I of this report.
- 3.1.5 A list of those persons and associations to whom a copy of the CALL FOR SUBMISSIONS was directly addressed by the Commission appears in APPENDIX "C" at page 128 of VOLUME I of this report.
- 3.1.6 The Commission further caused copies of the CALL FOR SUBMISSIONS to be displayed on public notice boards in every division of the Supreme Court and in

every magistrates court office throughout the Republic. The Commission is indebted to the SABC for its generous assistance to the Commission in publicising the work of the Commission. The SABC transmitted television and radio flashes in which the task of the Commission was explained and in which viewers and listeners were invited to make written submissions and/or oral representations to the Commission. In addition Mr. Fikile Bam was interviewed in a television programme about the work of the Commission.

3.1.7 The Commission caused to be widely published in the daily press, notices informing the public of the Commission's work and inviting readers to make written submissions and/or oral representations to the Commission. A list of the newspapers in which such notices were published appears in APPENDIX "D" at page 129 of VOLUME I of this report.

3.1.8 **285** written responses to the CALL FOR SUBMISSIONS were received by the Commission. A list of these respondents appears in APPENDIX "E" at page 130 of VOLUME I of this report.

3.2 RECIPROCAL DISCLOSURE OF WRITTEN RESPONSES BETWEEN RESPONDENTS

3.2.1 The regulations governing the Commission prohibit the publication of the contents of written responses to the Commission without the written permission of the Chairman.

3.2.2 Since various interested parties conveyed to the Commission a wish to have sight of responses submitted to the Commission by others, each respondent was requested in writing to signify to the Commission (by completing an enclosed form and by posting it to the Commission) whether he or she was willing, subject to the written permission of the Chairman, to have his or her response disclosed to other interested parties. Copies of the request and enclosed consent form are to be found in APPENDIX "F" at page 140 of VOLUME I of this report.

3.2.3 The vast majority of respondents communicated their consent to such disclosure. Thereafter copies of the responses requested were supplied by the Commission to the interested parties applying therefor, through the post, by courier service, or by personal delivery by members of the Secretariat.

3.3 INFORMAL MEETINGS WITH JUDGES, ATTORNEYS-GENERAL, PRACTITIONERS AND COURT OFFICIALS

3.3.1 During the period April to December 1995 the Chairman and the Secretariat visited various provincial and local divisions of the Supreme Court as well as the Ciskei Supreme Court, the Transkei Supreme Court and the Venda Supreme Court.

3.3.2 During the visits aforesaid, informal interviews were held with Judges President, Judges, Attorneys-General, members of the Registrar's Office and practitioners. During such interviews general information was gathered and an attempt was made to identify problem areas.

3.3.3 Details of the dates of such visits and of the persons interviewed are set forth in APPENDIX "G" at page 142 of VOLUME I of this report.

3.4 INSPECTIONS OF SUPREME COURT BUILDINGS, MAGISTRATES COURTS BUILDINGS AND BUILDINGS SUGGESTED BY INTERESTED PARTIES AS BEING SUITABLE FOR ADAPTATION TO USE AS A SUPREME COURT

3.4.1 At various times the Commission and its Secretariat carried out inspections of the following buildings housing Supreme Courts or Magistrates Courts:-

- (a) The Supreme Court at Bisho ;
- (b) The Supreme Court at Umtata ;
- (c) The Supreme Court at Port Elizabeth ;
- (d) The Supreme Court at Grahamstown ;
- (e) The Supreme Court at Mmabatho ;
- (f) The Supreme Court at Thohoyandou ;
- (g) The Magistrates Court in East London in which building there is also accommodated the East London Circuit Local Division ;
- (h) The Magistrates Court at Mdantsane ;
- (j) The Magistrates Court at Zwelitsha ;
- (k) The Magistrates Court at King William's Town ;
- (l) The Magistrates Court at Rustenburg ;
- (m) The Magistrates Court at Middelburg ; and

(n) The Magistrates Court at Klerksdorp.

3.4.2 The Commission and its Secretariat further inspected the following buildings which had been suggested as being suitable, subject to appropriate structural alteration, to house a division of the Supreme Court :-

(a) **IN PIETERSBURG**

the old Magistrates Court presently used by the South African Police Services ;

(b) **IN POTCHEFSTROOM**

the former Barnard-Huis Student Residence, being the property of the University of Potchefstroom and presently being used by the South African Police Services ;

(c) **IN KLERKSDORP**

the old Central West Headquarters ;
the West-End Building ; and
the Klerksdorp Medical Centre.

(d) **IN RUSTENBURG**

the Tlhabane Magistrates Court ; and
the Phokeng Civic Centre which is used as a Circuit Court for the Bafokeng District by the Bophuthatswana Supreme Court.

3.4.3 With the assistance of the Hon. Mr. Justice Pickard, Judge President of the Ciskei Supreme Court, and with the co-operation of the South African Police Services, the Commission and its Researcher undertook an aerial inspection of the area of jurisdiction of the Ciskei Supreme Court and the adjoining East London area.

3.5 PUBLIC SITTINGS OF THE COMMISSION AT WHICH ORAL REPRESENTATIONS BY INTERESTED PARTIES WERE RECEIVED

3.5.1 During the period October 1995 to August 1996 the Commission held fifteen public sittings at which oral representations by various interested parties (listed in Appendix “H” at page 143 of VOLUME I) were heard at the places mentioned in the first column hereunder on the dates respectively mentioned in the second column hereunder:-

i.	Grahamstown	-	2 - 3 October 1995 ;
ii.	East London	-	4 - 5 October 1995 ;
iii.	Umtata	-	18 October 1995 ;
iv.	Durban	-	25 November 1995 ;
v.	Cape Town	-	8 - 9 January 1995 ;
vi.	Springbok	-	11 March 1996 ;
vii.	Bloemfontein	-	16 March 1996 ;
viii.	Durban	-	30 March 1996 ;
ix.	Midrand	-	9-12 & 15-16 April 1996 ;
x.	Middelburg (MP)	-	22 April 1996 ;
xi.	Nelspruit	-	22 April 1996 ;
xii.	Pietersburg	-	23 - 24 April 1996 ;
xiii.	Sun City/Pilanesberg	-	18 May 1996 ;
xiv.	Kimberley	-	25 May 1996 ; and
xv.	Bloemfontein	-	21 August 1996.

3.5.2 Advance notice to the public of the venues and dates of the Commission’s public sittings was published by way of SAPA press releases. In this connection the Commission expresses its appreciation to SAPA and in particular to SAPA’s Bloemfontein representative, Mrs. E. Rhodes, for her excellent assistance.

3.6 THE COMMISSION’S OVERSEAS FACT-FINDING TRIP

3.6.1 From 26 August to 9 October 1996 the Commission and its Secretariat visited Australia, New Zealand, Canada, the United States of America, Scotland and England on a fact-finding mission.

3.6.2 In the course thereof the Commission and its Secretariat conducted intensive consultations in fifteen different cities (Perth, Sydney, Wellington, Auckland, Vancouver, Victoria BC, Denver, Minneapolis, Chicago, Ottawa, Toronto,

Washington DC, New York, Edinburgh and London) with many Judges, Judges clerks, academic jurists, practitioners, mediators, court management consultants, court managers, registrars, registrar/magistrates, referees, social scientists in domestic relations, and senior Government officials, etc. In addition the Commission and its Secretariat had the advantage of witnessing court proceedings and mediation sessions.

3.6.3 The persons so consulted by the Commission, all of whom took great pains in giving the Commission every possible assistance, were all experts in one or more of the fields of caseflow management, alternative dispute resolution techniques, commercial courts, bankruptcy courts, specialist courts for the adjudication of intellectual property law matters, and domestic relations courts (including family courts of comprehensive jurisdiction).

3.6.4 In its Final Report the Commission will describe in detail its conclusions based on the impressions formed by it in the course of its overseas fact-finding mission, and the significance of those conclusions in relation to the recommendations which the Commission will make in regard to the matters already set forth in paragraphs 1.8.1(a) to (h) at pages 5 - 6 in Chapter 1 of this Report. The Final Report will also list the many foreign Judges, experts and practitioners by whom the Commission was cordially received and all of whom took much time and endless trouble in consulting with and advising the Commission and its Secretariat.

3.7 ASSISTANCE GIVEN TO THE COMMISSION BY MR. L.O. FOURIE

3.7.1 In terms of regulation 6 of the regulations applicable to the Commission the Chairman may designate a person to assist the Commission, in a capacity other than that of a member, in the performance of certain of its functions.

3.7.2 In the course of its investigations the Commission wished to determine the broad nature and the approximate extent of the case-loads respectively carried by the following courts: (1) the South-Eastern Cape Local Division; (2) the Ciskei Supreme Court; (3) the Supreme Court at Grahamstown (including the East London Circuit Local Division); and the Bophuthatswana Supreme Court.

3.7.3 In terms of reg. 6 Mr. L.O. Fourie, a former Registrar of the Supreme Court, was designated by the Chairman to extract from the court files of the courts

mentioned in 3.7.2 above, certain particulars in respect of the trials, motions and appeals heard in each such court.

3.7.4 In due course Mr. Fourie was appointed by the Department of Justice on a temporary basis to assist the Commission in the above connection. The Commission having thereafter sought and gained the prior formal approval of the Judge President of each court concerned, Mr. Fourie began his work. In the execution thereof Mr. Fourie examined such court files as were still available at the court centres mentioned in the first column hereunder during the periods mentioned in the second column hereunder:-

Port Elizabeth	.....	1 March to 23 May 1996 ;
	.	
Bisho	.....	3 June to 29 July 1996 ;
	.	
Grahamstown	.....	1 August to 15 November 1996 ; and
	.	
Mmabatho	.....	25 November to 20 December 1996 .
	.	

3.7.5 The Commission wishes to express its appreciation to Mr. Fourie for the conscientious manner in which he carried out his mandate in circumstances not always congenial.

CHAPTER 4

SUMMARY OF THOSE ISSUES RAISED IN THE WRITTEN RESPONSES WHICH ARE RELEVANT TO SUB-PARAGRAPH (1)(b) OF THE TERMS OF REFERENCE

4.1 The Eastern Cape Province

4.1.1 Single Seat

4.1.1.1 Should there be a single seat in the Eastern Cape Division ?

4.1.2 Grahamstown

4.1.2.1 Should Grahamstown retain its status as the seat of the Eastern Cape Division ?

4.1.2.2 If Grahamstown does not retain its status as the seat of the Eastern Cape Division, what should become of it ?

4.1.3 Bisho

4.1.3.1 Should Bisho become the seat of the Eastern Cape Division ?

4.1.3.2 If Bisho does not become the seat of the Eastern Cape Division, should the Ciskei Court become a local division of the Eastern Cape Division ?

4.1.3.3 If the Bisho Court does not become the seat of the Eastern Cape Division, and it is not converted into a local division, should it be closed down ?

4.1.4 **Umtata**

4.1.4.1 Should the Transkei Supreme Court become an autonomous division ?

4.1.4.2 If so, what should be the name of such an autonomous division, and what should be the strength of its bench ?

4.1.4.3 If the Transkei Supreme Court does not become an autonomous division, should it be converted into a local division of the Eastern Cape Division ?

4.1.4.4 If so, what should be its name, and what should be the strength of its bench ?

4.1.4.5 Should the jurisdictional area of the Transkei Supreme Court be expanded ?

4.1.5 **Port Elizabeth**

4.1.5.1 Should the South-Eastern Cape Local Division at Port Elizabeth be retained ?

4.1.6 **East London**

4.1.6.1 Should the Circuit Local Division for the District of East London be retained as such ?

4.1.6.2 Should the East London Court become a local division of the Eastern Cape Division with jurisdiction over the districts of East London, Mdantsane and Komga ?

4.1.7 **General**

4.1.7.1 Should jurisdictional areas of divisions of the Supreme Court be co-extensive with the provincial boundaries of provinces ?

4.1.7.2 Should each province have its own provincial division ?

4.2 **Gauteng**

4.2.1 **Witwatersrand Local Division**

4.2.1.1 Should the Witwatersrand Local Division become an autonomous division of the Supreme Court in Gauteng with its seat at Johannesburg and its own Judge President?

4.2.1.2 Should the Witwatersrand Local Division of the Supreme Court retain its present status ?

4.2.2 **General**

4.2.2.1 Should a new Supreme Court seat be established at Midrand in Gauteng?

4.2.2.2 Should divisions of the Supreme Court be created in Mpumalanga, the Northern Province and the North West Province ?

4.3 **Kwazulu-Natal**

4.3.1 **Pietermaritzburg**

4.3.1.1 Should Pietermaritzburg remain the seat of the Natal Provincial Division with Durban remaining the seat of the Durban and Coast Local Division ?

4.3.2 **Durban**

4.3.2.1 Should the seat of the Natal Provincial Division be moved from Pietermaritzburg to Durban ?

4.3.3 **General**

4.3.3.1 Should jurisdictional areas of divisions of the Supreme Court be co-extensive with the provincial boundaries of provinces?

4.4 **Mpumalanga**

4.4.1 **Provincial Division**

4.4.1.1 Should Mpumalanga become an autonomous provincial division of the Supreme Court?

4.4.2 **Circuit Local Division**

4.4.2.1 Should Mpumalanga remain a Circuit Local Division of the Supreme Court at Pretoria?

4.5. **North West Province**

4.5.1 **Provincial Division**

4.5.1.1 Should the North West Province become an autonomous provincial division of the Supreme Court ?

4.5.1.2 If so, should provision nevertheless be made for the Pretoria Supreme Court to have concurrent jurisdiction over certain parts of the North West Province ?

4.5.2 **Circuit Local Division**

4.5.2.1 Should the North West Province remain a Circuit Local Division of the Supreme Court at Pretoria ?

4.5.2.2 Should there be concurrent jurisdiction across provincial boundaries ?

4.6 **Northern Cape**

4.6.1 **Jurisdiction**

4.6.1.1 Should the jurisdiction of a provincial division be confined to provincial boundaries ?

4.6.1.2 Should the Cape of Good Hope Provincial Division exercise concurrent jurisdiction over the magisterial district of Namaqualand which now forms part of the territory of the Northern Cape Province ?

4.6.3 **General**

4.6.3.1 Should the seat of the Northern Cape Division remain at Kimberley ?

4.6.3.2 What should the Northern Cape Division be called ?

4.7 Northern Province

4.7.1 Provincial Division

4.7.1.1 Should the Northern Province become an autonomous provincial division of the Supreme Court ?

4.7.2 Local Division

4.7.2.1 Should the Northern Province become a local division of the Supreme Court at Pretoria ?

4.7.3 Venda Supreme Court

4.7.3.1 What should be done about the Venda Supreme Court situated at Thohoyandou ?

4.8 Western Cape

4.8.1 Jurisdiction

4.8.1.1 Should jurisdictional areas of divisions of the Supreme Court coincide with the provincial boundaries of provinces ?

4.8.2 General

4.8.2.1 What should be the name of the Cape of Good Hope Provincial Division ?

CHAPTER 5

SUMMARY OF SUBMISSIONS IN THE WRITTEN RESPONSES WHICH RELATE TO ISSUES RAISED UNDER SUB-PARAGRAPH (1)(b) OF THE TERMS OF REFERENCE

5.1 Eastern Cape

5.1.1 Should there be a single seat in the Eastern Cape Division ?

- (a) **The Honourable B. de V Pickard, Judge President of the Ciskei Supreme Court states -**

“... where sub-division needs to occur in a particular Provincial Division of the Supreme Court, it should be done on an area of jurisdiction basis (as is presently the case with Local Divisions) and that all such sub-divisions to have equal standing and that none of them is regarded as something superior and representing the so-called ‘seat of the court’.”

- (b) Pickard JP goes on to state that a Judge President who will be resident in the area of one of the court venues should be appointed to have overall control and that -

“... At each of these venues ... there should be a Deputy Judge President in charge. ”

- (c) The views of Pickard JP are supported by the King William’s Town Transitional Local Council.

(d) **The National Association of Democratic Lawyers (Border) -**

“The area of the Eastern Cape Province is very large and should therefore be divided into several areas in which there will be a ‘seat’ or court venue...”

(e) **Attorney-General of Bisho -**

“ ... the size and demography of the province demand that it be served by more than one seat of this single Division.”

(f) **In reply to the views expressed by Pickard JP, the Hon Mr Justice N.W. Zietsman Judge President of the Eastern Cape Division, submits -**

“Such a suggestion is, in my opinion, undesirable, impractical and contrary to the good administration of Justice ...”

5.1.2 Should Grahamstown retain its status as the seat of the Eastern Cape Division ?

(a) **The Port Elizabeth and Districts branch of the National Association of Democratic Lawyers -**

“ The Provincial Division of the Supreme Court (judicial capital) should remain in Grahamstown with jurisdiction over the entire Province.”

(b) **Attorneys Neave, Stötter & Associates of Port Alfred -**

“ We write to advise that the Partners and Consultants of this firm support the retention of the seat of the Provincial Division in Grahamstown with minimum changes in geographical jurisdiction.”

(c) **Attorney-General for the Eastern Cape Division -**

“... The Attorney-General of the Eastern Cape Division supports these arguments for the retention of Grahamstown, whether it be the seat of a large, all-encompassing Eastern Cape Division or only of a geographically

smaller Division west of the Kei River ”

(d) Attorney Ralph Human of Grahamstown -

“I submit that the seat of the court should remain in Grahamstown.”

(e) The East London Attorneys Association -

“... that Grahamstown remain as the seat of the Court in the Eastern Cape...”

(f) City of Grahamstown -

“There are clearly strong historical reasons for the location of the Supreme Court in Grahamstown over 100 years ago. Its domain and its authority were established over many decades, and these were only interfered with by the creation of the Transkei and Ciskei bantustans which were required to establish their own Supreme Courts because of their ‘independent’ status. Given the imminent demise of these artificial creations of apartheid government, the domain of the new Provincial Supreme Court will be restored, and its Seat should be declared in Grahamstown where it always has been and logically belongs.”

(g) Zietsman JP -

“That Grahamstown should be the Judicial capital of the Eastern Cape and that the Grahamstown Court should have jurisdiction over the whole area.”

(h) Judges’ Committee of the Eastern Cape Division, Grahamstown -

“The city of Grahamstown is a cultural and educational centre which can properly be described as politically neutral. There is nothing controversial about it. ... It has been the seat of the local Supreme Court for well over a hundred years to speak of the effect of the withdrawal of the greater legal community upon the economic life of an already economically depressed city as ‘devastating’ is not an exaggeration ... The seat of the Supreme Court should remain in Grahamstown.”

(j) **Advocates and Attorneys Liaison Committee of the Eastern Cape** -

“The seat of the Provincial Division should be situated at Grahamstown and that court should have jurisdiction over the whole of the Eastern Cape Province. ... The court at Bisho cannot accommodate the work load at present borne by the court in Grahamstown.”

(k) **Attorney I.M. Spence of Greyvenstein & Spence at Barkly East** -

“ ... the Eastern Division of the Supreme Court of South Africa should continue in Grahamstown ...”

5.1.3 If Grahamstown does not retain its status as the seat of the Eastern Cape Division, what should become of it ?

(a) **The National Association of Democratic Lawyers (Border)** -

“ ... there should be Local Divisions in Umtata, Grahamstown ...”

(b) **King William’s Town Attorneys Association** -

“A Local Division to be known as the Central Eastern Cape Local Division should be established in Grahamstown.”

(c) **Black Lawyers Association (Eastern Cape)** -

“It is equally fallacious to argue as has been submitted in some quarters that Grahamstown should be the Judicial Capital ... The truth is that Grahamstown has not had that status over the area of the Eastern Cape for some twenty years already, and has not crumbled down.”

(d) **Pickard JP, supported by the King William’s Town Transitional Local Council** -

“It seems to me that, ... Grahamstown has the least claim to survival. However, the wise approach in my view would be to retain also Grahamstown at least until the laws of supply and demand phase it out automatically as Prof. Davies seems to suggest may happen.”

(e) **Professor B. Davies, a Professor of Development Studies, makes the following statements in his submission in collaboration with the city of Grahamstown -**

“The city has a fragile economic base ... Even the most minor shocks or dislocation, in this kind of situation, which results in a decrease in income through the loss of business activity, has immediate and severe effects ... The removal of the Seat of the Supreme Court from Grahamstown would have precisely this effect ... the removal of the Supreme Court would constitute a direct threat to 259 jobs in Grahamstown, together with ‘an estimated 200 secondary jobs in domestic employ’ ... an average of 40 percent of workers currently employed by the business interests surveyed would probably be retrenched ... it is submitted that the case for the retention of the seat of the Supreme Court in Grahamstown is sound, and is based on strong historical, practical and economic evidence.”

5.1.2

Should Bisho become the seat of the Eastern Cape Division ?

(a) **The National Association of Democratic Lawyers (Border) -**

“Should the Commission be of the view that it is necessary to have a Seat of the Supreme Court ... Bisho should be the Seat of the Supreme Court.”

(b) **Attorney E.F. Henning of Squire Smith & Laurie at Bisho -**

“I cannot find one good reason why the seat of the Supreme Court should remain in Grahamstown ... I believe that the Seat of the Eastern Cape Division should be moved to Bisho ...”

(c) **Attorneys Hutton & Cook of King William’s Town-**

“That the seat of the provincial division be Bisho/King William’s Town alternatively Grahamstown ...”

(d) **Pickard JP supported by the King William’s Town Transitional Local Council -**

“Bisho is without any doubt geographically the best suited for the Provincial Division and is, in terms of the communication networks, the most accessible to all inhabitants of the province. At any rate it simply seems logical and proper that the Provincial Division should be seated in the Capital.”

(e) **King William’s Town Attorneys Association -**

“...Bisho should be made the seat of the Provincial Division of the Supreme Court...Bisho is the Administrative and Legislative Capital of the Province... It would be more convenient to the Government to litigate at the seat of Government ...It is the most centrally situated area of the Eastern Cape and within easy reach of all the inhabitants in the area ...”

(f) **Society of Advocates of Ciskei -**

“It is submitted that Bisho must be the obvious venue for the seat of the court, being the most centrally situated and being the capital of the Province.”

5.1.5 If Bisho does not become the seat of the Eastern Cape Division, should the Ciskei Court become a local division of the Eastern Cape Division ?

(a) **Attorney-General (Ciskei) -**

“...Three local divisions within that single Provincial Division...The Umtata Local Division...The Bisho Local Division for roughly the central third of the Province...The Port Elizabeth/Grahamstown Local Division...”

(b) **National Association of Democratic Lawyers (Border Branch) -**

“The area of the Eastern Cape Province is very large and should therefore be divided into several areas in which there will be a “seat” or court venue..The following court areas...Umtata...Bisho...Grahamstown...Port Elizabeth...”

5.1.6 If the Bisho Court does not become the seat of the Eastern Cape Division, and it is not converted into a local division, should it be closed down ?

(a) **National Association of Democratic Lawyers (Port Elizabeth and Districts Branch)-**

“The Supreme Court presently operating at Bisho should be closed down and a permanent Local Division be created in East London.”

(b) **Zietsman JP -**

“It is the view of all of the Judges in this Division that Bisho, or the Ciskei area, does not justify having a seat of the Supreme Court.”

5.1.7

Should the Transkei Supreme Court become an autonomous division ? If so, what should be the name of such an autonomous division and what should be the strength of its bench ?

(a) **Advocate V.O.T. Vakalisa of the Umtata Bar** -

“ ... the Transkei Supreme Court should be accorded provincial status with a full bench.”

(b) **Transkei Attorneys Association** -

“ ... that the Supreme Court of Transkei be retained and that it be retained under its present jurisdiction, with full bench status.”

(c) **Attorney-General of the Transkei** -

“Transkeian legal structures are so firmly embedded - historically, culturally, economically and practically ... submitting or reverting to administration from elsewhere ... would not be feasible as against retention of a separate and autonomous Transkeian Division of the Supreme Court in all its manifestations.”

(d) **The Hon Mr Justice C.E.L. Beck, Judge President of the Supreme Court of Transkei** -

“ ... it would be preferable for the Court to have exclusive jurisdiction over its area, and not to have another distant Court that would enjoy concurrent jurisdiction over the area of Transkei ... We think therefore that the Court should be the Transkei Provincial Division ... A minimum of 7 Judges is presently required ...”

(e) **Department of Justice Regional Representative of Transkei** -

“An appeal is hereby made that the present Supreme Court of Transkei should be converted to a Provincial Division of the Supreme Court of South Africa...”

