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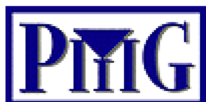

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JUSTICE AND CONSTITUTIONAL DEVELOPMENT PORTFOLIO COMMITTEE
11 August 2003
SUPERIOR COURTS BILL, CONSTITUTIONAL AMENDMENT, RULES: PROMOTION OF ADMINISTRATIVE JUSTICE ACT, INTERIM JURISDICTION OF HIGH COURTS IN EASTERN CAPE

Chairperson: Adv. J H de Lange (ANC)

Documents handed out:
Superior Courts Bill as certified by state law advisors prior to tabling in Parliament
Constitution Amendment Bill
Memorandum on Constitution Amendment Bill
"Promoting children's socio-economic rights through law reform: The proposed Children's Bill", by Julia Sloth-Nielsen
Regulations on Promotion of Equality & Prevention of Unfair Discrimination Act
Rules relating to Promotion of Administrative Justice Act
"Juveniles and Life Imprisonment", De Rebus, May 2003
"South Africa's Heart of Darkness: Sex crimes and child offenders: some trends", by Jean Redpath
Notice on Interim Jurisdiction of High Courts in Eastern Cape *(email info@pmg.org.za for document)*

SUMMARY
The Superior Courts Bill aims to rationalise and consolidate laws pertaining to the Constitutional Court, the Supreme Court of Appeal and the High Courts, in one Act of Parliament. Various comments and recommendations were made on the Bill.

The Constitution Amendment Bill seeks to amend the Constitution of the Republic of South Africa, in order to make provision for the appointment of two Deputy Presidents to the Supreme Court of Appeal; to make provision for the conversion of the various High Courts into a single High Court of South Africa; and to provide for the matters concerned therewith.

The Rules for the Promotion of Administrative Justice Act clarify the procedure to be followed when bringing an application for review of administrative action. It also specifies the duties of the administrator and the powers of the applicant.

The Notice RE: interim Jurisdiction of High Courts in Eastern alters the areas of jurisdiction for which a High Court has been established in terms of s 2(2) of the Interim Rationalisation of Jurisdiction of High Courts Act, 2001.

MINUTES
The Committee was briefed by Mr J. De Lange (Director: Legislation for the Department of Justice), on the new Superior Courts Bill. The purpose of this Bill is to rationalise and consolidate the laws pertaining to the Constitutional Court, the Supreme Court of Appeal and the High Courts into a single Act of Parliament. The Bill does not contain any significant new provisions relating to the Constitutional Court. With regard to the Supreme Court of Appeal, provision is made for the appointment of a second Deputy President of that Court. Another important change is that the Supreme Court of Appeal will also deal with appeals from the High Court in labour matters, due to the abolition of the Labour Appeal

Court.

The Labour Court will also be abolished. The abolition of the Labour Court is motivated by a number of reasons. Mr de Lange said that unlike judges in other High Courts, Labour Court judges are appointed for a fixed term. He said that the Court has struggled to attract personnel due to the perceived inferiority of the Court. He also expressed the view that s173 of the Labour Relations Act which gives the Labour Appeal Court exclusive jurisdiction to hear labour appeal matters could be unconstitutional since the Supreme Court of Appeal is the highest Court of Appeal in terms of the Constitution. He also said that there is confusion relating to the status of the Labour Appeal Court. The proliferation of judges at High Court level with different security of tenure and status is a cause of concern. He said that this gives rise to problems in the administration of justice.

Mr de Lange said that most of the provisions of the Bill are largely procedural in nature and are mostly carried over from the existing laws.

As stated, the objects of the Bill are to: (1) bring the structure of the Constitutional Court, the Supreme Court of Appeal and the High Courts of South Africa into line with the provisions of the Constitution; (2) to make provision for the adjudication of labour matters by the High Court and the Supreme Court of Appeal; and (3) to consolidate and rationalise the laws pertaining to those Courts.

The Bill is divided into the following chapters:
- Definitions
- Structure of Superior Courts
- Appointment of judges and officers, and finances of Superior Courts
- Manner of arriving at decisions in Superior Courts

- Orders of constitutional invalidity, appeals and settlement of conflicting decisions
- Provisions applicable to High Court only
- General provisions
- Transitional provisions, amendment and repeal of laws, and commencement

Discussion
The Chairperson voiced his dissatisfaction over Clause 8 (Finances & Accountability) which holds that power over the budget and administration should rest with the Chief Justice, rather than with the Department. He lamented the fact that it seemed the Department was giving away control over these matters, as the judiciary would now be running the finances of the courts.

Mr De Lange explained that the judiciary wanted to be very involved in the prioritising of what they needed.

The Chairperson responded that these provisions would be problematic.

Mr De Lange suggested that the Committee "test the waters", to see how the various parties would respond to these provisions.