5.1.8

If the Transkei Supreme Court does not become an autonomous division, should it be converted into a local division of the Eastern Cape Division? If so, what should be its name?

(a) **The National Association of Democratic Lawyers (Port Elizabeth and Districts Branch) -**

“A Local Division to be known as the Transkei Local Division should be situated at Umtata ...”

(b) **Attorney E.F. Henning of Squire Smith & Laurie at Bisho -**

“That local Divisions be established in Umtata ...”

(c) **Attorney-General of the Ciskei -**

“These local Divisions being...the Umtata Local Division for roughly the Eastern third of the Province ...The Bisho Local Division for roughly the Central third of the Province...The Port Elizabeth/Grahamstown Local Division for roughly the Western third of the Province.”

(d) **Attorneys Hutton & Cook of King William’s Town -**

“That there be three local divisions, namely...South Eastern Cape...Central Eastern Cape...Transkei - Umtata.”

(e) **East London Attorneys Association -**

“...that Umtata become a Local Division falling under Grahamstown with its area of jurisdiction encompassing the ‘old Transkei’ area of jurisdiction ...”

(f) **Zietsman JP -**

“ ... local division in Umtata with jurisdiction over the Transkei area ...”

(g) Judges' Committee, Grahamstown -

“... a local division for the area presently served by the Transkei Supreme Court could be established ...”

(h) Pickard JP supported by the King William's Town Transitional Local Council -

“... Umtata must retain its Court.”

(j) Advocates and Attorneys Liaison Committee, Eastern Cape -

“The Transkei Local Division should be situated in Umtata and should retain substantially the same geographical area of jurisdiction as the Supreme Court of the Republic of Transkei previously.”

(k) King William's Town Attorneys Association -

“There appears to be general consensus on the situation of Local Divisions in Port Elizabeth and Umtata. We too, are in general agreement with this view.”

5.1.9 Should the jurisdictional area of the Transkei Supreme Court be expanded ?

(a) The Transkei Attorneys Association -

“... it would make sense for the jurisdiction of the Transkei Supreme Court to be increased to include the areas of Kokstad, Aliwal North, Barkly East, Elliot and Maclear ...”

(b) Black Lawyers Association (Eastern Cape) -

“Umtata serving the districts of the former Transkei, plus Kokstad, Maclear, Matatiele, Ugie, Elliot and Barkly East.”

(c) **Society of Advocates of Ciskei** -

“... due to the proximity, the districts of Indwe, Elliot and Maclear must fall under the Umtata court’s jurisdiction.”

5.1.10 Should the South-Eastern Cape Local Division at Port Elizabeth be retained ?

(a) **National Association of Democratic Lawyers (Port Elizabeth and Districts Branch)** -

“The South East Cape Local Division should continue to exist in Port Elizabeth with the same area of jurisdiction it presently has, but including the area west of Humansdorp up to the western boundary of the Province.”

(b) **Attorneys Hutton & Cook of King William’s Town** -

“That there be three local divisions...South Eastern Cape - Port Elizabeth...Central Eastern Cape...Transkei Umtata...”

(c) **East London Attorneys Association** -

“The Supreme Court Local Division situated at Port Elizabeth should remain for obvious reasons.”

(d) **Zietsman JP** -

“Port Elizabeth has had its own local division for many years and we feel that this situation should remain.”

(e) **Judges’ Committee, Grahamstown** -

“The existing South Eastern Cape Local Division should remain with its present jurisdiction and its seat at Port Elizabeth ...”

(f) **Pickard JP supported by the King William’s Town Transitional Local Council** -

“Port Elizabeth cannot be left without a Court...It has a large workload, a strong economy and a huge population in its area...”

(g) **Advocates and Attorneys Liaison Committee (Eastern Cape)** -

“A local division of the Supreme Court for the Eastern Cape Province should be situated at Port Elizabeth.”

(h) **King William’s Town Attorneys Association** -

“...that Local Division be established at Port Elizabeth, Grahamstown and Umtata...”

(j) **Attorney E.F. Henning of Squire Smith & Laurie at Bisho** -

“That local Divisions be established in Umtata and Port Elizabeth.”

(k) **Attorney-General of the Ciskei** -

“The Port Elizabeth/Grahamstown Local Division ... it is a very safe prediction to make that the Port Elizabeth Court will grow at the expense of the Grahamstown Court ..”

5.1.11 Should the Circuit Local Division for the District of East London be retained as such ?

(a) **King William’s Town Attorneys Association** -

“The Circuit Local Division situated in East London currently serves only the East London area. The area of jurisdiction of this Court should be extended to include that area which currently falls within the jurisdiction of its Transitional Local Council, and would continue to be known as the East London Circuit Local Division.”

(b) Society of Advocates of Ciskei -

“... the East London court should remain as a local circuit court managed from Bisho.”

(c) Judges’ Committee, Grahamstown -

“East London should remain as a permanent circuit local division with its former area of jurisdiction restored to it. This involves restoring Mdantsane to East London, where it belongs ... They are part of one and the same city.”

5.1.12 Should the East London Court become a local division of the Eastern Cape Division with jurisdiction over the districts of East London, Mdantsane and Komga ?

(a) National Association of Democratic Lawyers (Port Elizabeth and Districts Branch) -

“... a permanent Local Division be created in East London. Its area of jurisdiction should be the Magisterial Districts of East London, Mdantsane and Komga.”

(b) East London Attorneys Association -

“... East London becoming a Local Division with re-incorporation of the Mdantsane and Komga areas into its jurisdiction.”

(c) Zietsman JP -

“A local division situated in East London to deal with the work arising from East London, Mdantsane and Komga areas could also be considered if the work justifies it. We see no merit in the suggestion that the East London and Mdantsane work should be handled in Bisho ...”

(d) **Advocates and Attorneys Liaison Committee (Eastern Cape) -**

“A local division of the Supreme Court for the Eastern Cape Province should be situated at East London in suitably upgraded accommodation and should service a geographical area of jurisdiction which would include the magisterial districts of East London, Mdantsane and Komga.”

5.1.13 Should jurisdictional areas of Divisions of the Supreme Court be co-extensive with the provincial boundaries of provinces ?

(a) **Pickard JP -**

“... a situation where the various Supreme Courts have jurisdiction which transcends the Provincial boundaries would be highly impracticable if not entirely intolerable.”

5.1.14 Should each province have its own provincial division ?

(a) **Pickard JP -**

“... each Province should eventually be served by its own Provincial Division throughout the whole of its territory.”

5.2 Free State

The Free State has retained its provincial boundaries. It has a provincial division of the High Court whose jurisdictional area is co-extensive with its provincial boundaries. No pressing problems were raised by respondents from the Free State.

5.3 Gauteng

5.3.1 Should the Witwatersrand Local Division become an autonomous division of the Supreme Court in Gauteng with its seat at Johannesburg and its own Judge President ?

(a) The Hon. Mr Justice P.E. Streicher, on behalf of the Johannesburg Judges -

“The Supreme Court in Johannesburg is by far the busiest division of the Supreme Court in South Africa ... We believe that the time has now arrived for the court in Johannesburg to be given the status of an independent division of the Supreme Court ... have its own judge president who can devote all his time to this division ... the efficiency of the court must of necessity benefit from such an arrangement.”

(b) The Johannesburg Bar -

“... that the time has now arrived for the creation of an independent division in Johannesburg, with exclusive jurisdiction over the magisterial districts in respect of which the TPD and WLD currently exercise concurrent jurisdiction, and with its own Judge President, Bench, and administrative structure.”

(c) The Hon. Mr Justice C.F. Eloff, Judge President of the Transvaal Provincial Division -

“Although the Johannesburg court is a local division it in reality functioned as a provincial division ... It is submitted that in the interests of justice that any restructuring of the Transvaal Provincial and the Witwatersrand Local Division should be done on the basis of retention of a unitary bench under the control of a single judge president ...The headquarters of the court shall be at Pretoria ... Within the area of jurisdiction of what was the Witwatersrand Local Division of the Supreme Court of South Africa there shall be a division named the Witwatersrand Division of the Supreme Court. That division shall have the jurisdiction of a provincial division.”

(d) **Mrs. H. Schutte of Pretoria** -

“Die Gauteng Provinsie is die provinsie met die hoogste bevolkingsdigtheid. Die bestaan van twee howe in hierdie provinsie, naamlik die Witwatersrand Provinsiale Afdeling en die Transvaalse Provinsiale Afdeling is dus geregverdig.”

(e) **Attorney P.A. Bracher of Deneys Reitz Attorneys at Johannesburg** -

“There is no longer any legal nor commercial justification for the Transvaal Provincial Division of the Supreme Court in Pretoria having superior jurisdiction to the Witwatersrand Local Division of the Supreme Court.”

5.3.2 Should the Witwatersrand Local Division of the Supreme Court retain its present status ?

(a) **Association of Pretoria Attorneys** -

“The existing Courts in Johannesburg and Pretoria should be retained ... The Johannesburg Supreme Court should retain its jurisdiction, whereas the Pretoria Supreme Court should be accorded supra provincial status ...”

(b) **The Pretoria Bar** -

“...the Johannesburg Supreme Court should retain its present status and jurisdiction...Pretoria should retain the seat of the Court.”

(c) **Greater Pretoria Metropolitan Council** -

“We have read the submissions of the Pretoria Bar and the Association of Pretoria Attorneys, which we wholly endorse ...”

(d) **Eloff JP, on behalf the judges of the TPD** -

“That the status quo of the TPD and the WLD should otherwise remain unchanged (this is the view of the majority ...)”

(e) **J.A. van S d'Oliveira, SC, Attorney-General of the Transvaal** -

“The present Pretoria Division ... handles all the work in the largest geographical part of Gauteng ... The question which arises is whether there is any convincing reason to change the existing practice.”

5.3.3 **Should a new Supreme Court seat be established at Midrand in Gauteng ?**

(a) **Midrand Metropolitan Sub-Structure** -

“Midrand’s position midway between Pretoria and Johannesburg ... the Midrand MSS makes so bold as to suggest to the Commission the merits of locating the seat of courts for Gauteng in Midrand ... extremely accessible from Pretoria, Johannesburg ...”

(b) **The Hon. Mr Justice G. Leveson, Acting Deputy Judge President** -

“A unified court at Midrand would extinguish the rival claims of the Johannesburg and Pretoria Bars to the business of both courts. It has the advantage of being more or less equidistant to the homes of both bars and the existing superior courts.”

(c) **Mrs. H. Schutte of Pretoria** -

“... met die afskaffing van die doodstraf sal die misdaadsyfer verder toeneem ... daar kan eerder gedink word aan die oprigting van ‘n derde Hooggeregshof in die Gauteng Provinsie.”

5.3.4

Should divisions of the Supreme Court be created in Mpumalanga, the Northern Province and the North West Province ?

(a) **The Association of Pretoria Attorneys** -

“The Pretoria Supreme Court should serve outlying areas in all provinces in its present area of jurisdiction and in the jurisdictional area of Venda and the Northwest Province with Civil Circuit Courts where such needs exists ... That no new divisions of the Supreme Court be created in the light of the lack of any need therefore.”

(b) **The Pretoria Bar** -

“We respectfully submit that, by creating provincial divisions with exclusive jurisdiction in the new provinces, parties and witnesses from the main population concentrations and the main districts of economic activity would be forced to litigate in a Supreme Court which would be far removed from these centres, while Supreme Court structures in Pretoria and Johannesburg are much closer and offer every imaginable facility for the conduct of such trials ... In summary, not one of the new provinces has a legitimate demand for the creation of a Supreme Court, other than a Civil Circuit Court.”

(c) **The General Council of the Bar of South Africa** -

“... there is no justification on the grounds of practicality for establishing provincial divisions in each of the provinces of the North West, the Northern Transvaal and Mpumalanga.”

(d) **Greater Pretoria Metropolitan Council** -

“Political demarcation does not provide a rational basis for the demarcation of areas of jurisdiction for the Supreme Court ... Pretoria as a seat of a Supreme Court serves the regional functional area fully and the rural areas around it sufficiently, and can serve the North-West, North and Mpumalanga Provinces as seat of the Circuit Court ... There is no logical political imperative for the proposition that each Province must have its own Supreme Court, contrarily, that it will reflect

negatively in the public perception regarding the independence of the judiciary if its seat should be coupled to Provincial Government ..."

(e) **Eloff JP, on behalf the judges of the TPD -**

"That neither provincial nor local divisions should be established for any of the three provinces Eastern Transvaal, Northern Transvaal and North-West ... That the area of jurisdiction of the Supreme Court of Bophuthatswana and Venda should be added to the area of jurisdiction of the TPD ... That Circuit systems for the hearing of civil cases should not be introduced."

(f) **Eloff JP -**

"It is unlikely that sufficient civil work is likely to be generated in any of the three provinces to justify the high cost of the establishment of superior courts in any of the provinces ... The establishment of a number of new provincial or local divisions is likely to result in a lowering of standards and a weakening of the quality of administration of justice ... It is unlikely that good judicial material will be attracted to such small divisions."

(g) **Attorney-General of the Transvaal -**

"The present Pretoria Division adequately handles all the work in our present Eastern, Northern and North-Western jurisdictional sectors, and in the past was also responsible for the areas which became Bophuthatswana and Venda. It also handles all the work in the largest geographical part of Gauteng ... The question which arises is whether there is any convincing reason to change the existing practice ... the establishment of full divisions in the three new areas may be accepted as long-term projects ... commencing with an expanded Circuit system."

"The two separate Supreme Courts, viz of Bophuthatswana and Venda ... There is in any event, no justification for their continued existence as separate entities and their fate must be considered along with the new provincial areas in which they happen to fall."

5.4 Kwazulu-Natal

5.4.1 Should Pietermaritzburg remain the seat of the Natal Provincial Division with Durban remaining the seat of the Durban and Coast Local Division ?

(a) The Honourable Mr Justice J.A. Howard, Judge President of the Natal Provincial Division -

“The seats of the Provincial and Local Division should remain where they are, in Pietermaritzburg and Durban respectively.”

(b) Venn Nemeth & Hart of Pietermaritzburg -

“... we submit that Pietermaritzburg should remain as the seat of the Supreme Court with Durban having a local division ...”

(c) Pietermaritzburg Legal Circle -

“Pietermaritzburg should remain the seat of the Supreme Court of Kwazulu-Natal, with Durban having a Local Division ...”

5.4.2 Should the seat of the Natal Provincial Division be moved from Pietermaritzburg to Durban ?

(a) The Chatsworth Legal Circle -

“... the seat of the Provincial Division in Kwazulu-Natal ought to be in Durban rather than in Pietermaritzburg.”

5.4.3 Should jurisdictional areas of divisions of the Supreme Court be co-extensive with the provincial boundaries of provinces ?

(a) Howard JP -

“The area of jurisdiction of the Provincial Division should be the province of Kwazulu-Natal. The area of jurisdiction of the Local Division should remain unaltered.”

5.5 **Mpumalanga**

5.5.1 **Should Mpumalanga become an autonomous provincial division of the Supreme Court ?**

- (a) **The Attorneys Association of Nelspruit submits that Mpumalanga should have its own Provincial Seat of the Supreme Court of South Africa at Nelspruit -**

“Die Nelspruit Prokureursvereniging is eenparig die mening toegedaan dat die Mpumalanga Provinsie ‘n eie Provinsiale setel van die Hooggeregshof van Suid-Afrika moet hê, en verder dat Nelspruit die setel van sodanige Hooggeregshof moet wees.”

- (b) **Highveldrif Attorneys Association supports the creation of a Provincial division of the Supreme Court with its seat at Secunda -**

“Die plasing van ‘n Judisiële Streeksetel in die Oos-Transvaal ... in Secunda ...”

- (c) **The Premier of Mpumalanga -**

“That an own Provincial Division is justified with its own Registrar’s office and should be seated in either Nelspruit or Middelburg in consultation with the Provincial Government. ... The name of the proposed Division ought to be ‘the Provincial Division of the Province Eastern Transvaal’ or any such other name as may be given to the Province in the future.”

- (d) **The Society of Advocates of the Eastern Transvaal supports the creation of a Provincial Division of the Supreme Court in Mpumalanga with its seat at Nelspruit -**

“Vestig ‘n Provinsiale Afdeling van die Hooggeregshof in die Provinsie Oos-Transvaal. ... Die Setel van sodanige Afdeling ... in dié verband stel ek Nelspruit voor.”

5.5.2 Should Mpumalanga remain a Circuit Local Division of the Supreme Court at Pretoria ?

(a) The Association of Witbank Attorneys -

“That a series of circuit civil courts be established ... That seats of the circuit courts concerned be Middelburg, Witbank, Nelspruit and Secunda.”

5.6 North West Province

5.6.1 Should the North West Province become an autonomous provincial division of the Supreme Court ?

(a) The North West Bar Association -

“the people of the North-West Province are entitled to a Provincial Division of the Supreme Court for its area ... it is suggested that Mmabatho be the seat ... There are at present six judges in Mmabatho ... It is suggested that the name be the SUPREME COURT OF SOUTH AFRICA (NORTH-WEST PROVINCIAL DIVISION).”

(b) The Molopo Circle of Attorneys -

“... the Circle fully aligns itself with the sentiments expressed by the North West Bar Association with regard to the establishment of a Supreme Court for the North West Province and its location in Mmabatho.”

(c) The Circle Council, North West Province, of the Law Society of South Africa -

“Dat lede van Noord-Wes ten gunste van die instelling van ‘n onafhanklike Hooggeregshof vir die Noord-Wes Provinsie is.”

(d) The Law Society of Bophuthatswana -

“Therefore the establishment of a North West Provincial Division with two Local Divisions, one in Odi and one in Klerksdorp with two full time resident judges in the two respective Local Division will serve a useful purposes to the people ...”

(e) Prof. T.J. Kruger, Head of the Department of Applied Legal studies, University of Potchefstroom -

“Die Hooggeregshof van die gewese Bophuthatswana bestaan steeds ... Die setel van die hof kan gerieflik in Mmabatho gehou word ... Die getalsterkte van die regbank behoort met drie of vier regters uitgebrei te word.”

(f) Attorney Frans Kruger of Potchefstroom -

“Daarom is dit dan my voorstel dat dit oorweeg word om bv. plaaslike setels van die Hooggeregshof te plaas in Klerksdorp, Potchefstroom en Rustenburg ... die Provinsiale Afdeling, in hierdie geval Mmabatho ...”

(g) City Council of Klerksdorp -

“After having assessed the data received from everyone approached, it was apparent that there was a strong perception that the Supreme Court be localised and that the seat of the Supreme Court, or a division thereof, be in Klerksdorp.”

5.6.2 Should the North West Province remain a Circuit Local Division of the Supreme Court at Pretoria ?

(a) The Brits Attorneys Association -

“... dat die Transvaalse Provinsiale Afdeling van die Hooggeregshof van Suid-Afrika voort bestaan ... onder ‘n ander naam byvoorbeeld Noordelike Afdeling van die Hooggeregshof van Suid-Afrika ... as alternatief termynsittings op sekere hoofsentra, byvoorbeeld Mmabatho ...”

5.6.3 Should there be concurrent jurisdiction across Provincial boundaries ?

(a) The Brits Attorneys Association -

“Indien die afsonderlike provinsies hulle eie afsonderlike afdelings van die Hooggeregshof verkry, word versoek dat konkurrente jurisdiksie verleen word aan ander provinsies se Hooggeregshowe, dit wil sê vir ‘n radius van byvoorbeeld 80 kilometer aangrensend tot ‘n bepaalde provinsie se Hooggeregshofsetel.”

(b) Attorneys Van Velden - Duffey of Rustenburg -

“Ek bepleit dus konkurrente jurisdiksie waar ‘n setel van die Hooggeregshof buite my provinsie geografies nader is vir my en die verweerder as die betrokke provinsiale setel van die Hooggeregshof.”

5.7 **Northern Cape**

5.7.1 **Should the jurisdiction of a provincial division be confined to provincial boundaries ?**

(a) **Premier E.M. Dipico** -

“... my submission is that only districts which fall within the borders of the Northern Cape Province should fall under the area of jurisdiction of the Northern Cape Division ... likewise other Provincial Divisions in other provinces should have their areas of jurisdictions within the borders of their respective provinces.”

(b) **Circle 16 of the Law Society of the Cape of Good Hope** -

“... each province should be served with its own Supreme Court and that its area of jurisdiction should coincide with the geographical area of the province it serves.”

(c) **Circle 19 of the Law Society of the Cape of Good Hope** -

“... dat die jurisdiksiegrense van die Noord-Kaapse Hooggeregshof die provinsiale grense vir die provinsie Noord-Kaap sal volg.”

(d) **The Hon. Mr Justice, J. J. Kriek, Judge President of the Northern Cape Division, supported by the Northern Cape Society of Advocates** -

“... the whole of the area which is subject to the laws made by a Provincial Legislature should fall within the area of jurisdiction of the same Division of the Supreme Court.”

(e) **Attorney-General of the Northern Cape** -

“...van ‘n suiwer regsogpunt gesien, is dit gewens dat die jurisdiksionele grense van die Noord-Kaapse Afdeling ooreenstem met die provinsiale grense.”

(f) **The General Council of the Bar of South Africa -**

“...adjustment to the areas of jurisdiction of the different courts in the former Cape Province to confine their jurisdiction to the Provincial boundaries.”

5.7.2 **Should the Cape of Good Hope Provincial Division exercise concurrent jurisdiction over the magisterial district of Namaqualand which now forms part of the territory of the Northern Cape Province ?**

(a) **Attorney A.N. Schreuder on behalf of the attorneys of Namaqualand, Calvinia & Williston -**

“... en verkies derhalwe die huidige bedeling ... met ander woorde om onder die Hof in en vanaf Kaapstad te bly praktiseer ... indien hulle wel ingeskakel moet en sal word onder ‘n Afdeling in die provinsie Noord-Kaap (wat hulle sal betreur) dan is hulle voorstelle die volgende ... daar ‘n plaaslike afdeling vir Upington ingestel word ...”

(b) **Attorney Arno van Zyl of Springbok -**

“... dat Springbok steeds onder die jurisdiksie van die Hooggeregshof in Kaapstad moet bly ... dit is baie makliker om in Kaapstad te kom of dokumentasie in Kaapstad te kry vanaf Springbok en omgekeerd as wat dit die geval sou wees tussen Springbok en Kimberley.”

5.7.3 **Should the seat of the Northern Cape Division remain at Kimberley ?**

(a) **Premier E.M. Dipico -**

“My submission in this regard is that the seat of the Northern Cape Division of the Supreme Court should remain in Kimberley.”

(b) Circle 16 of the Law Society of the Cape of Good Hope -

“It would be illogical and prohibitively expensive to move the seat of the Court elsewhere and the seat should remain in Kimberley.”

(c) Attorney-General of the Northern Cape -

“Alhoewel Kimberley nie baie sentraal geleë is in die Noord-Kaap nie, sal dit ongetwyfeld die setel van die Afdeling moet bly.”

5.7.4 What should the Northern Cape Division be called ?

(a) Premier E.M. Dipico -

“It is submitted that the name of the division of the Supreme Court in this province ought to remain the Northern Cape Division.”

(b) Circle 16 of the Law Society of the Cape of Good Hope -

“We believe very strongly that the present name viz Northern Cape Division, should be retained.”

(c) Attorney-General of the Northern Cape Division -

“Die naam van die Afdeling behoort te verander na ‘Noord-Kaapse Provinsiale Afdeling’.”

5.8 Northern Province

5.8.1 Should the Northern Province become an autonomous Provincial Division of the Supreme Court ?

(a) Pietersburg Chamber of Business -

“ ... for the establishment of a division of the Supreme Court of South Africa in the Northern Province ... the seat of the proposed Supreme Court must be in Pietersburg ...”

(b) The Acting Regional Representative of Justice (Venda) -

“The view of the Regional Representative is that there should be a Provincial Division in Pietersburg, the capital of the province, with the Supreme Court of Venda serving as a local division ...”

(c) Prof. B.C. Majola, Dean of the Faculty of Law (University of the North) -

“That a Provincial Supreme Court be established with its seat in Pietersburg and which should exercise jurisdiction in the Northern Province.”

(d) Northern Transvaal Province Commission on Constitutional Affairs

-

“A Provincial Division of the Supreme Court of South Africa to be referred to as Northern Province Division of the Supreme Court of South Africa be established ... the seat of the Provincial Division will be Pietersburg ...”

(e) Adv. M. van Eyk, Office of the MEC for Safety and Security (Pietersburg) -

“It is recommended that a Provincial Division for the Northern Province be established ... the seat for ... Provincial Division : Pietersburg ... Proposed numerical strength ... 6 Judges ... Proposed names ... The Northern Provincial Division ...”

(f) Attorney H. Mathivha of Mathiva & Molope at Pietersburg -

“Each Province should have its own Supreme Court.”

(g) The Registrar of the Venda Supreme Court -

“The provincial division of this province can be situated in Pietersburg ...”

(h) The Attorney-General of Venda -

“... A provincial division established at Pietersburg ...”

(j) P.R. Mawila, Senior lecturer, University of Venda -

“It is desirable that each province have its own court(s)...A provincial division with its seat at Pietersburg be set up.”

(k) The Northern Region of the Law Society of Transvaal -

“... our submission is that the Venda Supreme Court should be relocated to Pietersburg ... The area of jurisdiction of such a Division ... It should be the Northern Province ... we suggest that it be called the Northern Provincial Division of the Supreme Court of South Africa.”

5.8.2 Should the Northern Province become a local division of the Supreme Court at Pretoria ?

(a) Pietersburg Attorneys Association -

“...daar plaaslike afdelings vir elkeen van die Provinsies van Gauteng, Noordwes, Oos Trasvaal asook die Noordelike Provinsie gevestig sal word (indien aangeneem word dat daar orals in hierdie provinsies ‘n behoefte aan ‘n Hooggeregshof is)...”

(b) Transitional Local Council of Pietersburg/Polokwane is in favour of a local division of the Supreme Court -

“Ek glo en vertrou dat jarelange werk, behoeftebepalings en vertoë uiteindelik nou gestalte sal kry in die vestiging van ‘n plaaslike afdeling van die Hooggeregshof in hierdie Provinsie.”

5.8.3

What should be done about the Venda Supreme Court situated at Thohoyandou ?

(a) **The Northern Region of the Law Society of Transvaal** -

“... the Venda Supreme Court should be relocated to Pietersburg ...”

(b) **The Acting Regional Representative of Justice (Venda)** -

“... that the Supreme Court of Venda be retained as a local division ...”

(c) **Prof. B.C. Majola, Dean of the Faculty of Law (University of the North)** -

“That a Local Division of the said Supreme Court, be created and have its seat at Thohoyandou (Venda), where the former Venda Supreme Court used to operate.”

(d) **Adv. M. van Eyk, Office of the MEC for Safety and Security (Pietersburg)** -

“An independent Supreme Court of Venda ... It is recommended that this court be converted into a Local Division and the area of jurisdiction be increased.”

(e) **The Registrar of the Venda Supreme Court** -

“... the existing Supreme Court situated in the former Republic of Venda can be the local division of the Supreme Court serving the areas of the Far North of this province ...”

(f) **The Attorney-general of Venda** -

“There is already a Supreme Court here in Thohoyandou ... with the addition of very few staff members these divisions could cope with the additional work should this court’s jurisdiction be extended to serve the ‘Far North’ ... as a local division.”

(g) P.R. Mawila, Senior lecturer of the University of Venda -

“A local division with seat at Thohoyandou be established.”

(h) Northern Transvaal Province Commission on Constitutional Affairs

-

“... that the Supreme Court in Venda formerly known as Venda Supreme Court be abolished.”

(j) Eloff JP -

“Thohoyandou can not serve as the centre of any future superior court. The court buildings might be used for criminal circuits.”

5.9 Western Cape

5.9.1 Should jurisdictional areas of divisions of the Supreme Court be co-extensive with the provincial boundaries of provinces ?

(a) The Hon. Mr Justice G. Friedman, Judge President of the Cape of Good Hope Provincial Division -

“As far as the Cape Provincial Division of the Supreme Court is concerned, the territorial jurisdiction should be co-extensive with the boundaries of the province of the Western Cape.”

(b) The Law Society of the Cape of Good Hope -

“... the Cape of Good Hope Provincial Division should serve the area falling within the boundaries of the Province of the Western Cape only. It does not make jurisdictional sense to have a Supreme Court with a seat in one province exercising jurisdiction within the geographical area of another province.”

(c) NADEL, Cape Town -

“It is Nadel’s submission that the existing areas of jurisdiction must be adjusted so as to accommodate the changes made to provincial entities and boundaries ... a provincial division of the Supreme Court should be established within each of the nine provinces ... “

(d) Attorney-General of the Cape of Good Hope -

“Dit is my uitgangspunt dat die regsgebiede van die Hooggeregshowe aangepas en beperk moet word tot daardie distrikte wat binne die nuwe provinsiale grense val ...”

(e) Premier H J Kriel -

“... word voorgestel dat die jurisdiksiegebied van die Provinsiale Afdeling Kaap die Goeie Hoop gewysig word om dieselfde geografiese gebied as die provinsie Wes-Kaap te hê.”

- (f) **Attorney P J Potgieter of De Klerk & van Gend Attorneys, Cape Town** -

“Dit is na ons mening nie noodsaaklik dat die regsgebiede van die howe en die provinsiale grense moet ooreenstem nie en wat die Provinsiale Afdeling Kaap die Goeie Hoop van die Hooggeregshof aanbetref betoog ons dat die status quo gehandhaaf behoort te word ...”

5.9.2 What should be the name of the Cape of Good Hope Provincial Division ?

- (a) **Friedman JP** -

“The name ‘Cape of Good Hope Provincial Division’ should for historical reasons be retained.”

- (b) **Acting Judge President J J Fagan on behalf of the Judges of the Cape of Good Hope Provincial Division** -

“the name of the Division should be the Cape of Good Hope Provincial Division”

- (c) **Premier H J Kriel** -

“... die **Provinsiale Afdeling Kaap die Goeie Hoop**, is ‘n gevestigde naam en dit word voorgestel dat dit net so behou word.”

CHAPTER 6

THE BROAD GUIDE-LINES ADOPTED BY THE COMMISSION

6.1 INTRODUCTION

In approaching the problem of rationalising the divisions of the High Court the Commission has tried to apply a number of guide-lines to which all its members subscribe. It is useful here to indicate what these are. At the same time it is convenient to point out certain matters of principle, and in particular the crucial issue of the immediate future of the three provinces adjoining Gauteng, in regard to which individual members hold sharply divergent opinions.

6.2 FINANCIAL CONSTRAINTS IN RELATION TO THE PROBLEM OF ACCESS TO CIVIL JUSTICE IN SOUTH AFRICA

6.2.1 In trying to decide where and how the State should spend money in the improvement of access to civil justice in South Africa one bears in mind that South Africa is, relatively speaking, a poor country; that it is expensive to build, equip, and staff High Courts; and, last but not least, that capital is urgently needed to satisfy more crying wants elsewhere.

6.2.2 In his address to the Commission Mr Malcolm Wallis, SC, Chairman of the General Council of the Bar of South Africa, defined what he saw as the priorities in regard to capital expenditure as follows -

“ We are very mindful of the fact that the establishment of additional facilities by way of additional Courts, additional judicial appointments, support staff, libraries and, one would hope, working recording machines... is a very expensive project... ”

“ You have been given figures in regard to the cost of establishing

Courts in various centres. The new Courts in Pretoria have cost in excess of R40 million...R26 million was spent in establishing Courts in Mmabatho, according to the submissions from the North-West. So that is a general idea of what would have to be spent to establish new Courts in centres around the country...

“ We are mindful of the budgetary constraints which operate in South Africa, we would believe, in broad principle, that provided an acceptable level of legal services and access to Courts can be provided throughout the country without the need to resort to these expensive capital projects, it is desirable at this stage in our history that that be done. The capital is more urgently needed as we see it in the fields of education, housing, medical facilities: to spend R40 million on new Court rooms in a centre when the people who will go to that Court room do not have houses, running water and electricity, verges close upon obscenity frankly...”

- 6.2.3 The Commission unanimously endorses the views so expressed on behalf of the General Council of the Bar.
- 6.2.4 South Africa’s penury has a twofold significance for the problem of improved access to civil justice. The first is that we can ill afford new High Court buildings. The second is this. Access to civil justice is provided by both the High Courts and the Magistrates Courts. Civil litigation in the former is prohibitively expensive while in the latter it is comparatively cheap.
- 6.2.5 It is perfectly true, of course, that the standard of civil justice in the Magistrates Courts is often weak. Indeed, in the Magistrates Courts of the Ciskei and the Transkei it is appalling (see, for example, the oral representations in VOLUME II of Pickard JP at p.48 para (41); Adv Dickson, SC at pp 64/5, paras (12) and (13); the Hon Mr Justice W.H. Heath at p. 83 para (10); and Beck JP at p. 90 para (14)). Nevertheless it must be borne in mind that in monetary terms the civil jurisdiction of the Magistrates Courts (except in the former TBVC territories) now stands at R100 000. For most people in South Africa R100 000 represents a very large sum of money. When the new Act on the Rationalisation of the Magistrates Courts comes into operation on 1 April 1997 the civil jurisdictional limit of R100 000 in the Magistrates Court will apply uniformly throughout the RSA. There are no less than 427 Magistrates Courts scattered all over South Africa.

6.2.6

The important fact that much of the civil litigation presently conducted in the High Courts involves amounts justiciable in the Magistrates Courts is generally recognised. Of some significance in this respect are certain comparative figures based on the investigations undertaken on behalf of the Commission in four High Courts in the Eastern Cape, and in the Bophuthatswana High Court, by Mr L.O. Fourie. Mr Fourie extracted data from the files of the abovementioned Courts for the years 1994 and 1995. In respect of judgments sounding in money granted in civil trials during the said two-year period, it is apparent from the data collected by Mr Fourie that (save for the Circuit Local Division in East London) the average amount awarded in civil trials was, in the case of each of the High Courts, far below the figure of R100 000. The comparative figures are set forth in the Table below :-

	<u>COURT</u>	<u>NUMBER OF TRIALS ON WHICH AVERAGE IS BASED</u>	<u>NUMBER OF JUDGMENTS IN WHICH A SUM IN EXCESS OF R100 000 WAS AWARDED</u>	<u>AVERAGE SUM OF MONEY AWARDED</u>
(A)	<u>Eastern Cape</u>			
	(1) <u>SECLD (Port Elizabeth)</u>	54	3	R 40 033
	(2) <u>Seat of Court (Grahamstown)</u>	54	6	R 35 029
	(3) <u>East London Circuit Local Division</u>	27	7	R120 696
	(4) <u>Ciskei High Court (Bisho)</u>	148	9	R 27 810
(B)	<u>Bophuthatswana High Court (Mmabatho)</u>	31	1	R 28 977

6.2.7

Since the Magistrates Court is almost at the doorstep of most potential civil litigants countrywide, there is a very strong argument that the first charge upon any available capital should be the improvement of the quality of civil justice in the Magistrates Courts. Such an improvement will require the following four urgent steps:-

- (a) **the payment of adequate and market-related salaries to prosecutors in the lower courts.** The prosecutorial component is the nursery of the justice system in the lower courts. The salaries paid to prosecutors were

described by the Attorney-General of the Transvaal, Dr J.A. van S d'Oliveira as "a national disgrace". The Commission agrees with that description. The inevitable consequence of the woefully inadequate remuneration of prosecutors was spelt out by Dr d'Oliveira in the following words -

"The average experience of regional prosecutors in the province is 9,8 months, and the magistrates court prosecutors 8,8 months...Now there is a tremendous turnover there and why? It is when my advocates who do the cases in the regional courts see that attorneys or counsel appointed by the Legal Aid Society ...are paid R3 800 or R4 000 a day, whereas those prosecutors get that out at the end of the month."

Adv K.P.C.O. von Lieres und Wilkau, SC, who was the Attorney-General of the WLD from November 1983 to May 1995, remarked in the course of his evidence -

"...but up until today there is no enduring or lasting or efficient professional staffing policy, not under the old regime and not by the new regime. And that is your fundamental problem, I would contend, why you suffer staff inadequacies in the prosecutorial section."

- (b) **the payment of adequate salaries to magistrates who are grossly underpaid.** One of the Transvaal Judges who made oral representations to the Commission was the Hon Mr Justice K. van Dijkhorst. Judge van Dijkhorst is the Chairman of the Magistrates Commission. In regard to the salaries of Magistrates he remarked as follows -

"Mnr. die Voorsitter, ons weet die landdroste is onderbetaal, absoluut onderbetaal...Dit is die grootste grief wat die landdroste het...As daar nie gou na gekyk word, en behoorlik na gekyk word nie, dan gaan daar al meer en meer mense die diens verlaat. In Durban het ons in twee maande ses landdroste verloor, manne wat bekwame manne was."

- (c) **the large-scale and intensive training of those magistrates who are interested in specialising in civil rather than criminal trial work.**

- (d) **the vigorous recruitment of Magistrates (as soon as their salaries have been suitably increased) from the ranks of experienced advocates and attorneys in private practice.**

6.3 GEOGRAPHICAL CONSTRAINTS UPON ACCESS OF CIVIL LITIGANTS TO THE HIGH COURTS

- 6.3.1 A slogan often enthusiastically uttered by interested parties in their submissions to the Commission was -

“ Bring the Courts to the people.”

This praiseworthy goal may to a large extent be capable of realisation in the case of the Magistrates Courts, because there are 427 of them. But it is impossible to ensure that every potential litigant in South Africa should be within easy reach, in terms of distance, of a High Court. In this connection Mr Wallis SC observed to the Commission -

“...that however desirable it is that everybody should be able to walk into a Supreme Court just down the road, that is simply not feasible - and all over the world people in large countries like our own have to travel to Courts...”

- 6.3.2 The large size of South Africa means that, however much one tries to juggle with seats of the divisions of the High Court, some litigants will always find themselves living at a place which is far removed from the High Court within whose area of jurisdiction they fall. This simple truth is neatly illustrated in the dialogue quoted below which took place between a member of the Commission and Mr Attorney E.G. Harris who made representations to the Commission on behalf of the Molopo Circle of Attorneys -

*“ **MR MALULEKE:** ...we have heard suggestions that...people in Odi might find it a lot cheaper to get a bus and go to Pretoria and instruct an attorney directly to litigate in the TPD rather than be faced with the great cost...of instructing two firms of attorneys to litigate in Mmabatho, simply for the luxury of a province having the status of a provincial division. That is why I wanted to get your comment on that.*

MR HARRIS: *Mr Maluleke, I fully agree with you that it certainly would probably be cheaper for persons living in the Moretele and Odi area to commute to Pretoria and instruct an attorney directly rather than use an attorney there as correspondent with a Mmabatho firm. But then again, the same applies to Vryburg which is in the south-west portion of the North-West Province,...We state categorically, it must be in a province, and you are going to have logistical problems wherever you go, one way or another. Yes, it will be easier for a party to litigate direct with Pretoria in the Odi area, but then again, from Pretoria's point of view, what about persons litigating from Nelspruit? What about persons litigating from Pietersburg? Unfortunately exactly the same applies there. You are always going to have some sort of problems with regard to proximity to the court."*

6.3.3 Moreover the problem of a litigant's distance from a High Court is exacerbated, in some situations, also by the absence of cheap and convenient means of transport. This is illustrated (again by reference to the densely-populated north-eastern corner of the North-West province) by the following point made to us by Adv P.R. van Rooyen SC in the course of his address on behalf of the Pretoria Bar -

"...it is not only the question of distance, it is also the question of transportation routes. If you start thinking of this entire Garankuwa/Mabopane area, they have rail links, they have bus services, they have taxis, the commuting distance and time to Pretoria is peanuts; it is done every day by millions of people but the entire transport system is so organised. But how do you get from there to Mmabatho, that is not so easy."

6.4 THE FUTURE VOLUME OF CIVIL WORK IN THE HIGH COURT

6.4.1 There are strong indications that in the near future the volume of civil work in the High Court is likely to decline substantially.

6.4.2 Reference has already been made to the increase of civil jurisdiction of the

Magistrates Courts to R100 000 and to the fact that it will soon be of general application throughout the country.

- 6.4.3 On behalf of the Pretoria Attorneys Association Prof J.H. Martins, Director of UNISA's Bureau of Market Research, undertook an elaborate study into the possible decentralisation of the Transvaal Provincial Division of the Supreme Court. The increase in the jurisdiction of the Magistrates Court came into operation on 1 May 1995. The Martins study examined civil actions heard in the Pretoria Supreme Court for the years 1993/4 and made projections thereon in the light of the increased jurisdiction of the Magistrates Courts. With reference to these projections Adv P.R. van Rooyen, SC, informed the Commission -

“ In Pretoria roughly 35,4% of the cases involved sums of R100 000. The number of cases with plaintiff and defendant resident in the same province is expected to decline to 44 in the North-West; 58 in the Eastern Transvaal [Mpumalanga]; and 40 in the Northern Province.”

- 6.4.4 Dealing with the increased civil jurisdiction of the Magistrates Court the Hon Mr Justice I.G. Farlam, of the Cape of Good Hope Provincial Division, remarked to the Commission -

“ We understand, although this information is more anecdotal than anything else, that the present increase is likely to have drastic effects on the civil work of a number of the smaller Provincial Divisions. I see from one of the memoranda which was put before this Commission that it was deemed advisable in Ciskei to retain the existing limit of R20 000 for various reasons, and one does not know how many cases would have been left to be heard in Ciskei if the limit had been increased to R100 000 if that had come into operation in the Ciskei as well.”

- 6.4.5 Farlam J also referred to the provisions of the Magistrates Court Amendment Act, 120 of 1993, which Act has not yet been put into operation. He proceeded to say -

“ Take away then from the existing workload of the Provincial Division not only the vast bulk of civil trials for the reasons I have mentioned, but also the vast bulk of the divorce work, then there will not be very much trial work left at all. But the point we make is that therefore in devising

adjustments and improvements for the existing system, one must bear in mind that the existing system is shortly to be fundamentally changed if and when the provisions of Act 120 of 1993 are brought into operation.”

6.4.6 It is furthermore an important consideration that in the High Court the bulk of defended civil actions are settled before they ever reach the actual trial stage.

6.4.7 The Labour Relations Act No 66 of 1995 makes extensive use of Alternative Dispute Resolution techniques to speed up dispute resolution between employer and employee. The Act makes conciliation and arbitration the primary tools for determining labour disputes.

6.5 THE NECESSITY THAT EVERY PROVINCIAL DIVISION OF THE HIGH COURT SHOULD HAVE A SEAT

6.5.1 A number of interested parties in the Eastern Cape urged upon the Commission that the notion of a “seat” of a provincial division (see sec 4(1) read with the First Schedule to the Supreme Court Act) was an outmoded concept and that, at any rate in the Eastern Cape Division, it was the root of all evil and should be abolished.

6.5.2 The attack on the “seat” was spearheaded by the Judge President of the Ciskei Supreme Court. Pickard JP was opposed to the idea for the reason that he wished to see four seats of equal status in a situation which would permit the Judge President of the day to have his headquarters in any one of the four “seats”.

6.5.3 Adv N.K. Dukada, speaking on behalf of the Umtata Bar and the Transkei Branch of Nadel, said to the Commission -

“ we are completely opposed to the notion of the judicial capital in the Eastern Cape.”

He was, however, prudent enough to add that if a judicial capital were to be adjudged necessary, it should be Umtata.

6.5.4 Mr H.M. Lusu, on behalf of the Black Lawyers Association, associated himself with the view on the judicial capital expressed by Adv Dukada.

6.5.5 Addressing the Commission on behalf of the Border Branch of NADEL, Adv T.D. Pillay invited us to disabuse our minds of the constraints of the past -

“ one of which, for example, is the Supreme Court Act providing for the seat of the Court.”

6.5.6 According to Adv Pillay the introduction of the concept of the seat of the Court was calculated to “confuse the argument”. He developed his theme by saying -

“ You are rationalising the courts with the view to administering practice, not giving somebody a seat from which he can pontificate about the rest of the province...”

6.5.7 No attempt was made to explain to the Commission in what particular way the concept of a seat of a provincial division was outmoded or subversive of the proper administration of justice. We decline the invitation that we should discard it. We agree with the view expressed by the Hon Mr Justice D.D.V . Kannemeyer (a former Judge President of the Eastern Cape Division) -

“ that a peripatetic Judge President would not be able to effectively control the division.”

(See VOLUME II at pp 6-7, para (7))

6.5.8 The Commission is satisfied that the institution of a seat of a provincial division is not merely a useful one but that it is in fact indispensable to the proper administration of justice within a provincial division.

6.6 THE ESTABLISHMENT OF A PROVINCIAL DIVISION OF THE HIGH COURT WITHIN EACH OF THE THREE ADJOINING PROVINCES

6.6.1 In response to a question put to him by a member of the Commission the Judge President of the Cape of Good Hope Provincial Division said that in his view

there should be a division of the Supreme Court in each of the nine provinces -

“Basically my reason for saying that is, that the Constitution envisages that provincial Legislatures would ask the Provincial Division concerned for advisory opinions in regard to legislation which they are contemplating introducing. If you have an overlapping of jurisdictions which Provincial Division must they go to?”

“ The second point is that the Supreme Court is given jurisdiction to declare invalid provincial legislation. Does that mean, for example, if we have an overlapping jurisdiction, that the Legislature of the Western Cape would pass an Act and they would have the option as to whether they come to this Court to have it declared invalid or whether they go to the Court of the Northern Cape Division? It is not logical. It does not fit into the scheme of the Constitution if there is not a Provincial Division in each geographical area.”

“Another pointer which indicates that was the intention of the framers of the Constitution is this. That under the section dealing with the appointment of Judges, the Judicial Service Commission is entitled to have as an ad hoc member the Premier of the province in which the appointment is to be made.”

6.6.2 The Judge President of the Northern Cape, the Hon Mr Justice J.J. Kriek, told the Commission that he was also in favour of the notion that every province should have its own provincial division of the Supreme Court.

6.6.3 On the other hand the Chairman of the General Council of the Bar adopted a more cautious approach to the validity of the argument that every province was intended, upon a proper interpretation of the Constitution, to have its own provincial division of the Supreme Court. He said, *inter alia* -

“ If South Africa were a truly federal state, then the, if I may call it, the federalism argument becomes almost overriding...”

“ We are not going to have a truly federal state; and that must weaken the argument considerably, because you then have to ask yourself, well, where in the structure we have arrived at in this political compromise does the judicial power lie, and the judicial power lies at the national

level, that is quite clear.”

- 6.6.4 The Hon. R.N. Leon believes strongly that, as a matter of principle, each of the nine provinces should be a provincial division with a provincial seat. This, in his view, would be in accordance with the spirit of the Constitution and the ethos of the people.
- 6.6.5 The Hon. R.N. Leon considers, however, that there may very well be logistical difficulties in putting this principle into immediate effect. There are times in life when an ounce of practice is worth a ton of principle. The Hon. R.N. Leon therefore recommends that each of the adjoining provinces should, as an interim measure, become a local division and not a provincial division.
- 6.6.6 The Chairman finds it unnecessary to express any firm opinion as to whether or not, in the light of the provisions of the Constitution, it necessarily follows that each of the nine provinces should have its own provincial division of the High Court. Preferring to adopt a pragmatic approach to the problem, the Chairman is satisfied that in each of the three adjoining provinces the establishment, sooner or later, of a provincial division of the High Court has to be accepted as politically inevitable. Suffice it to say that the three adjoining provinces, taken together, have a total population in excess of 11 million. This figure represents more than one quarter of South Africa's total population.
- 6.6.7 However, like the Hon. R.N. Leon, the Chairman also considers that, in order to become autonomous provincial divisions, each of the adjoining provinces must undergo an evolutionary process of which the first stage is that of being a local division. This first stage, though a transitory one, is nevertheless quite essential. Moreover, the time-frame for the achievement of the final goal of autonomy may not be the same in the case of all three adjoining provinces. Much will depend upon imponderables such as the rate of increase in the volume of High court civil litigation and the rapidity of the growth of a local Bar at the seat of the local division.
- 6.6.8 That such an intermediate stage may be a necessary - and indeed a desirable - first step, and a useful way of testing the water, is recognised by a number of interested parties from the adjoining provinces. Mr Attorney Brandmuller who, on behalf of the Middelburg Attorneys Association, pleaded for the establishment of a seat of the Supreme Court in Middelburg, Mpumalanga, saw the following possible solution to the problem -

“...At the moment we have got a Transvaal Bench and a Bench in the Witwatersrand. If a court is situated in Middelburg then the Judges could also travel on a daily basis to come and work here, they could be rotated easily, fairly easily, they would not be...off the beaten track, so to speak, as if they were in Nelspruit where they would be sitting alone for a long period of time...”