Mr S Swart (ACDP) asked what would be the costs of what is envisaged in the Bill. He asked if the Bill would not disturb the normal legal practice.

Mr de Lange said that the normal legal practice would remain in charge. He was not in a position to respond on the financial implications of the Bill. A lot would depend on the number of judges to be appointed and the size of the national prosecution department.

Mr D Rudman (Department Chief Director: Legislation) said that the department has not any capacity to evaluate the costs involved and that this would require outsourcing of the job.

Adv M Masutha raised a concern with regard to the renaming of the various divisions of the court. He indicated that the department might be confronted with a situation where it would have to consult with the public as has happened with the various names changes in the past.

Mr de Lange said that it would be nice to have indigenous names for the high courts. If it is decided that names should change, then public consultation would have to take place.

Mr J Maseko (UDM) was concerned that in terms of Clause 45 (2), the Northern Gauteng Division shall also function as the Limpopo and Mpumalanga Divisions. He asked if the Northern Gauteng Division would in future service parts of the North West Province or would the department establish a local division for the Bophuthatswana Provincial Division in Garankuwa?

The Chair added that having Northern Gauteng Division handling cases from the three provinces would also be costly. He felt that poor people in those provinces have a right to access to justice in places close to their homes.

The Chair and Ms S Camerer felt that the expertise of Labour Court judges would be lost following the changes envisaged by the Bill. Ms C Johnston (NNP) also felt that jobs might be lost when people have to be transferred only to find that they are unwilling to be transferred. These concerns arose from the fact that in terms of Clause 46(3) any person who, immediately before the commencement of this Bill, holds office as a judge of the Labour Court but who is not a judge of a Superior Court shall cease to hold such office on the date of commencement of this Bill. However, provision is made for the transfer of such judges to equivalent post in other Superior Courts. The Chair said it would be better to have a provision stipulating that such judges would receive first preference.

The Chair asked Mr de Lange to comment on the position of the Competition Appeal Court.

Mr de Lange replied that the Competition Act could be repealed and the word 'court' redefined. He also said that provision could be made with the effect that appeals would go to the Supreme Court of Appeal and not the Competition Appeal Court.

The Chair also felt that all Bills dealing with appointment of judges and their remuneration should be included in this Bill. He said that one should avoid a situation wherein matters relating to judges are regulated in various Acts.

Adv Masutha asked the presenter to outline the implication of the structures of the courts on the authority of the Chief Justice. He felt that since the courts are separate entities the Chief Justice might not be able to exercise effective control over all of them.

The Chair said that this is one of the chief weaknesses of the Bill. The powers of the Chief Justice need to be adequately addressed in the Bill.

Adv Masutha asked if the Bill proposes doing away with specialised courts.

The Chair said that specialised courts are being dealt away with but the specialisation in personnel would remain. He asked Mr de Lange to clarify how the Constitutional court and the Supreme Court of Appeal fit into the High Court structure.

Mr de Lange replied that they are totally different as specified in the Constitution.

The Chair said he would have preferred a unitary system of the courts. He then asked for clarity on the importance of Clause 22 which deals with time allowed for entering an appearance.

Mr de Lange replied that he was not so sure if this clause should be in the Bill. He agreed with the chairperson that it was there in order to set standards so that legislation would determine procedure.

With regard to Chapter 7 of the Bill, Mr de Lange that present procedures are confirmed. In terms of Clause 30, the Supreme Court of Appeal and not the Rules Board would make its own rules.

With regard to Chapter 8 the presenter said that the clauses provide for transitional arrangements.

The Chair asked why Thohoyandou is not allowed to function as the High Court in the Limpopo

Province.

Mr de Lange indicated that there is only one permanent judge in the division hence Northern Gauteng division still handles some of the cases from the province.

Constitution Amendment - briefing
Mr J de Lange said that the purpose of the Bill is to amend the Constitution of the Republic of South Africa, in order to make provision for the appointment of two Deputy Presidents to the Supreme Court of Appeal; to make provision for the conversion of the various High Courts into a single High Court of South Africa; and to provide for the matters concerned therewith.

Clause 1 Amendment of section 166 of Act 108 of 1996
This clause seeks to remove reference to High Courts and substitutes High Court of South Africa. This is because the Bill envisages a single high court for the Republic.

Clause 2 Amendment of section 167 of Act 108 of 1996, as amended by s11 of Act 34 of 2001
Mr de Lange said that the Bill seeks to delete reference to **a** high court and insert **the** high court. The motivation is that only one high court would be created.

Clause 3 Amendment of section 168 of Act 108 of 1996, as amended by s12 of Act 34 of 2001
The amendment seeks to delete reference to a deputy president and insert reference to two deputy presidents.