“ It would, therefore, not be necessary to appoint new judges, you could use those judges, bring them here and be able to rotate them so that they would still have input in the Transvaal Bench and be used there, they could still be utilised and then it would not be necessary to appoint one person or two persons which we believe initially, no more than two people would be used in a division like this.”

6.6.9 The Northern Region of the Transvaal Society of Attorneys urged the establishment of a provincial division in the Northern Province with Pietersburg as its seat. Their spokesman, Mr Attorney F. Geldenhuys, nevertheless told the commission that a local division might prove acceptable to his members -

“ As ek dit so kan stel dat as die plaaslike afdeling gouer gaan kom dan is dit vir ons ‘n eerste prys want ons het die rigtinggewing so gou as moontlik nodig. So u moet u ook laat lei, ons het gesê ‘the shortest, cheapest way’ en as ‘n plaaslike afdeling die goedkoopste en die gouste is dan is dit vir ons ‘n eerste prys.”

6.6.10 Adv A.N. Jappie and Mr G.S.S. Maluleke, on the other hand, take the view that, as a matter of principle, it is essential that within each of the adjoining provinces a provincial division should be established at once. This approach was adopted by many of the interested parties in all three adjoining provinces. The aspirations of many in the adjoining provinces was clearly articulated by the Judge President of the Bophuthatswana High Court. Supporting the idea of a provincial division in the North West, with Mmabatho as its seat, the Hon Mr Justice M.W. Friedman said, *inter alia* -

“ What was the Transvaal has been subdivided into four different areas. Each area has its own provincial legislature, its own cabinet, it makes its own laws and it cannot be said that there is an exact community of interest between all the four provincial areas. Therefore I submit, in principle each area would be entitled to its Supreme Court because a

Supreme Court is an important manifestation of its sovereignty. A provincial legislature does not want its laws to be pronounced on by another court outside its jurisdiction, save except, the Appellate Division or the Constitutional Court, which are obviously courts of higher jurisdiction.”

6.6.11 A strong plea for the establishment forthwith of a provincial division in the North West was made to the Commission by Adv H. Lever, SC, on behalf of the North West Society of Advocates, as the following extract from his oral representations to the Commission will show -

“We have the personnel, we have the infrastructure, we have all the facilities in Mmabatho. The cost factor is there, no doubt the R26 million building would cost between R40 million and R50 million today, but in addition to that it would take about, I imagine, three years to erect such a structure. That is also a consideration.

CHAIRMAN: *...I bear in mind the vital point of distinction drawn by Mr Justice Friedman, namely that Mmabatho has a physical court and Pietersburg has not. Bearing in mind that valid distinction, what is your general reaction to the suggestion thrown out in the Northern Province that perhaps it might be difficult to create a provincial division overnight and that a convenient transitional phase might be to make the adjoining provinces, or some of them, local divisions to be served by Pretoria?*

MR LEVER: *I think it is an excellent idea for the Northern Province and I would suggest that North-West is not really comparable with either Mpumalanga or the Northern Province, and I agree with the Judge President as well. In our case it would be a reduction of status and there would be no need for it. I think in reality we can cope with a little bit of assistance.*

JUDGE LEON: *But is the reduction in status a matter that ought to be paramount, or ought not the paramount consideration to be the interest of the people?”*

6.7 **THE EXISTING HIGH COURT FACILITIES AT MMABATHO IN THE NORTH WEST AND AT THOHOYANDOU IN THE NORTHERN PROVINCE**

6.7.1 A thorny issue is what should be done with the High Court buildings at Mmabatho and Thohoyandou. One possible approach is to reason that, inasmuch as these High Court buildings (which were built at enormous expense) already exist, it is imperative that their use as High Courts should be preserved.

6.7.2 The Commission is of the opinion that while it is highly desirable that, where at all possible, these facilities should be put to some productive use, it is fallacious to reason that they should continue to function as High Courts at all costs.

6.7.3 The true inquiry, we think, is correctly reflected in the following remarks by the Chairman of the General Council of the Bar while he was discussing the position of Mmabatho -

“ The real question is not whether we make use of the facilities there, it is precisely how we make use of them and whether it is necessary, in order to make proper use of them to ...preserve, because that is its present status, a Court which is a division of the Supreme Court of South Africa which operates entirely independently and separately from the rest of what I call for convenience, the old Province of Transvaal.”

6.7.4 In regard to Mmabatho Mr Wallis, SC, further observed -

“...and certainly whatever your conclusions, we would be utterly opposed to the notion of the abandonment of that facility in Mmabatho. One might well find that a virtually permanent Circuit Civil Court in time would be maintained there, which would be serviced by the Bar and Side-Bar there. It might be a little less than that, particularly once the impact of the Magistrates Courts jurisdiction increase starts to bite...”

6.7.5 It should be remembered, moreover, that full use as High Courts cannot be made of the Court buildings either at Thohoyandou or at Mmabatho for the simple reason that the accommodation provided by them is so elaborate as to be quite disproportionate to their very modest local needs. For example, the Bench of the Bophuthatswana High Court consists of five judges. The Court building

boasts eleven Judges Chambers.

- 6.7.6 The High Court building at Thohoyandou has three Courts and Chambers for three Judges. How excessive these facilities are when measured against either realistic expectations or actual needs, appears sufficiently from the following description given to the Commission by Eloff JP -

“...When Venda was brought to an end, the Minister of Justice requested me to administer what was left of that court, but there was a problem in that the Premier of the Northern Province was unwilling to accept any step which would recognise that that court should not have been brought about or served no need. I was, nevertheless, since 1994 involved in the running of that court in the sense that I looked at the duty roster, the work, the workload and arranged for Judges to be sent there and it is my considered view that even one Judge can cope very adequately with what is involved there, he can do all the criminal work and all the civil work...It is a pity that the high cost was involved in the establishment of the buildings, it might be wasted capital but that is just one of the other elements of wasted capital which will have to be dealt with in the New South Africa, however, the court buildings might be used for criminal circuits or for other administrative purposes.”

6.8 WHAT FACTORS SHOULD PRIMARILY DETERMINE THE SELECTION OF THE SEAT OF THE COURT IN A NEW DIVISION OF THE HIGH COURT?

- 6.8.1 In advancing claims in favour of a particular city or town as being the most suitable place for the seat of the Court in a proposed new division of the High Court, many interested parties tended to rely heavily or exclusively on the high population density in or around the city or town.
- 6.8.2 The Commission considers, however, that a high population density, taken by itself, is not a significant pointer to the need for a High Court presence in a particular city or town.
- 6.8.3 The Commission takes the view that the need for a High Court presence in a particular city or town is indicated far more reliably by the number of attorneys who practise in that place.

- 6.8.4 In tabular form APPENDICES “L” and “M” at pages 150 and 151 of VOLUME I of this Report give comparative figures of the number of attorneys and of the size of the population respectively of each magisterial district within (1) Eastern Cape; (2) Mpumalanga; (3) the Northern Province; and (4) North West.
- 6.8.5 Historically in South Africa the capital of the province has been the seat of the Supreme Court : Pretoria for the TPD ; Cape Town for the CPD ; Pietermaritzburg for the NPD ; and Bloemfontein for the OPD. Grahamstown was the seat of the erstwhile Eastern Districts Local Division; and since 1957 it has been the seat of the Eastern Cape Division. Kimberley was the seat of the former Griqualand West Local Division; and since 1969 it has been the seat of the Northern Cape Division.
- 6.8.6 The homelands policy of the previous government skewed the picture. In the implementation of a policy which has since been discredited and abandoned there were erected, at artificially created capitals, grandiose buildings, including buildings to house new Supreme Courts.
- 6.8.7 As capitals for the homelands there were selected in the main places which, having regard to their inaccessibility and the size of their population, were somewhat inappropriate. Both Mmabatho and Bisho are classic examples of the unsuitable capitals chosen.
- 6.8.8 Neither in principle nor as a matter of logic is there any reason why this Commission should lend the stamp of its approval to what was a disreputable political stratagem by recommending that in the new dispensation of nine provinces the town which is the capital of the province should *ipso facto* be the seat of the provincial division of the High Court.
- 6.8.9 If, for example, the provincial government of KwaZulu-Natal were to decide to make Ulundi the capital of that province, it could hardly be suggested that, on such account, Ulundi should supplant Pietermaritzburg as the provincial seat of the High Court. When one compares Pietermaritzburg with Ulundi the latter’s inaccessibility, and its lack of infrastructure and essential facilities, all expose the futility of any such argument.
- 6.8.10 It follows, in our view, that in the selection of the seat of a division of the High Court, each town or city proposed as a possible seat should be judged on its own merits. The province in question should be viewed as a whole, and due

regard should be had to factors such as the size of the town's population; its accessibility; the presence or absence of economic activity; the number of legal practitioners practising there; and the volume of civil and criminal work, at High Court level, likely to be generated there.

- 6.8.11 The Commission's recommendations regarding the seat and name of the Eastern Cape Division appear in Chapter 8 hereafter. The Commission's recommendations regarding the seats of the Courts (and the names of the proposed new divisions) in the Transvaal Provincial Division appear in Chapters 9 and 10 hereafter. For the sake of completeness it is convenient at this juncture to record the unanimous opinion of the Commission that in respect of the CPD, NCD, NPD, OPD and DCLD it is desirable to retain both the present names and the present situations of the seats of the abovementioned divisions as respectively specified [see paragraph 2.6 in Chapter 2 above] in the First Schedule to the Supreme Court Act, save that the NPD should be renamed "KwaZulu-Natal Provincial Division".

6.9 THE DISPARITY WHICH EXISTS IN THE CASE OF CERTAIN PROVINCES BETWEEN THEIR RESPECTIVE AREAS OF JURISDICTION AND THEIR RESPECTIVE TERRITORIAL AREAS

- 6.9.1 It has already been pointed out (see paragraphs 2.29 to 2.33 in Chapter 2) that the respective provincial territories of the Western Cape, the Eastern Cape, the Northern Cape and KwaZulu-Natal are not co-extensive with the respective areas of jurisdiction of the CPD, the ECD, the NCD and the NPD.
- 6.9.2 Until the district of Namaqualand was added to the provincial territory of the Northern Cape it fell under the jurisdiction of the Supreme Court in Cape Town. The town of Springbok in Namaqualand is closer to Cape Town than to Kimberley. A number of attorneys in Springbok wished to remain under the jurisdiction of the Cape Town Supreme Court and they made oral representations to this effect to the Commission. Save for the said attorneys in Springbok, there was general agreement among other interested parties that, in the interests of certainty and uniformity, a province's area of jurisdiction should be precisely co-extensive with its territorial area; and that this principle should be consistently applied.

6.9.3 In urging the Commission to recommend, in cases of disparity, that provincial boundaries should correspond exactly with the area of jurisdiction of the province concerned Mr L.J. Roberts, SC, Attorney-General of the Eastern Cape, pointed out some of the anomalies and practical difficulties which might otherwise result. He said -

“ Now at the moment there are within the area of the Eastern Cape Division of the Supreme Court three provinces...So it is all a little confusing for the public and I daresay for some of the magistrates who have to work in these five districts which I have mentioned. From the practical point of view it means that those in that area applying the law in this division - I am thinking of the Judges and the Attorney-General and advocates, people who perform more in the Supreme Court - we have to maintain three sets of Government Gazettes dealing with each, or provincial gazettes dealing with these three provinces, even though places like Murraysburg hardly ever have a case here, one has to be ready for that eventuality. It means keeping up to date with the developments of all these provinces, legal developments, legislative developments and political developments. It goes beyond that. The criminal justice system has to interact with certain other role players, for example police services, the social work services and psychiatric services. Now all of those are province based...”

6.9.4 Mr C.F. du Plessis, SC, the Attorney-General of the Northern Cape, pointed to anomalies which might stem from divergent prosecutorial policies if jurisdictional areas overlapped. He gave the following concrete example -

“ For certain reasons the North-West does not prosecute for illicit liquor trade. It is an historical thing. It comes from the Bophuthatswana days ... I prosecute for illicit liquor trade and if I fall in with the policy of the North-West then I will have the situation where the offence will have to be countenanced in Vryburg, but nowhere else in the Northern Cape, which is quite unacceptable.”

6.9.5 In the unanimous opinion of the Commission it is essential in all cases that provincial territories should be co-extensive with jurisdictional areas. This is reflected in our recommendations in Chapter 7. Much as the Commission sympathises with the plight of the attorneys in Springbok, that town cannot be permitted to remain under the jurisdiction of Cape Town.

6.10 **THE NEED FOR CIRCUMSPECTION IN WEIGHING SUBMISSIONS MADE TO THE COMMISSION**

6.10.1 Many of the issues touching the rationalisation of the divisions of the High Court involve vested interests. While the Commission has derived great assistance from the submissions made to it, it has also to recognise that many of the interested parties are not entirely disinterested parties.

6.10.2 The problem was succinctly stated by the Chairman of the General Council of the Bar as follows -

“...the North-West Bar places more stress on those senses of community and identity - you’ve seen that in their submissions. The Pretoria Bar stresses practicality. Let’s be quite blunt about it, both have a motivation of self-interest. The Pretoria Bar would like the work in from the North-West and the North-West would like to keep itself going, and is scared about its own existence.”

6.10.3 The references to the North-West Bar and the Pretoria Bar, were, of course, intended merely as examples of a more general tendency. In truth, self-interest impelled the submissions made to the Commission in many places; and not least of all in the Eastern Cape where on occasion the debate was as passionate as it was prolix.

CHAPTER 7

THE COMMISSION'S RECOMMENDATIONS IN REGARD TO THE DISPARITY WHICH EXISTS IN THE CASE OF CERTAIN PROVINCES BETWEEN THEIR RESPECTIVE AREAS OF JURISDICTION AND THEIR RESPECTIVE TERRITORIAL AREAS

- 7.1 The provinces involved are the Western Cape, the Eastern Cape, the Northern Cape and KwaZulu-Natal.
- 7.2 The extent of the disparity which in each case exists between the area of jurisdiction of the province concerned as defined in Schedule 1 to the Supreme Court Act, and its territorial area as defined in Part 1 of Schedule 1 to the previous Constitution has already been noted in paragraphs 2.29 to 2.33 of Chapter 2 of this Report.
- 7.3 For the reasons stated in paragraph 6 of Chapter 6 of this Report the Commission unanimously recommends :-
- (a) that the respective areas of jurisdiction of the :-
 - (i) Cape of Good Hope Provincial Division ;
 - (ii) Eastern Cape Division ;
 - (iii) Northern Cape Division ; and
 - (iv) Natal Provincial Division ;should in each case be adjusted to make them co-extensive with their respective territorial areas as defined in Part 1 of Schedule 1 to the previous Constitution ; and
 - (b) that the magisterial district of Delmas should be removed from the area of civil jurisdiction of the Witwatersrand Local Division.

7.4 If implemented the practical effect of this recommendation will be :-

7.4.1 that the eight magisterial districts of :-

- (i) Namaqualand
- (ii) Calvinia
- (iii) Williston
- (iv) Sutherland
- (v) Fraserburg
- (vi) Hanover
- (vii) Colesberg
- (viii) Noupoot

will fall under the area of jurisdiction of the Northern Cape Division ;

7.4.2 that the magisterial district of Willowmore will fall under the area of jurisdiction of the Eastern Cape Division ;

7.4.3 that the magisterial district of Murraysburg will fall under the area of jurisdiction of the Cape of Good Hope Provincial Division ;

7.4.4 that the magisterial district of Vryburg will fall under the area of jurisdiction of that division of the High Court within which, upon rationalisation of the three provinces adjoining Gauteng, North West province then falls ;

7.4.5 that the eastern segment of the magisterial district of Piet Retief will fall under the area of jurisdiction of the Natal Provincial Division; and

7.4.6 that the magisterial district of Delmas (which now belongs territorially to the province of Mpumalanga) will no longer fall under the civil jurisdiction of the Witwatersrand Local Division.

CHAPTER 8

THE COMMISSION'S RECOMMENDATIONS IN REGARD TO THE RATIONALISATION OF THE COURTS WITHIN THE EASTERN CAPE DIVISION

8.1 SHOULD THERE BE A SEAT OF THE HIGH COURT IN THE EASTERN CAPE DIVISION ?

For the reasons already mentioned in paragraph 6 in Chapter 6 of this Report the Commission unanimously recommends that there should be a seat of the High Court in the Eastern Cape Division. The Commission further recommends that the name "Eastern Cape Division" should be retained.

8.2 WHERE SHOULD THE SEAT OF THE EASTERN CAPE DIVISION BE ?

In regard to the situation of the seat of the Court the recommendations of the Commission are not unanimous.

8.2.1 THE RECOMMENDATION OF THE MAJORITY

The recommendation of the majority (the Chairman, the Hon. R.N. Leon and Adv. A.N. Jappie) is that **GRAHAMSTOWN** should be retained as the seat. The reasons on which the majority recommendation is based are set forth in subparagraphs (a) to (l) hereunder.

- (a) In the written responses and oral representations by interested parties only Grahamstown and Bisho were seriously suggested as possible locations for the seat of the Eastern Cape Division. If any valid ground existed for the removal of the seat from Grahamstown (and in the opinion of the majority none was

raised) then, despite the unfavourable geographical situation of Port Elizabeth at the extremity of the province, Port Elizabeth might well have merited serious consideration as a contender for the seat of the Court. In fact however, no single interested party advanced Port Elizabeth as the seat of the division. In the opinion of the majority, the claim that Bisho should be the seat of the Court is entirely indefensible.

- (b) The majority agrees with the following assessment of the situation made by the Hon. Mr Justice T.M. Mullins in the course of his oral representations to the Commission -

“ The suggested move of the court to Bisho could, in my view, only be justified on the grounds of political expediency. There is no need for the court to follow the legislative and executive authorities. For the whole of its existence since 1864 the Supreme Court in Grahamstown has been situated approximately 1 000 kilometres from the seat of the Cape Provincial Legislature in Cape Town, and this has resulted in no problem to the court or inconvenience to the litigant. There is no interaction or interdependence between the legislature and the judiciary which necessitates their proximity to each other. ”

- (c) Grahamstown has a convenient central position which is roughly equidistant from the only two metropolitan areas in the Eastern Cape : the seaports of Port Elizabeth and East London. It is a matter of significance that the retention of Grahamstown as the seat is strongly urged :-

- (1) by every Judge on the Bench of the Eastern Cape Division ; and
- (2) by a very substantial majority of the advocates and attorneys practising in the Eastern Cape.

- (d) The court building in Grahamstown has three civil and two criminal courtrooms. It has chambers for thirteen Judges. It houses an excellent law library. Bisho has one civil and two criminal courtrooms. It has six chambers for Judges. Its law library is inferior to that of the Grahamstown Court.

- (e) The Attorney-General of the Eastern Cape, together with his staff numbering some forty persons, has his office in Grahamstown.

- (f) In terms of sec. 3 of Act 66 of 1965 the Master of the Supreme Court has his office at Grahamstown because it is the seat of the Court. The Master's staff numbers 33.
- (g) To convert Bisho into the seat of the Court would necessitate the building of additional courts and additional Judges Chambers. It would require the relocation of the Attorney-General and his entire staff and the Master and his entire staff (and his files) from Grahamstown to Bisho.
- (h) Mr. Justice Mullins was closely involved in the erection of the Court building which houses the Port Elizabeth High Court. Of the probable costs involved in expanding the Bisho Court Judge Mullins gave the Commission the following figures and estimates -

“The Port Elizabeth court with chambers for eight judges and with seven courts which you have seen, Mr. Chairman, as well as accommodation for a Deputy Attorney-General and his staff, was completed in 1992 at a cost of R13 million. A new building in another centre adequate to house the seat of the court would today cost several times that amount, even taking into account the existing facilities at Bisho. There is no justification for such expenditure of public funds to replace adequate existing court facilities ...”

- (j) A mere fraction of the probable cost of moving the Attorney-General's staff was described thus to the Commission by the Attorney-General, Mr. L.J. Roberts SC -

“ ... the little calculation that I performed is that to move my office as it stands at the moment, that is just compensating the staff for their moves, would be well in excess of R1 million . Add to that the cost of moving the furniture and all the rest, that is I am sure a considerable amount.”

- (k) Grahamstown has a rich historical heritage. It is a city of cultural and educational distinction, and it has been the seat of the Court for 130 years. Established courts are the products of a process of slow evolution. We consider that the matter is well described in the following words of Mr. Justice Mullins -

“ To conclude, Mr. Chairman, I would submit that a court serving the

best interests of the community does not come into existence merely by the erection of a magnificent building and the provision of sufficient judges. A court with proper amenities and facilities for practitioners and for the public and for the proper administration of justice develops and evolves over many years of adaptation to the conditions and circumstances of the area and the population which it serves. To uproot a court of 130 years standing would be disruptive of the administration of justice ...”

- (l) Were it in fact essential in the interests of the proper administration of justice in the Eastern Cape Division to move the seat of the Court elsewhere, then the obvious negative impact of such a step upon the population of Grahamstown would perhaps not be a decisive factor operating against such a move. Since we are satisfied that in truth the retention of Grahamstown is conducive to the proper administration of justice, it becomes necessary to emphasise the following. Grahamstown is an economically depressed city in which unemployment is rife. We find that the ripple effect of moving the seat of the court away from Grahamstown would prove crippling to the city. We find further that to close down the High Court at Grahamstown completely would, in socio-economic terms, be nothing short of catastrophic for a large segment of the city’s community. It should be pointed out, moreover, that in either situation the brunt would be borne by the socially and economically most disadvantaged section of the community.

8.2.2 THE MINORITY RECOMMENDATION

The recommendation of the minority (Mr G.S.S Maluleke) is that the seat of the Court in the Eastern Cape Division should be moved from **GRAHAMSTOWN** to **BISHO** ; and that the High Court at Grahamstown should either be closed down completely or converted to a Circuit Court.

The reasons on which the minority recommendation is based are set forth in sub-paragraphs (a) to (g) hereunder.

- (a) The population of the Eastern Cape is approximately 6,6 million and has the second lowest gross domestic product (G.D.P). Presently it has 5 High Courts including a semi-permanent circuit court at East London. In spite of the geographic size of this province and the long distances which separate its main

centres, its number of High Courts, seen in the national context, is disproportionately high. It follows that rationalisation of the situation in the Eastern Cape must involve, *inter alia*, a reduction in the number of High Courts.

- (b) Grahamstown has a population of roughly 90 000 people and is over 100 kilometres from Bisho, East London and Port Elizabeth. Except for the High Court Buildings and the offices and homes of the Judges, Attorney-General, Master of the High court, Registrar of Deeds and State Attorney, and the history and tradition of the Court at Grahamstown, the Court is inaccessible to the vast bulk of the population. The arguments for the retention of the seat of the Court at Grahamstown are advanced mainly by attorneys, advocates and judges who live, practise and work in Grahamstown, East London and Port Elizabeth; and we need to caution ourselves against vested interests.
- (c) This Province should be divided into 3 regions : The seat of the court at Bisho, with local divisions at Umtata and Port Elizabeth. The jurisdiction of the Transkei High Court should embrace the whole of the former Transkei and further include Elliot, Maclear, Barkly East and Indwe. The jurisdiction of the SECLD to embrace its present area of jurisdiction and further include the areas of Grahamstown, Albany, Alexandria, Jansenville, Willowmore, Aberdeen, Graaff-Reinet, Middelburg, Fort Beaufort and Cradock. The area of jurisdiction of the High Court at Bisho will be the Province of the Eastern Cape. The Court at Bisho will also exercise concurrent jurisdiction in respect of the aforesaid local divisions.
- (d) It is important that we be even handed and consistent. For example, in our recommendations, Kwazulu-Natal with a larger population and G.D.P. has, and will have, only two High courts. Northern Cape Province, with a population of less than one million, has and will have one High Court. It follows that the Eastern Cape Province could be more than adequately served by having three High Courts.
- (e) There will be no need to spend much money to extend the Court Building at Bisho, since many of the Magisterial districts which are served by Grahamstown will fall under Umtata and Port Elizabeth. This will result in a more equitable distribution of the workload. Should the work warrant it, Grahamstown and East London could be used as periodical Circuit Courts.

- (f) I am sensitive to the “negative impact” that will result in moving the seat of the Court from Grahamstown, as described in sub-paragraph 8.2.1(l) above. However, in my view, it is infinitely more unjust to persist with an artificial system by making people as far away as Elliot or Maclear travel inordinately long distances to obtain justice, so that Grahamstown may remain the seat of the High Court in the Province. For more than 20 years, Grahamstown has not been the seat of the Court for the Transkei where about 60% of the population of the Province live. For more that 15 years the Court at Grahamstown has had no jurisdiction over the area presently under the Bisho Court, and Grahamstown has survived.
- (g) The following factor may not be a decisive reason for Bisho to be the seat of the High Court, but it is important to note that all provinces which have High Courts have the seat at the capital; and save for Gauteng, all provincial governments argued strongly that each province must have a provincial division, and that the seat of the provincial division should be at the Capital.

8.3 THE COMMISSION UNANIMOUSLY RECOMMENDS THE RETENTION OF THE SOUTH-EASTERN CAPE LOCAL DIVISION

- 8.3.1 All the interested parties who made written responses and/or oral representations to the Commission in regard to the rationalisation of the Courts in the Eastern Cape Division were agreed that the SECLD should retain its status as a local division.
- 8.3.2 In the light of all the information available to it the Commission endorses this generally held view.
- 8.3.3 Accordingly it is the Commission’s unanimous recommendation that the South-Eastern Cape Local Division be retained without any variation of its name.
- 8.3.4 It is further unanimously recommended (see Chapter 7 of this Report) that the area of jurisdiction of the SECLD should include the magisterial district of Willowmore but exclude the magisterial district of Murraysburg.

8.4 THE COMMISSION UNANIMOUSLY RECOMMENDS THAT THE TRANSKEI HIGH COURT BE CONVERTED INTO A LOCAL DIVISION OF THE EASTERN CAPE DIVISION

8.4.1 The Transkei covers a very large area. Its population numbers approximately three and a half million. It is a long distance away from East London and Bisho; and it is even further remote from Grahamstown. The journey by road from Grahamstown to Umtata is hazardous. Within the Transkei roads are poor, essential services are run-down, and telephonic and postal services are erratic.

8.4.2 From the oral representations made to the Commission by the Hon. Mr. Justice C.E.L. Beck, Judge President of the Transkei High Court, it is clear that each of the six Judges doing duty in the Transkei is kept fully occupied. The High Court is housed in a modern Court building in Umtata. It has three civil and three criminal courts. There are chambers for six Judges and there is adequate accommodation for the staff of the Attorney-General and the Registrar. Judge Beck describes the law library as being “reasonably adequate”.

8.4.3 The Transkeian Attorney-General, Mr. C.D.H.O. Nel, SC, told the Commission that for the year 1995 his murder dockets would probably total one thousand. That the number of prosecutions for murder is likely to increase appears from the oral representations made to the Commission at Umtata by a member of the Eastern Cape Division Bench, the Hon. Mr. Justice F. Kroon, whose Commission of Inquiry had been investigating no less than 285 deaths in Transkei. Of these only one or two had been the subject of inquest proceedings; and none of the others had been the subject of criminal prosecution in any court.

8.4.4 At present the civil jurisdictional limit for Magistrates in the Transkei is R5 000 in illiquid claims and R20 000 in liquid claims. When asked by the Commission whether the civil work of the Transkei High Court would be significantly reduced if the civil jurisdiction of the Magistrates were to be substantially increased, the learned Judge President replied as follows -

“ That is a problematical question. I personally, and the other judges

also are of this view, doubt very much whether an increase even up to as much as R100 000 in the magistrates court jurisdiction would make any significant difference to our civil load in the foreseeable future. I say that because with due respect to the magistrates in the Transkei ... they lack the civil experience and they would not really be able to cope with the complexities of the work that they could be expected to get if they had to handle cases of that magnitude.”

8.4.5 The need for the establishment of a local division in the Transkei seems to be conceded on all sides in the Eastern Cape. It is put in a nutshell in the following statement to the Commission by Beck JP -

“ The first submission ... that we make is that the workload, the number of judges required, the distances involved from the other court venues in this region, all make it necessary that there should be a permanent court venue with resident judges here.”

and again later in his oral representations -

“... we do feel that it probably is necessary for the region to be represented by a Judge President who will be accountable in the broad sense and be a link with the Minister of Justice and we feel that having such a mother court as it were with a Judge President for the region would assist in promoting cohesion and to some extent it would help in cross-pollination and in enhancing perhaps the status of the court.”

8.4.6 Having regard to the volume of the work in his Court Beck JP expressed the view that the High Court in Umtata required a Bench of eight Judges. The Attorney-General agreed with this estimate by the Judge President.

8.4.7 Both Beck JP and Adv. N.K. Dukada (who made oral representations to the Commission on behalf of the Society of Advocates of Umtata and the Transkei Branch of NADEL) suggested that magisterial areas beyond the Transkei, such as, for example, Elliot, Maclear, Barkly East and Lady Grey, should be incorporated into the area of jurisdiction of the Transkei. Having regard to the volume of work already dealt with in the Transkei as well as its poor system of communications, and further, in the absence of any request for such incorporation from practitioners in the magisterial districts mentioned, the majority of the Commission is firmly of the opinion that the area of jurisdiction

of the Transkei should remain as it is. The minority view is, however, that four further districts should be added to the jurisdiction of the Transkei.

8.4.8 Within the area of jurisdiction of the Eastern Cape Division there are 44 magisterial districts. Transkei has 28 and Ciskei has 9. The necessity for Transkei to have its own Attorney-General appears sufficiently from the oral representations made to the Commission at Grahamstown by Mr. L.J. Roberts, SC, the Attorney-General of the Eastern Cape Division. Mr. Roberts said, ***inter alia*** -

- (i) “ *Now if one were to have one attorney-general governing this entire province there would be enormous difficulties ...*”
- (ii) “ *The size of the Transkei as it is at present, if you do not add any further districts ... is ... judging from the figures from Umtata, quite adequate to justify a separate attorney-general office. Its size [i.e the size of the attorney-general’s staff] is roughly between the Free State and the Northern Cape ... So it is perfectly viable from the criminal point of view to have a separate attorney-general office in that region and the amount of crime and the size of the population also bear out that would be a viable proposition.*”
- (iii) “ *There is a further reason ... why it seems to me that Transkei deserves a separate attorney-general and that is this, that if one judges by ... media reports there has been a fairly large-scale breakdown of many essential services and I understand there are considerable difficulties in the functioning of the magistrates courts, the police and so on.*”

8.4.9 Wide support also emerged for the appointment of a Deputy Judge President in the Transkei should it become a local division. Having regard to the overall situation in the Transkei the Commission considers that such an appointment is necessary.

8.4.10 Accordingly the Commission unanimously recommends -

- (A) that the Transkei High Court should be converted into a local division of the Eastern Cape Division with its own Deputy Judge President and Attorney-General ; and

(B) that the name of the new local division should be “the Transkei Local Division”.

8.4.11 The **majority** recommends that the area of jurisdiction of the new local division should correspond with that of the present Transkei High Court. The **minority** (Mr G.S.S. Maluleke) recommends that Elliot, Maclear, Barkly East and Indwe be added to the Transkei.

8.5 THE BISHO/EAST LONDON DISPUTE IN REGARD TO THE SEAT AND AREA OF JURISDICTION OF A PROPOSED NEW LOCAL DIVISION WITHIN THE EASTERN CAPE DIVISION

8.5.1 A subject of heated debate between various interested parties in the Eastern Cape was what may be termed the Bisho/East London dispute. The essential facts are stated below.

8.5.2 The region known as the Border Corridor separates the Ciskei from the Transkei. The Border Corridor consists of the following six magisterial districts all of which fall within the jurisdiction of the Eastern Cape Division, and therefore under the sway of the seat of the Court at Grahamstown : East London, Komgha, King William’s Town, Stutterheim, Cathcart, and Queenstown.

8.5.3 In East London there is a Circuit Local Division which does both criminal and civil work. It sits for the greater part of the year. The Circuit Local Division was established as long ago as 1961. Some 10 to 15 kilometres distant from the City Hall of East London is the township of Mdantsane. Its population is not precisely known, but it is reputed to be second in size only to Soweto. Since its establishment Mdantsane has, for practical purposes, been the dormitory suburb of East London. The residents of Mdantsane rely almost entirely on East London for their employment. An estimated 40 000 to 60 000 people commute daily between Mdantsane and East London.

8.5.4 As far as local government is concerned East London and Mdantsane both fall under the Greater East London Transitional Local Council.

- 8.5.5 At present the jurisdiction of the Circuit Local Division is confined to the municipal area of East London. Originally its jurisdiction encompassed Mdantsane, but when the Republic of Ciskei was created Mdantsane was excised from the jurisdiction of East London and placed under the jurisdiction of the Ciskei Supreme Court.
- 8.5.6 The East London Circuit Local Division is housed in the Magistrates Court in the Law Court Building in Buffalo Street , East London. The Law Court Building is at present being renovated at a cost budgeted originally at R3,5 million. The renovation includes plans for increased and improved accommodation for the Circuit Court.
- 8.5.7 The seat of the Ciskei High Court is at Bisho, which is within the magisterial district of Zwelitsha. The area of jurisdiction of the Ciskei High Court comprises the following nine magisterial districts : Hewu, Victoria East, Keiskammahoek, Middledrift, Seymour, Peddie, Zwelitsha, Mdantsane and Dimbaza.
- 8.5.8 The Ciskei High Court is housed in a modern Court building having one civil court, two criminal courts and chambers for six Judges. It has a law library and it provides ample parking for court staff, litigants and the public.
- 8.5.9 It is common cause that there should be established within the Eastern Cape Division a new local division which should include at least the magisterial districts of East London, Mdantsane and Komga.
- 8.5.10 The Bisho/East London dispute raises the following two issues :
- (a) Should the seat of the new local division be **Bisho** or **East London** ?
 - (b) What should be the **area of jurisdiction** of the new local division ?
- 8.5.11 One of the interested parties to the dispute is the Advocates and Attorneys Liaison Committee of the Eastern Cape (“the AALC”). Its constituent members are the Eastern Cape Society of Advocates (representing advocates practising both in Port Elizabeth and Grahamstown), the South-East Cape Attorneys Association, and the Grahamstown Attorneys Association.
- 8.5.12 In making oral representations before the Commission Adv. Van Schalkwyk,

SC appeared on behalf both of the AALA and the East London Attorneys Association (“the ELAA”).

8.5.13 On behalf of the AALC it was submitted that East London should be the seat of the new local division, and that its area of jurisdiction should consist simply of East London, Komga and Mdantsane. This view of the matter was shared by the Judges of the Eastern Cape Division.

8.5.14 East London was also favoured as the seat of the new local division by the ELAA. The ELAA, however, suggested that in addition to East London, Mdantsane and Komga, the area of jurisdiction of the new local division, should further include the magisterial districts of King William’s Town and Zwelitsha.

8.5.15 Speaking on his own behalf, and on behalf of four members of his Bench, the Judge President of the Ciskei High Court, the Hon. Mr. Justice Pickard, and a number of other interested parties, submitted **first**, that **Bisho** should be the seat and, **second**, that the area of jurisdiction of the new local division should encompass both the nine magisterial districts falling under the Bisho Court and, in addition, the whole of the Border Corridor comprising East London, Komga, King William’s Town, Stutterheim, Cathcart and Queenstown. Even more ambitious proposals to expand Bisho’s jurisdictional base were advanced. Making oral representations on behalf of the Bisho Bar and the Border branch of NADEL, Adv. T.D. Pillay urged the inclusion of the Aliwal North magisterial district which borders on the Free State.

8.6 THE COMMISSION’S RECOMMENDATIONS IN REGARD TO THE BISHO/EAST LONDON DISPUTE

In regard to the seat and the area of jurisdiction of the proposed new local division in the Border area the recommendations of the Commission are not unanimous.

8.6.1 THE RECOMMENDATIONS OF THE CHAIRMAN AND THE HON. R.N. LEON

8.6.1.1 Their joint recommendations are :-

- (a) that **East London** should be the seat of the proposed new local division ;

- (b) that its **area of jurisdiction** should consist of the magisterial districts of East London, Mdantsane, Komga, Zwelitsha and King William's Town ;
- (c) that the new local division should be named the “**Border Local Division**”; and
- (d) that the Ciskei High Court at Bisho be closed down and that its Court building be used by the Regional Court.

8.6.1.2 The reasons on which the above recommendations are based are set forth in paragraphs 8.6.1.3 to 8.6.1.19 below.

8.6.1.3 East London is a developed and economically active industrialised seaport serving a large hinterland by convenient road, rail and air links. It has been a Circuit Local Division for the past thirty-six years.

8.6.1.4 Bisho (to quote the description given to the Commission by Pickard JP) -

“... consists of at this time a number of business buildings and office buildings and I think about 2000 houses.”

Half the members of the Bisho Bar live in either Mdantsane or East London.

8.6.1.5 More than one hundred attorneys practise in East London, some fifty of whom do High Court work.

8.6.1.6 The majority of black legal practitioners in the Border region are to be found in Mdantsane.

8.6.1.7 According to the ELAA 90% of the litigation that takes place in the High Court at Bisho emanates from Mdantsane.

8.6.1.8 The key to the problem as to whether the seat of the local division should be Bisho or East London is whether, realistically

viewed, Mdantsane belongs to Bisho or to East London.

- 8.6.1.9 Bisho is part of the Transitional Local Council of which Zwelitsha and King William's Town are members. Bisho is adjacent to King William's Town.
- 8.6.1.10 Mdantsane is far closer to East London than it is to Bisho. The respective positions of East London, Mdantsane and King William's Town relative to each other are indicated in the map which is APPENDIX "K" at page 149 of VOLUME I of this Report.
- 8.6.1.11 It is a postulate of the argument of the proponents of Bisho that in truth East London is no more than an appendage of Bisho. For example, the spokesman on behalf of the Bisho Bar, in the course of his oral representations to the Commission, remarked of East London -

" It is a component as it were of Bisho. "

- 8.6.1.12 We reject this suggestion as being nonsensical. We agree with the following criticism levelled against the proposition by Zietsman JP. In the course of his address to the Commission he observed -

" An error made by the Bisho Court proponents we believe is the fact that they speak of East London and Mdantsane as though they are suburbs of Bisho. Bisho and King William's Town do go together, but they are not part of the East London-Mdantsane city. To talk of a Bisho, King William's Town, East London, Mdantsane metropolitan area, as does Pickard J on page 64 of his written submission, or the East London, Bisho area as he does on page 15 is, we believe, misleading. They do not even fall under the same Transitional Local Council. "

- 8.6.1.13 The sole advantage which in our opinion Bisho enjoys over East London is the clear superiority of the High Court building in Bisho when compared to the far less satisfactory accommodation

of the East London Circuit Local Division in the Law Court Building in East London.

8.6.1.14 We have paid due regard to this substantial factor in the debate. Making full allowance for it, we consider nevertheless that the interests and convenience of the bulk of High Court civil litigants in the immediate area would be better served by having the seat at East London. In regard to criminal prosecutions, so it seems to us, East London is the obvious seat for the new local division. In this connection the following facts given to the Commission by the Attorney-General at Grahamstown are revealing -

“ An area like Port Elizabeth, East London, Uitenhage, generates a lot more crime ... per 1000 head of population ... In fact, if I can just give some statistics there, of the 120 prosecutors in my area of jurisdiction about half are located in two magisterial districts, Port Elizabeth and East London, and I can assure you they are some of the busiest prosecutors in the division. So that gives an idea of the impact of a very urban area with all the crime and how that impacts on the whole demographics of trying to work out where the Court is really required. That is true for violent crime, as is certainly almost more true for commercial crime, because the more business there is the more serious commercial crime there is.”

8.6.2.15 It must be steadily borne in mind that historically, and because of ever-present financial constraints, several local divisions which are now well established have had modest beginnings. The situation in the Eastern Cape in this regard was conveniently summarised in the course of his oral representations to the Commission by Mr. Justice T.M. Mullins. He said -

“ As far as accommodation in East London is concerned, Mr. Chairman, the Court Eastern Cape Local Division was established in 1974, some 16 years before the present new ... Supreme Court building was built. At the time it was established judges were housed in the old

magistrates court buildings known as the New Law Courts, and at first only one courtroom was available and one room as a judge's chamber. As the work increased the Supreme Court was allocated more courtrooms ... and immediately before the move to the new building (which was in 1990), four courtrooms were being used. I mention this ... to indicate how a small local division can develop from very small accommodation facilities until the need and the funds are available to establish a separate Supreme Court building."

- 8.6.1.16 During October 1996 the Commission requested from Mr. Jeremy Watson, the architect advising the Public Works Department, an up-dated report on the progress of the building refurbishment operations on the Law Court Building in East London. In a report dated 5 November 1996 Mr. Watson indicated that the renovation contract (currently standing at R4,2 million) was well in hand and that there was ample opportunity to find further Court and office space for the High Court "*at a fraction of the cost of new premises*".
- 8.6.1.17 On the morning of Saturday 23 November 1996 the Commission, accompanied by the architect, Mr. Watson, undertook a thorough inspection of the Law Court Building in East London. The upper floors of the building are occupied by various Departments and agencies quite unrelated to the Department of Justice. The inspection revealed that the building is more than adequate to accommodate a High Court, a Regional Court and a Magistrates District Court, with sufficient extra room for later expansion if and when required.
- 8.6.1.18 At the conclusion of the inspection Mr. Watson was asked to provide the Commission with an estimate of the additional cost involved in providing the Law Court Building with a completely separate entrance for that portion occupied by the High Court. On 29 November 1996 the responsible quantity surveyor furnished Mr. Watson with a written costs estimate of R1,85 million in respect of such a separate entrance.

8.6.1.19 Finally, and in regard to the limited area of jurisdiction for the new Border Local Division recommended by us, we point out that while Bisho and King William's Town wish to be part of it, no such indication has been given by interested parties in the magisterial districts of Stutterheim, Cathcart and Queenstown. The inference is that they are satisfied with the *status quo*.

8.6.2 THE RECOMMENDATIONS OF ADV. A.N. JAPPIE

8.6.2.1 The recommendations of Adv. A.N. Jappie are :-

- (A) that **Bisho** should be the seat of the proposed new local division ;
- (B) that its **area of jurisdiction** should consist of :
The area of the former Republic of Ciskei and the following magisterial districts-
 - East London
 - Mdantsane
 - Komga
 - King William's Town
 - Stutterheim
 - Cathcart
 - Queenstown ;
- (C) that from time to time East London should be a Circuit Local Division administered from Bisho, hearing both criminal and civil matters ; and
- (D) the new local division should be named the "**Border Local Division**".

8.6.2.2 The reasons on which the above recommendations are based are set forth in paragraphs 8.6.2.3 to 8.6.3.6 hereunder.

8.6.2.3 As a result of the re-incorporation of the former homeland, the Republic of Ciskei, there is now a need for the establishment of a local division of the High Court in the Border region. It is

anticipated that most of the civil litigation for this region will originate in the greater East London area. Ideally a local division of the Court ought to be situated at East London. As East London does not have its own building for such a court, a court can only be established there after an extensive renovation programme to the existing Magistrates Court building, at a great cost. There is an existing court building at Bisho which is situated some sixty (60) kilometres from East London. The use of this court building at Bisho is, therefore, the most cost effective way of providing for a local division for the Border Region.

- 8.6.2.4 Moreover, as the Government of the Eastern Cape Province has its seat at Bisho, this factor, while not by itself decisive, may also be considered.
- 8.6.2.5 The University of Fort Hare intends establishing a law faculty at Bisho. The establishment of such a faculty could considerably add to the research facilities available to such a Court.
- 8.6.2.6 The city of East London and the towns of King William's Town, Komgha, Stutterheim, Cathcart and Queenstown are all within a 200 kilometre radius of Bisho. With the exception of East London, all the other towns regard the King William's Town/Bisho area as the economic hub for this region.

CHAPTER 9

THE COMMISSION'S RECOMMENDATIONS IN REGARD TO THE STATUS AND AREA OF JURISDICTION OF THE WITWATERSRAND LOCAL DIVISION AS PART OF THE RATIONALISATION OF THE TRANSVAAL PROVINCIAL DIVISION

9.1 INTRODUCTION

9.1.1 In paragraph 9.2 hereunder the present status and the area of jurisdiction of the Witwatersrand Local Division ("WLD") are summarised.

9.1.2 In regard to the status and area of jurisdiction of the WLD three fundamental questions have to be answered :-

(a) Should the WLD be made an autonomous division of the High Court ?

And if so :

(b) What magisterial districts, **within the province of Gauteng**, should be assigned respectively (1) to the civil and criminal jurisdiction of the Johannesburg High Court and (2) to the civil and criminal jurisdiction of the Pretoria High Court ?

And :

(c) **Beyond the province of Gauteng**, what areas of the TPD (if any) should be assigned respectively (1) to the jurisdiction of the Pretoria High Court and (2) to the jurisdiction of the Johannesburg High Court ?

9.1.3 The Commission unanimously recommends that the WLD should be made an

autonomous division with its own Judge President and Deputy Judge President. In this connection the Commission's unanimous recommendations, and the reasons on which they are based, are detailed in paragraph 9.3 below.

9.1.4 The Commission's unanimous recommendations in regard to the division, **within the province of Gauteng**, of the areas of jurisdiction between (1) the Johannesburg High Court and (2) the Pretoria High Court respectively, and the reasons on which they are based, are set forth in paragraph 9.4 below.

9.1.5 In regard to the question what areas of the TPD (if any), **beyond the province of Gauteng**, should be assigned respectively (1) to the jurisdiction of the Pretoria High court and (2) to the jurisdiction of the Johannesburg High Court, the recommendations of the Commission are not unanimous.

9.1.6 As will appear more fully in Chapter 10 :-

9.1.6.1 The Chairman and the Hon. R.N. Leon recommend :-

- (A) that each of the three adjoining provinces should be made a local division of the TPD ;
- (B) that the Pretoria High Court should exercise concurrent jurisdiction in respect of the Mpumalanga local division and the Northern Province local division ; and
- (C) that the Johannesburg High Court should exercise concurrent jurisdiction in respect of the North West local division.

9.1.6.2 Adv A.N. Jappie and Mr G.S.S. Maluleke recommend that each of the three adjoining provinces of Mpumalanga, Northern Province and North West should forthwith be made an autonomous provincial division of the High Court; and that **beyond the province of Gauteng** neither the Pretoria High Court nor the Johannesburg High Court should exercise any jurisdiction in the area of the former province of Transvaal.

9.2 THE PRESENT STATUS AND AREA OF JURISDICTION OF THE WITWATERSRAND LOCAL DIVISION

9.2.1 Sec 6(1) of the Supreme Court Act, read with the First Schedule to the Act, determines the seat and area of jurisdiction respectively of the Transvaal Provincial Division (“TPD”) and of the WLD.

9.2.2 The First Schedule to the Supreme Court Act specifies that the area of jurisdiction of the TPD is the Province of the Transvaal and that the seat of the Court is Pretoria.

9.2.3 The First Schedule to the Supreme Court Act limits the area of jurisdiction of the WLD to certain magisterial districts in the Transvaal; and it specifies that its seat is Johannesburg.

9.2.4 In respect of civil matters the area of jurisdiction of the WLD is wider than its jurisdiction in respect of criminal matters.

9.2.5 In civil matters its area of jurisdiction extends to the following seventeen magisterial districts:-

Alberton, Benoni, Boksburg, Brakpan, Delmas, Germiston, Johannesburg, Kempton Park, Krugersdorp, Nigel, Randburg, Randfontein, Roodepoort, Springs, Vanderbijlpark, Vereeniging and Westonaria. (See map in Appendix “N”)

9.2.6 In criminal matters its area of jurisdiction extends to the following ten magisterial districts:-

Alberton, Boksburg, Germiston, Johannesburg, Kempton Park, Krugersdorp, Randburg, Randfontein, Roodepoort, and Westonaria. (See map in Appendix “O”)

9.2.7 In terms of sec 6(2) of the Supreme Court Act the TPD exercises concurrent jurisdiction in the area of jurisdiction of the WLD.

9.2.8 The WLD has no circuit court jurisdiction.

9.2.9 The WLD has its own Deputy Judge President, but not its own Judge President. The Judge President of the TPD presides over the WLD. In terms of sec 43 of the Supreme Court Act the Judge President of the TPD makes the Rules for the WLD.