Clause 4 Substitution of section 169 of Act 108 of 1996
The clause substitutes the above section by a new section that make reference to the High Court of South Africa and not a High Court of South Africa. Mr de Lange said that reference to an Act of Parliament in s169 (1)(ii) means reference to the Superior Courts Bill. A new subsection 2, which specifies the composition of the High Court of South Africa, has been added.

Mr de Lange welcomed suggestion for new names of the different divisions so that they would not be known by the names of the provinces in which they are situated.

Mr de Lange said that Clauses 5 and 6 are also technical amendments or substitution that seek to make reference to the High Court of South Africa instead of a High Court.

Clause 7 Amendment of section 174 of Act 108 of 1996
Mr de Lange said that this clause seeks to remove reference to a deputy **president** and insert reference to deputy **presidents**

Clause 9 Amendment of Schedule 6 to Act 108 of 1996, as amended by section 3 of Act 35 of 1997, section 5 of Act 65 of 1998 and section 20 of Act 34 of 2001
Mr de Lange said that this clause would deem certain judges referred to in the clause to have been appointed to the relevant Division of the High Court of South Africa in accordance with the provision of referred to in s169 (2) of the Constitution. He felt that this provision was not necessary. He also said that he was uncomfortable with deeming judges to have been appointed given the fact that the Constitution provides for the manner in which judges have to be appointed.

Rules Relating to Promotion of Administrative Act
Ms I Botha (Secondary Legislation, Department of Justice) outlined the rules for members.

Rules 1 and 2 - She described the procedure for judicial review. She indicated that proceedings for judicial review of an administrative action would be initiated by delivery of a notice of motion supported by an affidavit.

Rules 4 and 6 specify the duties of the administrator where a public enquiry was not held and where a public enquiry was held.

The Chair asked the presenter why documents have to be handed to the applicant in terms of rule 4 (a). He was of the opinion that there is no obligation on the part of the administrator to file documents.

He said that the administrator only has to decide whether to hold a public enquiry.

Ms Botha indicated that there might be instances where an applicant has been given reasons for the decisions but is not satisfied therewith. She felt that in such cases it should be possible for the applicant to required information from the administrator.

The Chair said that the Minister or Administrator only has to reply by means of an affidavit. If the applicant needs further information the normal process of discovery of documents should be followed. It is necessary to keep rule 3 and 4 separate and be able to distinguish them. It should be made possible to challenge a decision that was not taken in terms of rule 3. He asked Ms Botha to investigate if one needs a notice of motion for reasons if such not given within 90 days.

Ms Botha was concerned that if there was no public enquiry and one expects a member of the public to use the normal discovery of document process, huge costs would be incurred by the applicant.

The Chair reminded the presenter that although substantive law has changed considerably procedural law has not changed. One could not expect the government to supplement his/her case by giving away its files. The normal procedures of conducting a case should still be followed. The Bill should provide for three sets of notices of motion and none of them should required the government to give away its files. One notice would be for the purposes of rule 3; one for the purposes of rule 4 and the other for reasons. One might require another notice of motion for cases wherein no decisions were taken or one would deal with this situation in terms of rule 3.

Rule 6 allows the applicant to amend, add to or vary the notice of motion and supplement the supporting affidavit once the administrator has furnished documents and reasons in terms of rules 4 and 5.

Rule 7 stipulates what the administrator or anyone who desires to oppose the application should do.

Rule 8 sets out the powers of an applicant upon failure by the administrator to comply with the provisions of rule 4 or 5.

Notice RE: Interim Jurisdiction of High Courts in Eastern Cape
Mr D Rudman (Deputy Director General: Dept of Justice and Constitutional Development) said that the purpose of the notice is to alter the areas of jurisdiction for which a high court has been established in terms of s 2(2) of the Interim Rationalisation of Jurisdiction of High Courts Act, 2001.

In terms of the notice the districts of Maluti and Umzimkulu would be included in the jurisdictional area of the high court of Pietermaritzburg and Durban.

Mr Rudman said that the notice seeks to excise some districts from the Eastern Cape Division. Some of the districts excised from the Eastern Cape division are Elliot, Komga and Maclear. He also indicated that Herschell (Sterkspruit) would now fall under the Eastern Cape Division. Mr Rudman furthermore indicated that some districts would be included whilst some are excised from the Transkei division. The same would also happen to the Ciskei Division. The Chair concluded that basically some districts were taken from the old Republic to the Transkei and Ciskei divisions.

Mr Rudman indicated that the town of Matatiele became part of the district of Mount Currie. However, the remaining part of Matatiele still formed part of the Transkei. It appeared that Matatiele changed to Maluti and hence the notices reflect Matatiele and in brackets Maluti.

Ms N Mahlawe (ANC) asked if the notice was just a discussion paper or would it be becoming law in the near future.

The Chair said that as soon as it is passed by Parliament it would become law of the Republic.

The meeting was adjourned.

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