9.3 THE COMMISSION'S UNANIMOUS RECOMMENDATIONS IN REGARD TO THE WITWATERSRAND LOCAL DIVISION:-

- (A) that the WLD should be made an autonomous division of the High Court ;
- (B) that the autonomous Witwatersrand Division should have a Bench consisting of 35 Judges, including its own Judge President and Deputy Judge President ; and
- (C) that, by an appropriate amendment of sec 3(5) to the Supreme Court Act, there be established a simple procedure (requiring merely the oral agreement of the two Judges President) for the easy interchange of Judges, whenever expedient, between the High Court Benches in Johannesburg and Pretoria.

9.3.1 The reasons upon which the above recommendations are based are set forth in paragraphs 9.3.2. to 9.3.18 below.

9.3.2 The TPD has 53 permanent Judges. Of this total number 26 Judges live in Johannesburg. All 26 Johannesburg Judges have expressed as their firm conviction that the time has come for the Court in Johannesburg to be given the status of an autonomous division of the High Court with its own Judge President. This view of the matter is shared by the Johannesburg Bar which is the largest Bar in the Country.

9.3.3 There exists, on the part of the Johannesburg Judges, a deep-rooted dissatisfaction with the WLD's subordinate position and, in particular, the fact that it has not its own Judge President.

9.3.4 In the view of the Deputy Judge President of the WLD the present system -

“ Simply does not work except at the price of a waste of time, delay and expense.”

9.3.5 At the very outset, and in the interests of fairness, two things should be clearly stated. First, every supporter of the proposal for an independent Johannesburg Court who appeared before the Commission was at pains to stress that his criticism was levelled at the system rather than at the person of the Judge President of the TPD. The Commission views the matter in the same light. It is obvious that Eloff JP is a dedicated and energetic Judge President and that he has administered the Courts in Pretoria and Johannesburg selflessly and to the best of his ability. Second, it should not be imagined that the establishment of an autonomous WLD with its own Judge President at the helm will at once usher in a golden age for the Johannesburg Court. For example, renovation of the filthy and dilapidated Court building and the provision of an efficient Registrar’s Office staffed with properly trained personnel are matters likely to depend largely upon the initiative of State Departments which, for many years, have done little if anything to provide the most elementary services to the Johannesburg Court.

9.3.6 Nevertheless, in the view of the Commission the administration of the two large High Courts in Pretoria and Johannesburg, separated as they are by a distance of some 60 kilometres, is an assignment so demanding as to be incapable of satisfactory execution by any single Judge President, however capable and conscientious he may be. To cite but a single example : The preparation of the forthcoming term’s roll for some 58 Judges (being permanent and acting judges), on its own, is an herculean labour which cannot reasonably be expected of a single administrator.

9.3.7 The chief spokesman on behalf of the Johannesburg Judges was the Hon. Mr Justice P.E. Streicher. In the course of his oral representations to the Commission, Judge Streicher put the matter thus -

“The headquarters of the Transvaal Provincial Division are at Pretoria. Every second week the Judge President commutes from Pretoria to Johannesburg. When he is in Johannesburg he is in charge of the Johannesburg court and makes decisions in respect of the Johannesburg court. Even when he is in Pretoria he makes decisions concerning the administration of the Johannesburg court. He deals direct with the Johannesburg Judge, with the Registrar and his personnel, with the

Attorney-General, the advocates and the attorneys. As can be expected, the Judge President does not inform the Deputy Judge President of every decision that he makes. His predecessor did not do so and his successor will not do so. The result is that the Deputy Judge President often does not know what is happening in the division which he is supposed to control and that he does not know what the Judges, whose work he is supposed to organise, are doing and the same would apply to his successor and will apply to his successor.”

9.3.8 Apart from the fact that it does not have its own Judge President the WLD has, practically speaking, already advanced far along the road to autonomy. In oral representations made to the Commission on behalf of the Johannesburg Bar, Adv. W.H.G. van der Linde said the following -

“ Of course de facto today we know that the WLD does its own appeals and reviews from the lower courts in its 17 magisterial districts; it does its own Judges appeals; its Judges are sourced on the whole from the community which it serves, certainly from a geographical point of view and it has its own Deputy Judge President. Now those are all measures that, by their very nature, tell us that they were taken in order to support the autonomy of that division. That being so it is inconsistent, unless some argument is raised, it is inconsistent why the autonomy should not be complete.”

9.3.9 Johannesburg is the country’s largest city. It is the economic, industrial and mining hub of the entire Southern African continent. The WLD is by far the largest and busiest division of the High Court. By way of example one may refer to the size of the Registrar’s Office in the Johannesburg court. It consists of a Chief Registrar, two Senior Registrars, ten Registrars and 124 other staff members.

9.3.10 Taking a broad look at the whole situation the Commission is constrained to agree with the following summation by Judge Streicher -

“ As the busiest division of the Supreme Court which is served by more Judges than any other division in the country and whose administration is more demanding than any other court in the country, the Johannesburg Court is, more than any other court in the country, entitled to be granted independent status with its own Judge President. The granting of such

independence to the Johannesburg court will merely recognise the de facto position, it will not affect the administration of justice adversely and will enhance the efficiency of the Johannesburg court.”

9.3.11 In the course of his oral representations to the Commission the Judge President of the TPD said that in the event of an autonomous Johannesburg High Court being established, it would require not less than 35 Judges. The Deputy Judge President of the WLD agreed with this estimate.

9.3.12 During October 1996 the Commission sent a circular to every Judge and acting Judge of the TPD. A copy of the said circular is to be found in APPENDIX “J” at page 148 of VOLUME I of this Report. In the circular the addressee was requested to provide the Commission with his or her estimate of the number of Judges which would be required in an independent WLD.

9.3.13 An analysis of the 39 estimates received by the Commission in response to the said circular confirms that the Judge President’s estimate of 35 Judges was an accurate one.

9.3.14 In his oral representations to the Commission the Judge President of the TPD argued strongly for the preservation of the *status quo*, and against the establishment of an autonomous WLD with its own Judge President. However, in order to cover the eventuality that the Commission might nevertheless recommend the autonomy of the Johannesburg High Court, Eloff JP said the following -

“ I suggest that if the Commission does recommend that the WLD should be given autonomy and severed from the TPD, it should recommend a change to the law to facilitate the easy exchange of Judges.”

9.3.15 In amplification of his suggestion the Judge President explained that the present procedure for securing the secondment of a Judge from one division to another required the formal approval of the Minister of Justice, and that in practice this procedure was cumbersome and slow. Eloff JP submitted that transfer should be achieved simply by the oral and informal agreement of the two Judges President involved in the secondment. He added -

“...that may overcome the difficulty I have mentioned earlier that very often the TPD has a log-jam and you need a Judge from the WLD : and

if that can be done by one JP ringing the other it will certainly go far to alleviate the position.”

9.3.16 The Commission agrees with the suggestions made by Eloff JP which are summarised in 9.3.14 and 9.3.15 above. To give effect thereto would, in the opinion of the Commission, preserve for the separate Pretoria and Johannesburg High Courts the immense advantage (now enjoyed by the TPD) of being able, whenever expedient, to draw upon a vast reservoir, numerically and qualitatively, of judicial talent.

9.3.17 In the opinion of the Commission the importance of perpetuating this benefit after the Pretoria and Johannesburg Courts have been separated, cannot be sufficiently stressed. What it means, in practical terms, was expressed thus by the Hon. Mr Justice K. van Dijkhorst in the course of his oral representations to the Commission. In emphasising the necessity for making optimum use of judicial talent, the learned Judge said the following -

“ Die eenheid van Pretoria/Johannesburg het ‘n voordeel van skaal. ‘n Mens moet dit nooit miskyk nie. Ons kry ‘n Johannesburgse regter wat meer onderleg is in belastingsake, en gevalle kry ons wat in Pretoria kom sit. In sommige gevalle kry ons kêrels wat in patente veel weet om in Pretoria te kom sit. So, ons het die voordeel van skaal, deskundigheid word uitgeruil...Jy het ‘n groter bron en die bron word benut en ons regter-president doen dit wel deeglik.”

9.3.18 Subject to what has been mentioned in 9.3.16 and 9.3.17 above, the Commission considers the conclusion to be inevitable that in the interests of the proper administration of justice the WLD should be made an autonomous division of the High Court with its seat in Johannesburg and having its own Judge President and Deputy Judge President. The case for the autonomy of the Johannesburg court is overwhelming.

9.4 THE UNANIMOUS RECOMMENDATIONS OF THE COMMISSION IN REGARD TO WHAT MAGISTERIAL DISTRICTS, WITHIN THE PROVINCE OF GAUTENG, SHOULD BE ASSIGNED RESPECTIVELY (1) TO THE CIVIL AND CRIMINAL JURISDICTION OF THE JOHANNESBURG HIGH COURT AND (2) TO THE CIVIL AND CRIMINAL JURISDICTION OF THE PRETORIA HIGH COURT ?

9.4.1 The Commission unanimously recommends -

- (A) that the autonomous Johannesburg High Court should have **civil** and **criminal** jurisdiction over the following FOURTEEN magisterial districts in the province of Gauteng :-

Alberton , Benoni , Boksburg , Heidelberg , Germiston , Johannesburg , Nigel , Oberholzer , Randfontein , Roodepoort , Springs , Vanderbijlpark, Vereeniging and Westonaria. (See map in Appendix “P”)

- (B) that the Pretoria High Court should have **civil** and **criminal** jurisdiction over the remaining area of the province of Gauteng, namely the following SEVEN magisterial districts :-

Bronkhorstspuit , Cullinan , Kempton Park , Krugersdorp , Pretoria , Randburg and Wonderboom. (See map in Appendix “P”)

- (C) that the autonomous Johannesburg High Court should be given circuit court jurisdiction in respect of the Springs Circuit and the Vereeniging Circuit.

9.4.2 The reasons on which the above recommendations are based, are set forth in paragraphs 9.4.3 to 9.4.9 below.

9.4.3 The present division of areas of jurisdiction between the Pretoria High Court and the Johannesburg High Court is haphazard, geographically untidy and has been overtaken by history.

9.4.4 The districts of Oberholzer (south-west of Johannesburg) and of Heidelberg (south-east of Johannesburg) now fall under Pretoria’s area of civil jurisdiction, whereas, in geographical terms, both these districts are closer to Johannesburg and

fall more naturally within the orbit of Johannesburg rather than Pretoria.

- 9.4.5 The three districts of Benoni, Brakpan and Springs, situated immediately to the east of Johannesburg, now fall under Pretoria's area of criminal jurisdiction, whereas, in geographical terms, all three of these districts are closer to Johannesburg and fall naturally within the orbit of Johannesburg rather than Pretoria.
- 9.4.6 The five districts of Oberholzer and Vanderbijlpark (south-west of Johannesburg) ; Vereeniging (south of Johannesburg) ; Heidelberg and Nigel (south-east of Johannesburg) now all fall under Pretoria's area of criminal jurisdiction, whereas, in geographical terms, all five districts are closer to Johannesburg and fall naturally within the orbit of Johannesburg rather than Pretoria.
- 9.4.7 The magisterial district of Delmas, which falls under the area of civil jurisdiction of the Witwatersrand Local Division, now forms part of the territory of the province of Mpumalanga.
- 9.4.8 The recommendations set forth in 9.4.1 are designed to achieve certainty and uniformity, and will be more easily intelligible to litigants than the present random system.
- 9.4.9 While we appreciate that our recommendations will necessarily require a large number of Judges in Johannesburg, we believe that this burden borne by the Johannesburg Judges will to some extent be lightened by the presence throughout of a Judge President and a Deputy Judge President in the same place.

CHAPTER 10

THE COMMISSION'S RECOMMENDATIONS REGARDING THE RATIONALISATION OF THE REMAINDER OF THE TRANSVAAL PROVINCIAL DIVISION

10.1 INTRODUCTION

- 10.1.1 The Commission having unanimously recommended that the WLD should be made an autonomous division of the High Court, it is necessary to consider next what should be done with the three new provinces of Mpumalanga, Northern Province and North West ("the adjoining provinces"); what the status of the adjoining provinces should be; and what interrelation, if any, there should be between the adjoining provinces and the Pretoria High Court and/or the Johannesburg High Court.
- 10.1.2 Save for (a) the magisterial district of Vryburg in North West ; (b) the area of jurisdiction of the Bophuthatswana High Court in North West ; and (c) the area of jurisdiction of the Venda High Court in the Northern Province, the territories of the adjoining provinces fall under the area of jurisdiction of the Transvaal Provincial Division.
- 10.1.3 In regard to the question what should be the status of the three adjoining provinces, and their interrelation with the Pretoria and/or the Johannesburg High Court, the recommendations of the Commission are not unanimous.
- 10.1.4 In paragraph 10.2 hereunder are detailed the recommendations of the Chairman and the Hon. R.N. Leon, and the reasons on which they are based.
- 10.1.5 In paragraph 10.3 hereunder are detailed the recommendations of Adv. A.N. Jappie, and the reasons on which they are based.

10.1.6 In paragraph 10.4 hereunder are detailed the recommendations of Mr. G.S.S. Maluleke, and the reasons on which they are based.

10.2 THE RECOMMENDATIONS OF THE CHAIRMAN AND THE HON. R.N. LEON

10.2.1 The Chairman and the Hon. R.N. Leon recommend :-

- (A) that **Mpumalanga** should be made a **local division** of the Pretoria High Court; that its seat should be **MIDDELBURG**; that it should be housed in the Magistrates Court building in Middelburg; that it should have its own Deputy Attorney-General; and that its name should be -
“ **THE MPUMALANGA LOCAL DIVISION** ”.
- (B) (1) that the **Northern Province** should be made a **local division** of the Pretoria High Court; that its seat should be **PIETERSBURG**; that it should be housed in the old Magistrates Court Building in Pietersburg; that it should have its own Deputy Attorney- General ; and that its name should be -
“ **THE NORTHERN PROVINCE LOCAL DIVISION** ”.
- (2) that the **Venda High Court** should be closed down and that its court building should be used as a circuit court local division of the Pretoria High Court.
- (C) (1) that the **North West** should be made a **local division** of the Johannesburg High Court; that its seat should be **POTCHEFSTROOM**; that it should be housed in the Barnard House, to be refurbished by the University of Potchefstroom and to be leased by the University to the State; that it should have its own Deputy Attorney-General; and that its name should be -
“ **THE NORTH WEST LOCAL DIVISION** ”.
- (2) that the **Bophuthatswana High Court** should be closed down and that its court building be used as a permanent circuit local division of the Johannesburg High Court for the hearing of both civil and criminal cases.

- (D) (1) that the Pretoria High Court should exercise concurrent jurisdiction over the Mpumalanga local division and the Northern Province local division, and that it should be named -

“THE NORTHERN VAAL DIVISION OF THE HIGH COURT.”

- (2) that the Northern Vaal Division, with its seat at PRETORIA, should have 20 Judges, including its own Judge President, Deputy Judge President and Attorney-General.

- (E) (1) that the Johannesburg High Court should exercise concurrent jurisdiction over the North West local division, and that it should be named -

“THE SOUTHERN VAAL DIVISION OF THE HIGH COURT.”

- (2) that the Southern Vaal Division, with its seat at JOHANNESBURG, should have 35 Judges, including its own Judge President, Deputy Judge President and Attorney-General.

10.2.2 The reasons on which the above recommendations are based are set forth in paragraphs 10.2.3. to 10.2.14 below.

10.2.3 As far as criminal prosecutions are concerned each of the three adjoining provinces is already adequately served by district magistrates courts, regional courts, and by regular High Court circuits.

10.2.4 The essential question is whether the present volume of High Court civil work generated within the adjoining provinces is large enough to warrant the immediate creation of provincial divisions, or, whether for this purpose local divisions would not be more than adequate. We do not consider that the volume of High Court work generated in the adjoining provinces remotely merits the immediate establishment of provincial divisions.

10.2.5 In the near future the volume of civil High Court work countrywide is likely to decline substantially - see paragraph 6.4 in Chapter 6 above. Whatever shape a future Family Court in South Africa is likely to assume, one thing may be

taken as a matter of certainty : the adjudication of undefended divorces will soon be removed from the High Court. The evidence before the Commission shows that the large bulk of High Court summonses issued by country attorneys involves divorce actions. On a national basis the percentage of divorce actions actually defended at the trial stage is minimal.

- 10.2.6 The advantages of having a local division as the first step in the process of evolution towards an ultimate provincial division over the establishment forthwith of a provincial division, are many and striking.
- 10.2.7 In a new provincial division created overnight, with a seat far removed from large cities, it will be difficult to make suitable judicial appointments to its new Bench from the ranks of properly qualified and experienced practitioners. It is inherently unlikely, we think, that practitioners who have made their mark in High Court work will be prepared to leave the city in which they work and live to work in the comparative isolation of a small Bench in what may be a distant country town.
- 10.2.8 In the event that this Commission should wish to recommend the establishment of a new provincial division, it is obliged to specify the numerical strength of the Bench in such new provincial division. For this Commission to attempt so to specify the number of Judges which a new provincial division in any one of the three adjoining provinces would require (i.e. the number of Judges who would be continuously and productively occupied in High Court civil litigation) would involve pure guesswork - guesswork which can hardly be undone once such permanent appointments to the new Bench are made.
- 10.2.9 In a local division the Bench will be manned by experienced Judges from the Pretoria and/or Johannesburg High Courts and the actual needs of the local division can be closely monitored. The number of Judges who can be continuously and productively occupied in High Court civil litigation in the local division can be realistically and accurately gauged.
- 10.2.10 Historically in our country the establishment of a new provincial division has invariably marked the culmination of an evolutionary process from modest beginnings. One must learn to walk before one tries to run. Viewed from the angle of the proper administration of justice we consider that the creation overnight of provincial divisions in the three adjoining provinces would be a recipe for disaster.

- 10.2.11 Last but not least, we point to the staggering financial implications of building and equipping three new provincial divisions together with all their ancillary support systems. The establishment of local divisions, on the other hand, can be accomplished at a comparatively modest cost and without the expense of additional judicial appointments.
- 10.2.12 As far as the seats of the respective local divisions recommended by us are concerned, nothing further need be said about **Pietersburg**. By common consent Pietersburg is the obvious choice as a seat for the Northern Province - whether it be made a provincial or a local division.
- 10.2.13 In Mpumalanga we prefer **Middelburg** rather than Nelspruit as the seat of the local division for the reason that the Middelburg/Witbank area is the economic hub of the province with substantially more attorneys than in the Lowveld region. Middelburg occupies a central position in the province and it is also easily accessible from Pretoria and Johannesburg . It will be easy for counsel from Johannesburg and Pretoria to appear in Middelburg; and Pretoria Judges doing duty there will be able to commute daily if they so wish. **Nelspruit**, on the other hand, is situated far to the east in Mpumalanga. To most of the major towns in the province Nelspruit is far less accessible than Middelburg. To make Nelspruit the seat of the local division would, for the bulk of the litigants in the province, reduce rather than enhance their access to civil justice in the High Court.
- 10.2.14 In North West province we favour **Potchefstroom** as the seat of the local division rather than Mmabatho for the reason that Mmabatho, which has a small population, lies in an extremely inaccessible part of the province in the far west, next to the Botswana border. On the other hand the Potchefstroom/Klerksdorp area has a large population and it represents the economic and industrial heartland of the province. Most of the province's attorneys practise there. Although **Mmabatho** has an impressive and well-appointed (if entirely under-utilised) High Court building, the University of Potchefstroom has undertaken, at its own expense, to renovate and modify its commodious Barnard House building to render it suitable for use as a High Court complex. The University is prepared to lease this property to the State at a nominal rental. Potchefstroom is readily accessible to most large towns in North West and it is conveniently close to both Johannesburg and Pretoria. It will be easy for counsel from Johannesburg and Pretoria to appear in Potchefstroom. Barnard House contains flats which, upon renovation, would be suitable for use as Judges' lodgings.

The University of Potchefstroom has an outstanding law library which will be available not only directly, but also by way of computer terminals, in the Judges Chambers. Potchefstroom is, in our opinion, an ideal seat for the local division in the North West.

10.3 THE RECOMMENDATIONS OF ADV. A.N. JAPPIE

10.3.1 Adv. A.N. Jappie recommends :-

(A) that **Mpumalanga** should be made a **provincial division** of the High Court; that its seat should be **MIDDELBURG**; that it should have civil and criminal circuits at Nelspruit; that it should have **THREE JUDGES** ; and that its name should be -

“ THE MPUMALANGA PROVINCIAL DIVISION ”.

(B) that the **Northern Province** should be made a **provincial division** of the High Court; that its seat should be **PIETERSBURG**; that it should have **THREE JUDGES**; and that its name should be -

“ THE NORTHERN PROVINCE PROVINCIAL DIVISION ”.

(C) that **North West** should be made a **provincial division** of the High Court; that its seat should be **POTCHEFSTROOM**; that it should have **FIVE JUDGES**; that it should have a **local division** with its seat at **MMABATHO**; and that consideration should be given to the institution of regular circuit courts at Odi and/or Moretele and Rustenburg; and that its name should be -

“THE NORTH WEST PROVINCIAL DIVISION”

(D) that the autonomous Johannesburg High Court should be named -

“THE WITWATERSRAND DIVISION OF THE HIGH COURT”

(E) that the Pretoria High Court should be named -

“THE NORTH GAUTENG DIVISION OF THE HIGH COURT”

10.3.2 The reasons on which the above recommendations are based are set forth in paragraphs 10.3.3 to 10.3.7 below.

10.3.3 Mpumalanga Province has a population of approximately 4,5 million. The Province has 23 Magisterial Districts. The Province has 337 practising attorneys spread over approximately 187 firms.

10.3.4 Available statistics as set out in the submissions on behalf of the Premier of the Province show that the work generated in the Mpumalanga Province on an annual basis for the attention of a High Court can be tabulated as follows :-

Civil Appeals from Magistrates Courts	40
Criminal review matters from the Magistrates Court	2557
Criminal Appeals from Magistrates Courts	362
Civil Supreme Court Cases	2711
Civil Supreme Court trials	832
Applications	1026
Opposed Applications	441
Divorce Matters	3251
Divorce Trials	262
Criminal Trials	105

I am thus of the view that Mpumalanga Province ought to have an autonomous Provincial Division.

10.3.5 The seat of the Provincial Division ought to be situated at Middelburg. My reasons for preferring Middelburg are the same as those set out in paragraph 10.2.13 above.

10.3.6 Nelspruit ought to be served by a permanent Criminal and Civil Circuit Court.

10.3.7 For reasons of consistency, it is recommended that the Courts in both the Northern Province and North West be made **Provincial Divisions** of the High

Court. The seat of each of these Courts should be at Pietersburg and Potchefstroom respectively. My reasons for preferring Pietersburg and Potchefstroom are the same as those set forth in paragraphs 10.2.12 and 10.2.14 above.

10.4 **THE RECOMMENDATIONS OF MR. G.S.S. MALULEKE**

10.4.1 Mr. G.S.S. Maluleke recommends :-

- (A) that **Mpumalanga** should be made a **provincial division** of the High Court; that its seat should be **NELSPRUIT**; that it should have civil and criminal circuits at Middelburg; that it should have **FOUR JUDGES**, its own Attorney-General, Master and State Attorney; and that its name should be -

“ **THE MPUMALANGA PROVINCIAL DIVISION** ”.

- (B) that the **Northern Province** should be made a **provincial division** of the High Court; that its seat should be **PIETERSBURG**; that it should have **FIVE JUDGES**, its own Attorney-General, Master and State Attorney; that it should have a local division or circuit court with civil and criminal jurisdiction with its seat at **THOHOYANDOU** and that its name should be -

“ **THE NORTHERN PROVINCE PROVINCIAL DIVISION** ”.

- (C) that the **North West Province** should be made a **provincial division** of the High Court; that its seat should be **MMABATHO (MAFIKENG)**; that it should have **FIVE JUDGES**, and its own Attorney-General, Master and State Attorney; that it should have a local division with its seat at **POTCHEFSTROOM** to serve Potchefstroom, Klerksdorp and Stilfontein; that the local division should have **THREE JUDGES**, and a Deputy Attorney-General; and that a circuit court with civil and criminal jurisdiction be established at Ga-Rankuwa for Odi and Moretele; and that the provincial division should be named -

“ THE NORTH WEST PROVINCIAL DIVISION ” .

(D) that the autonomous Johannesburg High Court should be named -

“THE SOUTH GAUTENG DIVISION OF THE HIGH COURT”

(E) that the Pretoria High Court should be named -

“THE NORTH GAUTENG DIVISION OF THE HIGH COURT”

10.4.2 The reasons on which the above recommendations are based are set forth in paragraphs 10.4.3 to 10.4.4 below.

10.4.3 It is noteworthy that it is mainly the Attorneys, Advocates, Judges and Attorneys- General who live, practise and work in Gauteng who argue strongly against the establishment of provincial divisions in the adjoining provinces. There is no clearer indication of what vested interests can do. Accordingly these arguments must be weighed with circumspection.

10.4.4 Mmabatho already has a Court and for over 20 years the Court in Pretoria has had no jurisdiction over what was then Bophuthatswana. It is ironical that the reasons advanced against the establishment of provincial divisions in the adjoining provinces would, if taken to their logical conclusion, mean that most of the High Courts should be closed down. For instance :

10.4.4.1 Criminal prosecutions are adequately served by Magistrates Courts and Circuit Courts in most of the provinces.

10.4.4.2 The volume of civil work will in all provinces be significantly reduced by the increased jurisdiction of the Magistrates Court, the introduction of specialist family courts, the new resolution of labour disputes, etc.

10.4.4.3 Pietersburg is by far a larger city than Kimberley or Grahamstown.

10.4.4.4 Mmabatho has more than double the population of Grahamstown. It is inconsistent to close the Court at Mmabatho and to involve the Justice Department in a long term lease with the University of Potchefstroom.

10.4.4.5 I give more weight to the representations of the people who live, practise and carry on business in the adjoining provinces than the representations of people from another province who clearly are motivated by self-interest. The governments of all these provinces advanced strong arguments for the establishment of provincial divisions in their provinces. I further maintain that it will be against the letter and spirit of the Constitution and the political will of the people to deny those provinces, which collectively have over 11 million people, their own provincial divisions.

APPENDIX “A”

THE TERMS OF REFERENCE OF THE COMMISSION

The Commission's Terms of Reference are as follows: -

- (1) **To inquire, as a matter of urgency, into and to report upon, and to make recommendations regarding the rationalisation of the provincial and local divisions of the Supreme Court as envisaged by section 242 read with section 241 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), with more specific reference to -**
 - (a) **(i) the efficacy or otherwise of the existing court structures and the suitability or otherwise of the existing areas of jurisdiction, and, subject to subparagraph (b) below, the Commission's recommendations regarding:**
 - (ii) **the desirability of altering the existing court structures and/or the existing areas of jurisdiction;**
 - (b) **(i) the desirability of creating within each of the nine provinces established under section 124 (1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) a provincial and/or local division or divisions of the Supreme Court, and, should the Commission advise the creation of such divisions, its recommendations regarding:**
 - (ii) **the seat of each such proposed division;**
 - (iii) **the area of jurisdiction of each such proposed division;**
 - (iv) **the numerical strength of the bench in each such proposed division;**
 - (v) **the name of each such proposed division;**
 - (c) **the need for improved access to justice for civil litigants in the Supreme Court through:**
 - (i) **the creation of specialist courts such as the Commercial Court functioning in Johannesburg;**
 - (ii) **the establishment of a Circuit Court system for the adjudication of civil cases;**
 - (d) **the desirability of extending the original civil jurisdiction of each provincial and local division of the Supreme Court by empowering it to entertain all causes, wherever arising, in those matters in which the defendant or respondent is an *incola* of South Africa as a whole;**
 - (e) **legislation (including transitional legislation) and other measures designed to secure the implementation of the Commission's recommendations; and**

- (f) any other matter relevant to the implementation of the Commission's recommendations, including the financial implications thereof.
- (2) With regard to the Terms of Reference above, the Commission is enjoined to obtain and to consider the views and submissions of all interested parties, including members of the judiciary, members of the practising legal professions, members of the public, attorneys-general, masters of the Supreme Court, registrars of deeds, registrars of the Supreme Court, magistrates, legal academics, lawyers organisations, members of the South African Police Service, and the premiers of the nine provinces.
- (3) The Commission is further enjoined, in the exercise of its discretion, to prepare and to submit interim reports from time to time.

APPENDIX "B"

THIS NOTICE CONTAINS ONLY AN ENGLISH AND AN AFRIKAANS VERSION. HOWEVER, THE NOTICE IS AVAILABLE ALSO IN ALL THE OTHER NINE OFFICIAL LANGUAGES AT NATIONAL LEVEL. SHOULD NEITHER ENGLISH OR AFRIKAANS BE YOUR FIRST LANGUAGE PLEASE APPLY IN WRITING TO THE SECRETARIAT FOR A COPY OF THE NOTICE IN THE LANGUAGE OF YOUR CHOICE.

COMMISSION OF INQUIRY INTO THE RATIONALISATION OF THE PROVINCIAL AND LOCAL DIVISIONS OF THE SUPREME COURT

CALL FOR SUBMISSIONS

(I) **THE APPOINTMENT OF THE COMMISSION AND ITS POSTAL ADDRESS:**

By Proclamation No R 20 published in the Government Gazette on 31 March 1995 the President of the Republic of South Africa appointed a Commission of Inquiry into the Rationalisation of the Provincial and Local Divisions of the Supreme Court and certain matters incidental thereto. The names of the chairman and the members of the Commission and its Terms of Reference are set forth in the Proclamation. **The postal address of the Commission is : The Secretariat, Commission of Inquiry into the RPLD, P O Box 55367, ARCADIA, 0007.**

(II) **CALL FOR WRITTEN AND/OR ORAL SUBMISSIONS TO THE COMMISSION**

All interested parties are invited to make WRITTEN submissions to the Commission. The deadline for written submissions is 30 June 1995. The postal address of the Commission is set forth in (I) above. ORAL submissions will be heard after 30 June 1995 at public hearings of the Commission. Further details regarding submissions are contained in sub-paragraphs (8) to (11) of the EXPLANATORY NOTE in (IV) below.

(2) With regard to the Terms of Reference above, the Commission is enjoined to obtain and to consider the views and submissions of all interested parties, including members of the judiciary, members of the practising legal professions, members of the public, attorneys-general, masters of the Supreme Court, registrars of deeds, registrars of the Supreme Court, magistrates, legal academics, lawyers organisations, members of the South African Police Service, and the premiers of the nine provinces.

(3) The Commission is further enjoined, in the exercise of its discretion, to prepare and to submit interim reports from time to time.

(III) **THE TERMS OF REFERENCE OF THE COMMISSION**

The Commission's Terms of Reference are as follows: -

(1)

[HERE THE CALL FOR SUBMISSIONS QUOTED IN FULL THE TERMS OF REFERENCE WHICH ARE EMBODIED IN APPENDIX “A”]

(IV) **THE BACKGROUND TO THE APPOINTMENT OF THE COMMISSION**

The legislative background to the appointment of the Commission is briefly indicated in sub-paragraphs (1) to (6) of the EXPLANATORY NOTE in (V) below.

(V) **EXPLANATORY NOTE**

(1) The Constitution of the Republic of South Africa, 1993, (“the Act”) came into operation on 27 April 1994.

(2) Sections 96 to 109 of the Act are contained in Chapter 7 thereof which deals with the judicial authority and the administration of justice.

(3) Section 101(1) of the Act reads as follows:-

“There shall, subject to sections 241 and 242 be a Supreme Court of South Africa, which shall consist of an Appellate Division and such provincial and local divisions, and with such areas of jurisdiction, as may be prescribed by law.”

(4) Subject to certain provisions, which are here not quoted, section 241(1) of the Act reads as follows:-

Every court of law existing immediately before the commencement of this constitution in an area which forms a part of the national territory, shall be deemed to have been duly constituted in terms of the constitution or the laws enforced after such commencement, and shall continue to function as such in accordance with the laws applicable to it until changed by a competent authority: ...”

(5) Sub-sections (1) and (2) of section 242 of the Act read as follows:-

“(1) All jurisdictional areas and court structures appropriate thereto existing immediately before the commencement of this constitution, shall as soon as possible after such commencement be rationalised in accordance with an Act Of Parliament with a view to establishing the jurisdictional areas and court structures contemplated in Chapter 7.

(2) The rationalisation of the jurisdictional areas and court structures referred to in subsection (1) shall be the responsibility of the national government after consultation with the Judicial Service Commission.”

(6) Section 124(1) of the Act establishes for the Republic of South Africa nine provinces, their respective areas being defined in Part 1 of Schedule 1.

(7) The appointment of the Commission is to be seen against the legislative background sketched in subparagraphs (1) to (6) above.

(8) Paragraph 2 of its terms of reference enjoins the Commission to obtain and to consider the views and submissions of all interested parties.

(9) The Commission proposes to carry out paragraph 2 of its Terms of Reference by inviting all interested parties to address to it **written** submissions (“responses”) setting forth their views and suggestions ; and, where necessary, by receiving at **public hearings oral** representations in support and amplification of responses.

- (10) You are therefore invited to make submissions in **writing** in regard to any or all of the matters set forth in sub-paragraphs (a) to (f) of paragraph 1 of the Terms of Reference. Your response should identify significant problems (both generally and with reference to your own Provincial and Local divisions) ; and you should further suggest solutions to such problems. **Your response should reach the secretariat of the commission as soon as possible but in any event not later than 30 June 1995. Your response must state clearly whether you wish to appear in person before the commission in order to make oral representations in support or amplification of your written submissions.**
- (11) After **30 June 1995** the Commission will hold public hearings at various centres in the Republic of South Africa, during which respondents wishing to do so will be afforded the opportunity of making **oral** representations. Such respondents will be notified well in advance of the venues and dates of such public hearings.

APPENDIX “C”

List of those persons and associations to whom a copy of the “Call for Submissions” was directly addressed by the Commission.

1. The Chief Justice and the Judges of the Appellate Division.
2. The President of the Constitutional Court and the Justices of the Constitutional Court.
3. The Judges President of the Provisional Divisions of the Supreme Court of South Africa and all the Judges in their Divisions.
4. The Judges President and the Judges of the Supreme Courts of the TBVC territories
5. The General Bar Council of South Africa.
6. The various Societies of Advocates in South Africa and in the TBVC territories.
7. The Society of Independent Advocates of South Africa.
8. The Association of Law Societies of the RSA.
9. The various Law Societies in South Africa and in the TBVC territories.
10. The Premiers of the nine provinces of South Africa.
11. The MEC for Safety and Security in each of the nine provinces.
12. The Attorneys General.
13. The State Attorneys.
14. The Legal Resources Centre.
15. The Masters of the various Divisions of the Supreme Court.
16. The Registrars of the various Divisions of the Supreme Court.
17. The Registrar of the Appellate Division.
18. The Law Faculties of all the Universities in South Africa and in the TBVC territories.
19. All Regional Court Presidents and all the Regional Court Magistrates.
20. Lawyers for Human Rights.
21. The Chief Family Advocate.
22. All Chief Magistrates and all the Magistrates in South Africa.
23. The Chief Registrar of Deeds.
24. Mr. J. Motoung.
25. The Hon. GP van Rhyn.
26. The National Commissioner of the South African Police Services.
27. The Black Lawyers Association.
28. National Association of Democratic Lawyers

APPENDIX “D”

List of daily newspapers in which the Commission’s appointment was announced and in which its Terms of Reference were published.

1. Argus, The
2. Beeld
3. Burger, Die
4. Business Day
5. Citizen, The
6. City Press
7. Daily Dispatch
8. Daily News, The
9. Diamond Fields Advertiser
10. EP Herald
11. Evening Post
12. Gazette
13. George Herald
14. Grocott’s Mail
15. Ilanga
16. Imvo Zabantsundu
17. Lentswe
18. Lowvelder, The/Laevelder, Die
19. Lydenburg Nuus/News
20. Natal Witness, The
21. Noord-Transvaler, Die
22. Oosterlig, Die
23. Potchefstroom & Ventersdorp Herald
24. Pretoria News
25. Rapport
26. Sowetan
27. Star, The
28. Sunday Times
29. Sunday Tribune
30. Volksblad, Die
31. Weekly Mail, The
32. Western Transvaal Record
33. Witbank News/Nuus

APPENDIX ‘E’

List of 285 written responses received by the Commission following upon the “Call for Submissions”

EASTERN CAPE

1.	The Hon Mr Justice B de V Pickard, of the Ciskei Supreme Court	<i>on behalf of</i>	The Judges of the Ciskei Supreme Court
2.	Adv N K Dukada	<i>on behalf of</i>	Society of Advocates of Umtata; and NADEL, Transkei Branch
3.	G E Nkwinti		
4.	M S van der Watt, Registrar, Eastern Cape Division		
5.	Adv K V Matthee		
6.	L S Kalimashe	<i>on behalf of</i>	Premier of the Eastern Cape Province
7.	C J Marnewick		
8.	W S Kuboni		
9.	D M Randell B E Rennie T Neville C Heunis E Wagenaar M A Bowker		
10.	Prof. P G Clayton		
11.	D D Tabata	<i>on behalf of</i>	NADEL Border Branch
12.	The Rev Dr R G Clarke The Rev S Languza Prof B Potgieter The Rev Dr H W G van der Linde	<i>on behalf of</i>	Grahamstown Christian Council of Churches
13.	Adv V O T Vakalisa		
14.	Attorney J H Brits		
15.	G Sefuthi		
16.	L Louder		
17.	D B Muir		
18.	C Lloyd		
19.	M K Knipe		
20.	V Every		
21.	J Miya	<i>on behalf of</i>	NADEL Port Elizabeth and District Branch
22.	Attorney J S Neave	<i>on behalf of</i>	Neave, Stötter & Associates
23.	Prof A J Kerr		
24.	Attorney L Schoeman		
25.	Attorney E M Makiwane	<i>on behalf of</i>	Transkei Attorneys Association
26.	Adv R D Claassen SC	<i>on behalf of</i>	Society of Advocates of Ciskei
27.	Adv L J Roberts SC, Attorney-General: Eastern Cape		
28.	H H van der Spuy	<i>on behalf of</i>	King William’s Town Transitional Local Council
29.	Attorney E F Henning		
30.	R Human		
31.	Adv W F Jurgens SC, Attorney-General: Ciskei		

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| 32. | H P M van der Merwe,
Acting Master of the
Supreme Court: Eastern Cape Division | | |
| 33. | Adv C D H O Nel SC,
Attorney-General: Transkei | | |
| 34. | Attorney D N Scrooby | | |
| 35. | The Hon Mr Justice C E L Beck,
Judge President of the
Transkei Supreme Court | | |
| 36. | Attorney S Clarke | <i>on behalf of</i> | East London Attorneys
Association |
| 37. | H B Pieters | <i>on behalf of</i> | The Regional Court
Magistrates: Eastern
Cape |
| 38. | U Pretorius | | |
| 39. | S Mohamed | | |
| 40. | S Snowden | | |
| 41. | M Mpahlwa
S Cridland | <i>on behalf of</i> | City of Grahamstown |
| 42. | Regional Representative:
Justice Transkei | | |
| 43. | The Hon Mr Justice N W Zietsman,
Judge President of the Eastern Cape
Provincial Division | | |
| 44. | The Hon Mr Justice A R Erasmus,
of the Eastern Cape Division | | |
| 45. | M J H Anderson | <i>on behalf of</i> | King William's Town
Attorneys, Circle 12 |
| 46. | Advocates and Attorneys
Liaison Committee: Eastern Cape | | |
| 47. | P Stergianos | | |
| 48. | M Embleton | | |
| 49. | L Mpati | <i>on behalf of</i> | Legal Resources Centre:
Grahamstown |
| 50. | H M Luso | <i>on behalf of</i> | B l a c k L a w y e r s
Association: Eastern
Cape |
| 51. | J Watson, of Brian Watson
Associates Inc | | |

MPUMALANGA

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|----|---|---------------------|--|
| 1. | Attorney P L du Toit | <i>on behalf of</i> | Nelspruit Attorneys
Association |
| 2. | Attorney A P Brandmuller | <i>on behalf of</i> | Middelburg Attorneys
Association |
| 3. | A Meerkotter | <i>on behalf of</i> | Middelburg Chamber of
Commerce and Industry |
| 4. | C P de Jager SC and

Adv. D P J Rossouw | <i>on behalf of</i> | The Premier of
Mpumalanga |
| 5. | A R Clark | | |
| 6. | Attorney E Boshoff | <i>on behalf of</i> | The Association of
Witbank Attorneys |
| 7. | Adv. D P J Rossouw | <i>on behalf of</i> | Society of Advocates
Eastern Tvl Province |

8.	Attorney P B Mnisi		
9.	J G Liebenberg	<i>on behalf of</i>	The Magistrate, Barberton
10.	S J Ndlovo		
11.	P W D Farquhar	<i>on behalf of</i>	Metavia Airlines
12.	K N De Kock	<i>on behalf of</i>	Dynamic Legal Aid cc
13.	Attorney J Jacobs	<i>on behalf of</i>	Highveld Ridge Attorneys Association
14.	H W Moldenhauer	<i>on behalf of</i>	The Magistrate, Nelspruit
15.	H L Rethman		

KWAZULU-NATAL

1.	F P van der Merwe	<i>on behalf of</i>	Natal Law Society
2.(a)	Adv A J Dickson SC	<i>on behalf of</i>	The Pietermaritzburg Bar
(b)	Adv A Findlay SC	<i>on behalf of</i>	The Natal Bar
3.	Attorney D Murugasen	<i>on behalf of</i>	Chatsworth Legal Circle
4.	Attorney D Schauf	<i>on behalf of</i>	Venn, Nemeth & Hart, Attorneys
5.	Attorney B Ntoi		
6.	P Park		
7.	C B Ebdon		
8.	N E Kerr		
9.	A Sichel		
10.	L S Farr		
11.	R Seetharam		
12.	T McDonald		
13.	G A Gillespie		
14.	P Singh		
15.	Attorney D Pistorius		
16.	S Posthumus		
17.	The Pietermaritzburg Legal Circle		
18.	The Hon Mr Justice J A Howard, Judge President of the Natal Provincial Division	<i>on behalf of</i>	The Judges of the Natal Provincial Division
19.	J E V Hunt		
20.	I J J Luther	<i>on behalf of</i>	Regional Court Magistrates of Natal
21.	Attorney H L Rethman		
22.	V M Mthembu		
23.	Adv D Singh	<i>on behalf of</i>	Family Advocate, Durban
24.	J C van der Westhuizen		
25.	N Naidoo		

NORTHERN CAPE

1.	Attorney P Horn	<i>on behalf of</i>	Circle 16 of the Law Society of the Cape of Good Hope
2.	Attorney P P Muller	<i>on behalf of</i>	Circle 19 of the Law Society of the Cape of Good Hope
3.	The Hon Mr Justice J J Kriek,	<i>on behalf of</i>	The Judges of the

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| 4. | Judge President of the Northern Cape Division
Adv H J Lacock SC | <i>on behalf of</i> | Northern Cape Division
Northern Cape Society of Advocates |
| 5. | B van der Merwe,
Regional Magistrate, Hartswater | | |
| 6. | S A Majiedt | <i>on behalf of</i> | The Premier of the Northern Province |
| 7. | Adv C F du Plessis SC,
Attorney-General: Northern Cape | | |

NORTHERN PROVINCE

- | | | | |
|-----|---|---------------------|--|
| 1. | F J Prinsloo | | |
| 2. | Pietersburg Attorneys Association | | |
| 3. | C Nel | <i>on behalf of</i> | Pietersburg Chamber of Business |
| 4. | Attorney P C Scheepers | <i>on behalf of</i> | Northern Region of the Law Society of Transvaal |
| 5. | Acting Regional Representative:
Department of Justice, Venda | | |
| 6. | Prof B C Majola | <i>on behalf of</i> | University of the North |
| 7. | A C K Vermaak | <i>on behalf of</i> | The Transitional Local Council of Pietersburg/Polokwane |
| 8. | S P Mothle | <i>on behalf of</i> | The Government of the Northern Province |
| 9. | Attorney H Mathivha | | |
| 10. | Adv M van Eyk | <i>on behalf of</i> | The MEC for Safety and Security of the Northern Province |
| 11. | N S Rambauli,
Registrar of the Supreme Court: Venda | | |
| 12. | Adv Morrison SC,
Attorney-General: Venda | | |
| 13. | Attorney F J J Geldenhuys | <i>on behalf of</i> | Northern Region of the Law Society of Transvaal |
| 14. | P R Mawila, Senior Lecturer:
University of Venda | | |

NORTH WEST

- | | | | |
|----|--|---------------------|----------------------------|
| 1. | Adv H Lever SC | <i>on behalf of</i> | North West Bar Association |
| 2. | Attorney E G Harris | <i>on behalf of</i> | Molopo Circle of Attorneys |
| 3. | Circle Council: North West of the Law Society of the Transvaal | | |
| 4. | Attorney H D Krüger | <i>on behalf of</i> | Rustenburg Branch of |

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| | Attorney H R G Visagie
Attorney D Kloppers
Attorney A Trusler | | Attorneys Profession,
Circle: North West |
| 5. | M E Motsoenyane,
Registrar of the Bophuthatswana
Supreme Court | | |
| 6. | Attorney P Sedile | <i>on behalf of</i> | The Law Society of
Bophuthatswana |
| 7. | Prof C J Reinecke | <i>on behalf of</i> | P o t c h e f s t r o o m
University for CHE |
| | Prof I Vorster
Prof T J Kruger SC | | |
| 8. | Attorney C J A Lourens | <i>on behalf of</i> | Law Society of Brits |
| 9. | Attorney F Kruger | | |
| 10. | Attorney A F Van Wyk | | |
| 11. | N O Stdzuma | | |
| 12. | Adv D D Mosupye | | |
| 13. | P A Pieterse | <i>on behalf of</i> | Klerksdorp City
Council |
| 14. | The Hon Mr Justice M W Friedman,
Judge President of the Bophuthatswana
Supreme Court | | |

FREE STATE

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|-----|--|---------------------|--|
| 1. | Adv J Lubbe SC | <i>on behalf of</i> | Society of Advocates
OFS Division |
| 2. | The Hon Mr Justice E K W Lichtenberg,
Judge President of the
Orange Free State Provincial Division | <i>on behalf of</i> | The Judges of the
Orange Free State
Provincial Division |
| 3. | N du Toit | <i>on behalf of</i> | National Environmental
A c c e s s i b i l i t y
Programme |
| 4. | J L Ditabe | | |
| 5. | Weyers | | |
| 6. | The Hon R P B Erasmus | | |
| 7. | B J Olifant | | |
| 8. | D A Kganare,
The MEC for Safety and Security
of the Free State Province | | |
| 9. | L G Vermaak, Magistrate, Brandfort | | |
| 10. | Dr B Setai | <i>on behalf of</i> | Orange Free State
P r o v i n c i a l
Administration |
| 11. | F J van Noordwyk, Magistrate,
Bloemfontein | | |
| 12. | The Hon Mr Justice M M Corbett,
Chief Justice of South Africa | | |

GAUTENG

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|----|----------------|---------------------|------------------|
| 1. | Prof C Loots | | |
| 3. | T W Rutherford | | |
| 4. | P M Rogers | | |
| 5. | E P S Gerbich | | |
| 6. | H Lamprecht | <i>on behalf of</i> | Greater Pretoria |

7.	The Hon Mr Justice C F Eloff, Judge President of the Transvaal Provincial Division.	<i>on behalf of</i>	Metropolitan Council The majority of judges of the Transvaal Provincial Division.
8.	Dr J A van S d'Oliveira SC, Attorney-General: Transvaal		
9.	T R York		
10.	Attorney S D Helman		
11.	J Roelofse	<i>on behalf of</i>	SASTEL Holdings cc
12.	J van Tonder		
13.	Attorney G H Odendaal	<i>on behalf of</i>	Law Society of South Gauteng
14.	Adv H J Fabricius SC		
15.	C Prinsloo P Geldenhuys S A le Roux J Holland-Müter M Schoeman L P Dicker S Potterill D Haasbroek A J Burger P R Uys (Lecturers at Justice Training College)		
16.	P J Howard		
17.	A I Bhoola		
18.	K B Cecil		
19.	H Schutte		
20.	G H Steyn		
21.	S W van Lear		
22.	E Henen		
23.	Attorney A Tugendhaft		
24.	Attorney R K W Ramsay		
25.	A Hoffenberg		
26.	A van Boom	<i>on behalf of</i>	ARBOR Business & Tax Advisors "Aksie-kommittee Faerie Glen uitb. 15"
27.	H F Bosman	<i>on behalf of</i>	
28.	E B Gonsalves		
29.	H Cunningham		
30.	P P A Rosewell		
31.	A S Healey		
32.	K Trybus T O Trybus G J Corlett		
33.	L W Williams		
34.	S M Manyoni		
35.	T Skosana		
36.	T C Henderson	<i>on behalf of</i>	Citizens Advice Bureau
37.	J H Wijker		
38.	I Stieglitz		
39.	P L Phetjalema		
40.	M Griessel	<i>on behalf of</i>	"Protes en Alternatiewe Litigasie Proses"
41.	R E Edwards		
42.	Attorney L Viljoen		

43.	E Louw		
44.	P T Hlabangana		
45.	L Dermit		
46.	J S Mazibuko		
47.	C Villa		
48.	Dr I Luker		
49.	B Cupido, Chief Social worker of the Gauteng Provincial Administration		
50.	The Secretary of the South African Law Commission		
51.	C Gilbert		
52.	M S L Coetzee		
53.	Adv M Klein	<i>on behalf of</i>	I n d e p e n d e n t A s s o c i a t i o n o f A d v o c a t e s o f S o u t h A f r i c a
54.	F P Tlakula	<i>on behalf of</i>	B l a c k L a w y e r s A s s o c i a t i o n
55.	Attorney R E Chalom		
56.	P A J Kotzè, Regional Court President: Southern Transvaal		
57.	The Hon Mr Justice G Leveson, Acting Deputy Judge President (Witwatersrand Local Division)		
58.	Attorney G Genis, State Attorney, Pretoria		
59.	Attorney P A Bracher		
60.	S R Harris		
61.	J M van den Heever		
62.	The Hon Mr Justice P E Streicher	<i>on behalf of</i>	23 J u d g e s o f t h e W i t w a t e r s r a n d L o c a l D i v i s i o n
63.	G J Slothouber, Chief Registrar of Deeds		
64.	J G Dormehl		
65.	Prof A A Landman, President of the Industrial Court		
66.	The Hon Mr Justice H C J Flemming, Deputy Judge President (Witwatersrand Local Division)		
67.	H A Bresler		
68.	Attorney C H Cohen		
69.	Attorney K E Beyers		
70.	The Association of Family Lawyers		
71.	The Hon Mr Justice K van Dijkhorst		
72.	J J B Esterhuizen, Regional Magistrate	<i>on behalf of</i>	46 M a g i s t r a t e s o f t h e R e g i o n a l D i v i s i o n o f S o u t h e r n T r a n s v a a l
73.	Attorney T S Fletcher		
74.	E M Masola		
	O D Maleka		
75.	J Eshen		
76.	D J P Scholtz, Registrar Witwatersrand Local Division		
77.	Adv F J Bosman SC, Family Advocate		
78.	Adv J L Engelbrecht		

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|------|--|---------------------|--|
| 79. | H du Plessis, Registrar of Deeds, Pretoria | | |
| 80. | Vaal Chamber of Commerce and Industries | | |
| 81. | K M Müller | | |
| 82. | S G Abrahams | | |
| 83. | S van der Walt, Magistrate, Wonderboom District | | |
| 84. | M C deWit, Regional Court Magistrate: Northern Transvaal | | |
| 85. | D M Ettlinger | | |
| 86. | Attorney D F Sheppard | | |
| 87. | R H Peckham, Magistrate, Germiston | | |
| 88. | R Mandelstam, Magistrate, Johannesburg | | |
| 89. | Attorney D M Dold | <i>on behalf of</i> | The South African Institute of Intellectual Property Law |
| 90. | The Association of Law Societies of the RSA | | |
| 91. | Adv M Tselentis SC | <i>on behalf of</i> | The Johannesburg Bar |
| 92. | The Association of Pretoria Attorneys | | |
| 93. | Adv E Bertelsmann SC | <i>on behalf of</i> | The Pretoria Bar |
| 94. | Adv M J D Wallis SC | <i>on behalf of</i> | General Council of the Bar of South Africa |
| 95. | J G Fivaz, National Commissioner | <i>on behalf of</i> | South African Police Service |
| 96. | L Louw | <i>on behalf of</i> | The Free Market Foundation of South Africa |
| 97. | The Law Society of the Transvaal | | |
| 98. | R J van der Berg | <i>on behalf of</i> | Midrand Metropolitan Sub-Structure |
| 99. | Commissioner H J Bruyn, Correctional Services | | |
| 100. | Adv G J van Zyl, Acting Family Advocate | | |
| 101. | A-M Wentzel
I du Toit | | |
| 102. | D F Spangenberg | | |
| 103. | J A du Plessis | | |
| 104. | P Gouws | | |
| 105. | J R W Meintjes | | |
| 106. | O A A Groenewald | | |
| 107. | A Loyilani | | |
| 108. | C van Niewenhuizen | | |
| 109. | M King | | |
| 110. | E Thompson | | |
| 111. | J Smith | | |
| 112. | Mrs Duvenhage | | |

WESTERN CAPE

- | | | | |
|-----|---|---------------------|---|
| 1. | Prof S Burman
B van Heerden
F McLennan | <u>on behalf of</u> | Centre for Socio-Legal
Research University of
Cape Town |
| 2. | Attorney M T Steyn | <u>on behalf of</u> | The Law Society of the
Cape of Good Hope |
| 3. | The Hon Mr Justice G Friedman,
Judge President of the
Cape of Good Hope Provincial
Division of the Supreme Court | | |
| 4. | Dr J P Driver-Jowitt | | |
| 5. | G Bruwer | | |
| 6. | Adv D Bosman | | |
| 7. | N Boulton | | |
| 8. | Adv D M de Lange | | |
| 9. | A Adams | | |
| 10. | NADEL, Vlaeberg | | |
| 11. | C LeHane | | |
| 12. | Dr D W R Lunt | | |
| 13. | L Abrahams | | |
| 14. | C R Benson | | |
| 15. | F Smith-Symms | | |
| 16. | P Jakoet | | |
| 17. | M Titus | | |
| 18. | L Davies | | |
| 19. | R G von Zweigbergk | | |
| 20. | N van Wyk | | |
| 21. | E M Dawson | | |
| 22. | M M Bakker | | |
| 23. | J F Siebert | | |
| 24. | M D Deary | | |
| 25. | Adv F W Kahn SC,
Attorney-General: Cape Town | | |
| 26. | Attorney R F Field | | |
| 27. | Attorney M Roup | | |
| 28. | P Grobbelaar | | |
| 29. | A P Dippenaar, Magistrate,
Vredenburg | | |
| 30. | The Hon Mr Justice J J Fagan,
Acting Judge President of the
Provincial Division of the
Cape of Good Hope | <u>on behalf of</u> | The Judges of the Cape
of Good Hope
Provincial Division |
| 31. | S J Horowitz, Senior Taxing
Master | | |
| 32. | H J Kriel, Premier of the
Western Cape | | |
| 33. | Adv J L U van der Hoven | | |
| 34. | H J Heyman,
Registrar of the Supreme Court,
Cape Town | | |
| 35. | P J Botha, Regional Court
President Cape Town | <u>on behalf of</u> | Regional Court
Magistrates, Cape Town |
| 36. | G M Miek | | |
| 37. | A de Beer | | |

APPENDIX ‘F’

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Dear

**REQUEST TO RESPONDENTS BY THE COMMISSION OF INQUIRY INTO THE
RATIONALISATION OF THE PROVINCIAL AND LOCAL DIVISIONS OF THE SUPREME COURT**

- (1) The Commission acknowledges with thanks receipt of your response dated _____.
- (2) The regulations governing this Commission prohibit the publication of the contents of a response without the written permission of the chairman.
- (3) In order to facilitate the preparation of their own responses some intending respondents have written to the Commission with a request that they be provided with copies of responses submitted to the Commission by other parties.
- (4) Such applicants have been informed that the Commission considers responses submitted to it to be private communications ; and that, subject to the qualifications mentioned in paragraphs (5) to (7) below, the Commission proposes to preserve the confidentiality of the responses received by it.
- (5) As and when responses reach the Commission each respondent will be asked by the secretariat to signify, by completion and return of the enclosed form, whether or not he or she is agreeable that, with the written permission of the chairman, the contents of his or her response be disclosed to another respondent with a view to oral representations to be made to the Commission by the latter.
- (6) As soon as possible after 30 June 1995, and before details of the Commission’s public hearings are announced, the Commission will publish in the press a list of respondents from whom written responses have been received. In this list those respondents who object to the disclosure of their responses will be indicated by an asterisk (*).
- (7) Within a period of ten (10) days after publication of the said list any respondent who, with a view to making oral representations at public hearings of the Commission, desires to see another’s written response, may apply for the chairman’s written permission for such access, but only in respect of a respondent whose name on the list is **not** followed by an asterisk. Such application must be made in writing and addressed to the secretary of the Commission.
- (8) **IN THE LIGHT OF THE ABOVE PLEASE COMPLETE THE ENCLOSED FORM BY MAKING YOUR CROSS IN THE APPROPRIATE PLACE AND THEN RETURN IT TO THE COMMISSION.**

Yours faithfully

SECRETARY

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.....
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Sekretaris van die Kommissie
van Onderzoek na R.P.P.A
Posbus 55367
ARCADIA
0007

1. Ek stem toe tot die blootlegging van my respons vir die doeleindes in die Kommissie se versoek aangedui: I agree to the disclosure of my response for the purposes indicated in the Commission's request:	
2. Ek stem nie toe tot die blootlegging van my respons nie: I object to the disclosure of my response:	

Dui u keuse met 'n "X" aan.
Indicate your preference with an "X".

.....

APPENDIX “G”

Particulars of informal meetings with Judges, Attorneys General, Practitioners and Court officials

1.	20 April 1995	The Registrar of the Witwatersrand Local Division	Mr. DJP Scholtz and with him Mrs. EM Herselman
2.	21 April 1995	The Deputy Attorney-General of the Transvaal, and the Chief Clerk of the Attorney- General, Transvaal:	Adv. BJ Bredenkamp SC and Mr. Bannister-Jones
3.	21 April 1995	The Registrar of the Transvaal Provincial Division:	Mr. GTM Prinsloo
4.	1 June 1995	The Registrar of the Natal Provincial Division.	Mr. EM Kriel
5.	1 June 1995	The Deputy Attorney-General of Natal.	Adv. HC de J Slabbert and Adv. RP Stuart
6.	1 June 1995	The Registrar of the Durban and Coast Local Division.	Mr. FS Botha
7.	13 June 1995	The Judge President of the Eastern Cape Division	The Hon. Mr. Justice NW Zietsman
8.	13 June 1995	The Deputy Attorney-General of the Eastern Cape, Port Elizabeth:	Adv. E Pretorius SC
9.	14 June 1995	The Registrar of the Eastern Cape Division:	Mr. MS van der Watt
10.	14 June 1995	The Acting Master of the Supreme Court, Grahamstown:	Mr. HPJ van der Merwe
11.	14 June 1995	The Judge President of the Ciskei Supreme Court:	The Hon. Mr. Justice B de V Pickard
12.	14 June 1995	The Registrar of the Ciskei Supreme Court :	Mr. JAS van Biljon
13.	15 June 1995	The Judge on duty at the East London Circuit Local Division:	The Hon. Mr. Justice JJ Nepgen
14.	15 June 1995	The President of the East London Attorneys Association:	Mr. S Clark
15.	21 June 1995	The Judge President of the Transkei Supreme Court:	The Hon. Mr. Justice CEL Beck
16.	21 June 1995	The Registrar of the Transkei Supreme Court:	Mr. H Wiley
17.	21 June 1995	The Attorney-General of Transkei:	Adv. CDHO Nel SC
18.	12 December 1995	Judge of the Venda Supreme Court:	The Hon. Mr. Justice JA Coetzee (Acting)
19.	12 December 1995	The Acting Attorney-General of Venda:	Adv. MS Ramaite

APPENDIX “H”

Names of interested parties who made oral representations at the public sittings of the Commission at the places and on the dates respectively set forth in paragraph 3.5 of Chapter 3 of the report

- | | | | |
|-----|--|---------------------|---|
| 1. | The Hon. Mr. Justice NW Zietsman,
Judge President of the Eastern Cape Division. | | |
| 2. | The Hon. Mr. Justice DDV Kannemeyer. | | |
| 3. | The Hon. Mr. Justice TM Mullins. | | |
| 4. | The Hon. Mr. Justice JW Jones. | | |
| 5. | Adv. LJ Roberts SC,
Attorney-General of the Eastern Cape. | | |
| 6. | Mrs. T Neville. (Pre recorded message played in her absence overseas) | | |
| 7. | Mr. M Mpahlwa,
Chairman of the Transitional Local Council. | | |
| 8. | Mr. D. Louw, Regional Magistrate, Uitenhage. | | |
| 9. | Adv. GD van Schalkwyk SC, | <i>on behalf of</i> | The Advocates and
Attorneys Liaison
Committee of the
Eastern Cape. |
| 10. | The Revd. Dr. RG Clark, | <i>on behalf of</i> | The Grahamstown
Christian Council of
Churches. |
| 11. | Prof. B Potgieter | <i>on behalf of</i> | The Grahamstown
Christian Council of
Churches. |
| 12. | The Revd. S Languza,
Chief of the Methodist Church of
South Africa in Grahamstown. | | |
| 13. | Mr. L Coetzee. | | |
| 14. | Ms S Snowden. | | |
| 15. | Mr. BB Zondani, | <i>on behalf of</i> | Ratepayers Association. |
| 16. | Dr. Ramstead. | | |
| 17. | Mr. RGM Segoli. | | |
| 18. | Adv. KV Matthee. | | |
| 19. | The Hon. Mr. Justice NW Zietsman,
Judge President of the Eastern Cape
Division. | | |
| 20. | The Hon. Mr. Justice B de V Pickard,
Judge President of the Ciskei Supreme Court. | | |
| 21. | Adv. TD Pillay, | <i>on behalf of</i> | NADEL Border Branch. |
| 22. | Adv. WJ Jurgens SC,
Attorney-General Ciskei. | | |
| 23. | Adv. RD Claassens SC, | <i>on behalf of</i> | The Society of
Advocates of
Ciskei. |
| 24. | Adv. KV Matthee. | | |
| 25. | Adv. AJ Dickson SC, | <i>on behalf of</i> | The King William’s
Town Attorneys
Association. |
| 26. | Adv. GD van Schalkwyk SC, | <i>on behalf of</i> | The Advocates and
Attorneys Liaison
Committee of the
Eastern Cape. |
| 27. | The Hon. Mr. Justice B de V Pickard,
Judge President of the Ciskei Supreme Court. | | |

28. Adv. LS Kalimashe,
Senior Legal Adviser for the Premier
of the Eastern Cape Province.
29. Adv. L Mpati *on behalf of* NADEL Port Elizabeth
Region.
30. The Hon. Mr. Justice WH Heath.
31. Adv. R Moosa,
Vice Dean of the Law Faculty
of the University of Fort Hare.
32. The Hon. Mr. Justice CEL Beck,
Judge President of the Transkei Supreme Court.
33. Adv. NK Dukada, *on behalf of* The Society of
Advocates of Transkei.
34. Adv. CDHO Nel SC,
Attorney-General of Transkei.
35. Mr. SG Poyser *on behalf of* The Transkei Attorneys
Association.
36. The Hon. Mr. Justice F Kroon.
37. Mr. HM Lusu *on behalf of* The Black Lawyers
Association.
38. Mr. H Wiley,
Registrar of the Transkei Supreme Court.
39. Mr. M Majeke.
40. Adv. MJD Wallis SC,
Chairman of the General Bar Council of South Africa.
41. The Hon. Mr. Justice G Friedman,
Judge President of the Cape of Good Hope
Provincial Division.
42. The Hon. Mr. Justice IG Farlam.
43. Mr. MT Steyn *on behalf of* The Law Society of the
Cape of Good Hope.
44. Mr. N Boulton.
45. Ms G Bruwer.
46. Mr. SJ Horowitz,
Senior Taxing Master.
47. Adv. DM de Lange.
48. Adv. D Bosman.
49. Mr. A van Zyl.
50. Mr. AN Schreuder.
51. Mr. A Huishamen.
52. Mr. NA Baartman,
Chairman of the Local District Council.
53. Mr. M van Rooyen,
Reporter of “Die Noordkaap” newspaper.
54. The Hon. Mr. Justice MM Corbett,
Chief Justice of South Africa.
55. The Hon. Mr. Justice LTC Harms,
of the Appellate Division
56. The Hon. Mr. Justice CF Eloff,
Judge President of the Transvaal Provincial Division.
57. The Hon. Mr. Justice CEL Beck,
Judge President of the Transkei Supreme Court.
58. The Hon. Mr. Justice NW Zietsman,
Judge President of the Eastern Cape Division.
59. The Hon. Mr. Justice IG Farlam.
60. The Hon. Mr. Justice EKW Lichtenberg,
Judge President of the Orange Free State Provincial Division.

61. The Hon. Mr. Justice RM Marais,
of the Appellate Division.
62. The Hon. Mr. Justice B de V Pickard,
Judge President of the Ciskei Supreme Court.
63. The Hon. Mr. Justice JJ Broome,
Deputy Judge President of the Natal Provincial Division.
64. Mr. JL Ditabe.
65. Mr. OD Hart on behalf of Attorneys Venn,
Nemeth and Hart.
66. Adv. AJ Dickson SC, on behalf of The Pietermaritzburg
Bar.
67. The Hon. Mr. Justice CF Eloff,
Judge President of the Transvaal Provincial Division.
68. The Hon. Mr. Justice HCJ Flemming,
Deputy Judge President of the
Witwatersrand Local Division.
69. The Hon. Mr. Justice PE Streicher.
70. The Hon. Mr. Justice JF Myburgh.
71. Adv. PR van Rooyen SC, on behalf of The Pretoria Bar and
the Law Society of
Pretoria.
73. Adv. E Bertelsman SC, on behalf of The Pretoria Bar.
74. Mr. CP Fourie on behalf of The Law Society of
Pretoria.
75. Adv. WHG van der Linde on behalf of The Johannesburg Bar.
76. Adv. M Klein on behalf of The Independent
Association of
Advocates of South
Africa.
77. Adv. BK Pincus SC on behalf of The Association of
Family Lawyers.
78. Attorney AS Helman.
79. Attorney B Gundelfinger on behalf of The Association of
Family Lawyers.
80. The Hon. Mr. Justice CF Eloff,
Judge President of the Transvaal Provincial Division.
81. Prof. MM Katz.
82. Mr. LF Pereira.
83. Dr. EM De La Rey.
84. Adv. MJ Cronje.
85. Mr. C Stuart.
86. Mr. R Mandelstam,
Senior Civil Magistrate Johannesburg.
87. Attorney CH Cohen.
88. Attorney RE Chalom.
89. Adv. KPCO von Lieres und Wilkau SC
90. Attorney CK Petty on behalf of The Law Society of
Transvaal.
91. Adv. GJ van Zyl,
Acting Chief Family Advocate.
92. Attorney DF Sheppard.
93. Mr. TR York.
94. Mr. JG Dormehl.
95. Miss PL Phetjalema.
96. Mr. E Masola.
97. Mr. TW Rutherford.
98. Mr. E Kruger on behalf of The Greater Pretoria

99.	The Hon. Mr. Justice K van Dijkhorst.		Metropolitan Council.
100.	Dr. JA van S d' Oliveira SC, Attorney-General of Transvaal.		
101.	Mr. DF Spangenberg.		
102.	Attorney AP Brandmuller	<i>on behalf of</i>	The Middelburg Attorneys Association.
103.	Attorney D van der Merwe	<i>on behalf of</i>	The Highfield Ridge Attorneys Association.
104.	Adv. DDJ Rossouw	<i>on behalf of</i>	The Premier of the Mpumalanga Province and the Nelspruit Society of Advocates.
105.	Attorney PL du Toit	<i>on behalf of</i>	The Nelspruit Attorneys Association.
106.	Attorney AP Brandmuller	<i>on behalf of</i>	The Middelburg Attorneys Association.
107.	Mr. Cachalia	<i>on behalf of</i>	The Premier of the Northern Province.
108.	Mr. SP Mothle, Legal Adviser to the Premier of the Northern Province.		
109.	Mr. C Rammatla, Senior Legal Adviser to the Provincial Government of the Northern Province.		
110.	Mr. T van der Hoven	<i>on behalf of</i>	The Transitional Local Council of Pietersburg.
111.	Prof. Mancktelow	<i>on behalf of</i>	The Law Faculty of the University of the North.
112.	Adv. MS Ramaite, Acting Attorney-General of Venda.		
113.	Attorney FJJ Geldenhuys	<i>on behalf of</i>	The Northern Region of Law Societies of Transvaal.
114.	The Hon. Mr. Justice MW Friedman, Judge President of the Bophuthatswana Supreme Court		
115.	Adv. H Lever SC	<i>on behalf of</i>	The North-West Society of Advocates.
116.	Attorneys CM Weiss and D Kloppers	<i>on behalf of</i>	The North-West Circle of the Rustenburg Attorneys.
117.	Attorney P Sedile	<i>on behalf of</i>	The Law Society of Bophuthatswana.
118.	Adv. D Mosupye.		
119.	Mr J de Kock	<i>on behalf of</i>	The City of Klerksdorp.
120.	Attorney R Brady	<i>on behalf of</i>	The Greater Klerksdorp Attorneys Association.
121.	Attorney EG Harris.	<i>on behalf of</i>	The Molopo Circle of Attorneys.
122.	Attorney S van der Merwe.		
123.	Prof. I Vorster Dean of the Law Faculty of the Potchefstroom University for CHE.		
124.	Prof. F Venter,		

- Chief of the Department of Public Law and Jurisprudence of
the Potchefstroom University for CHE.
125. The Hon. Mr. Justice JJ Kriek,
Judge President of the Northern Cape Division.
126. Mr. EM Dipico,
Premier of the Northern Cape Province.
127. Attorney T Horn *on behalf of* Circle 16 of the Law
Society of the Cape of
Good Hope.
128. Adv. JG van Nierkerk *on behalf of* The Northern Cape
Society of Advocates.
129. Adv. CF du Plessis SC,
Attorney-General of the Northern Cape.
130. The Hon. Mr. Justice RH Zulman
of the Appellate Division,
and Chairman of the Special Project Committee
for the Review of the Insolvency Law.
131. Attorney LM Sackstein.
132. The Hon. Mr. Justice CF Eloff,
Judge President of the Transvaal Provincial Division.
133. Attorney M Le Roux *on behalf of* The Intellectual
Property Institute.
134. The Hon. Mr. Justice WP Schutz,
of the Appellate Division.
135. Mrs. Attorney ED du Plessis,
President of the Transvaal Law Society.

APPENDIX "J"

TO : THE HON MR JUSTICE

SPECIAL REQUEST BY THE COMMISSION TO ALL TRANSVAAL JUDGES

- (A) During its public hearing at Midrand , Gauteng , during April 1996 , oral representations were made to the Commission on behalf of the Johannesburg Judges in support of a proposal that the WLD should become an autonomous Division of the Supreme Court with its own Judge President.
- (B) In the course of his address to the Commission the Judge President of the Transvaal , the Hon Mr Justice C.F. Eloff , expressed the opinion that an independent Division in Johannesburg would require at least 35 Judges.
- (C) Adverting to the possibility of such an independent Johannesburg Division Flemming DJP said that if it were to include the Circuit Courts [Springs and Vereeniging] he agreed with the Judge President's estimate of 35 Judges.
- (D) For the eventuality that it might decide to recommend the establishment of an independent Johannesburg Division , with its own Judge President , the Commission requests every Transvaal Judge and Acting Judge (including Judges on Circuit) to furnish the Commission with his or her own estimate of the number of Judges which an independent Johannesburg Division would require.
- (E) Your co-operation would be appreciated. Kindly indicate in the block hereunder your own estimate. Should you wish to qualify your estimate in writing , please add a few remarks thereunder.
- (F) Please fax , BEFORE 13 NOVEMBER 1996 , this form , duly completed , to the Secretary of the Commission. The Commission's fax number is : (012) 341 7172.

..... **JUDGES**

.....
NAME (BLOCK LETTERS)

.....
SIGNATURE

APPENDIX “K”

APPENDIX ‘L’

APPENDIX “M”

APPENDIX “N”

APPENDIX “O”

APPENDIX ‘P’