

**Address by the Deputy Minister of Justice and Constitutional Development,
the Hon JH Jeffery, MP,
at the Debate on Vote 22 (The Office of the Chief Justice),
National Assembly,
12 May 2022**

Honourable Chairperson,
Minister Ronald Lamola,
Deputy Minister Phatekile Holomisa,
Ministers and Deputy Ministers,
Honourable Members,
Members of the Judiciary,
Officials of the Office of the Chief Justice,

The Office of the Chief Justice was established in 2010 as a new government department separate from the Department of Justice and Constitutional Development to, amongst others, support the Chief Justice in executing their administrative and judicial powers and duties as Head of the Judiciary.

It supports the Judicial Services Commission and the South African Judicial Education Institute in the execution of their mandates and administers the Judges' Remuneration and Conditions of Employment Act.

The OCJ is responsible for running the Superior Courts – the High Courts, the Supreme Court of Appeal and the Constitutional Court as well as specialized courts such as the Labour Courts and the Competition Appeal Court.

The establishment of the OCJ was the first step in ensuring greater independence to the judiciary.

In today's debate I will be speaking about the Magistrates because, although the Magistrates Courts are still administered by the Department of Justice and Constitutional Development, Magistrates are part of the judiciary.

Section 165(6) of the Constitution, read with section 8 of the Superior Courts Act, provides that the Chief Justice is responsible for the establishment and monitoring of norms and standards for the exercise of judicial functions of **all** courts and thus enjoins the Chief Justice to issue protocols or directions to all judicial officers – i.e. both judges and magistrates.

The co-ordination of judicial functions of Magistrates Courts falling within the jurisdiction of the Division of the High Court is the responsibility of the Judge President of that Division.

Many of you may recall that, in the past, Magistrates were public servants, appointed from within the Department of Justice and thus part and parcel of the public service.

Today our magistracy is independent – for example a Magistrate cannot be suspended or fired by the Minister of Justice. This process now involves an investigation and a hearing by the Magistrates Commission as well as the concurrence of Parliament.

The new Magistrates Bill and the new Lower Courts Bill have been long outstanding but, we are pleased that the introduction of these Bills is expected to take place this year.

The purpose of the Magistrates Bill is to provide for the establishment, constitution, objects and functions of the Magistrates Commission and will regulate the appointment, conditions of service, remuneration, retirement, suspension and removal of, magistrates.

The main aims of the Bill are threefold -

Firstly, it aims to replace the current Magistrates Act, 1993, in order to ensure the autonomy of the lower courts judiciary from the Executive.

Secondly, it aims to incorporate all the provisions relating to the appointment of judicial officers of the lower courts in the Bill itself, since some provisions are presently contained in the Magistrates' Courts Act, 1944.

Thirdly, it aims to bring the procedure for dealing with complaints about magistrates' conduct in line, as far as it is possible and feasible, with the dispensation applicable to judges in the superior courts.

The Bill was published for public comment on the 25th of March, with a due date for comments of 29 April.

We have now extended the due date to 15 June.

The new Lower Courts Bill aims to provide for the establishment, composition and functioning of Lower Courts comprising of Regional Courts, District Courts and Municipal Courts and to make provision for the administration of the judicial functions of the Lower Courts.

At the heart of this Bill is the fact that, before the advent of the democratic constitutional dispensation in 1994, Magistrates' Courts were not constitutionally recognised as part of the judicial authority.

The new Lower Courts Bill highlights the fact that the legislative framework relating to the Superior Courts has been rationalised and consolidated through the Superior Courts Act, 2013, which, as I have said, provides that the Judge President of a Division of the High Court of South Africa is also responsible for the co-ordination of the judicial functions of all Magistrates' Courts falling within the jurisdiction of that Division, and that, since the Constitution provides that the judicial authority is vested in all the courts, it is desirable to provide for a uniform framework for judicial management, by the judiciary, of the judicial functions of all courts.

The due date for comments on the Lower Courts Bill is also 15 June 2022.

We will be engaging with the Magistrates' organizations on the Bills, such as JOASA and ARMSA, but I also want to urge all interested parties and stakeholders to provide comment on these important Bills.

These Bills will, once passed, indeed be the culmination of a significant milestone in the administration of justice in our country.

But, Honourable Members,

Whilst we make very real progress with the legislative framework we must also acknowledge that our Magistrates Courts and the users of these courts face many challenges, such as infrastructural challenges, lengthy court processes, case backlogs and faulty court equipment.

The only way to overcome these challenges is to look at who is responsible for what in our Courts.

There are judicial functions and administrative functions.

The Constitution contains very specific roles for both the Chief Justice and the Minister of Justice or as they are described in the Constitution as the “member of Cabinet responsible for the administration of justice”.

The Chief Justice is the head of the judiciary and exercises responsibility over the judicial functions of all courts.

The Cabinet member responsible for the administration of justice appoints acting judges to other courts after consulting the senior judge of the court on which the acting judge will serve and exercises final responsibility over the prosecuting authority. The Superior Courts Act also sets out judicial functions in section 8(6) to be performed by the judiciary as well as sets out the responsibilities of the Minister responsible for the administration of justice.

The issue of case backlogs is one that comes up again and again. There appears to be a perception that whenever there are backlogs in courts, it is the fault of the Department and thus the responsibility of the Executive to fix.

But such a point of view does not take cognisance of the important fact that court efficiency lies within the purview of the judiciary. I do note that the Committee Report on the OCJ did acknowledge that the OCJ was unable to provide an input on the backlogs as court performance lies with the Chief Justice and Heads of Court.

There are a number of stakeholders within our court system and for the system to work optimally they must all play their part and work together to reduce backlogs.

The Chief Justice has set Norms and Standards for the exercise of all judicial functions in courts.

In terms of the norms and standards, civil cases in the Magistrates’ Courts should be finalized within 9 months from the date of summons. In criminal matters judicial officers should strive to finalize criminal matters within 6 months after the accused has pleaded.

The Hon Horn recently tabled a Parliamentary Question to the Minister of Justice as to how often the National Efficiency Enhancement Committee (the NEEC) and the Provincial Efficiency Enhancement Committee (the PEEC) have been meeting, but the OCJ, when the Question was referred to them, made it abundantly clear that these are judicial governance stakeholder forums which are chaired by the Chief Justice and the Judges President of the High Courts, respectively – and therefore the Hon Horn’s question was to be referred to the Chief Justice for consideration, and not to the Minister of Justice.

The NEEC, the PEEC as well as the District Efficiency Enhancement Committees play a crucial role in court optimisation where all the relevant role-players meet.

Often many challenges exist in courts because these structures do not meet regularly enough.

The OCJ has set targets and indicators in the OCJ’s Annual Performance Plan which point to improved court efficiency, with specific and measurable output indicators such as the percentage of default judgments to be finalised by Registrars within 14 days from date of receipt of application, the percentage of taxations of legal bills of costs to be finalised within 60 days from date of set down, the percentage of warrants of release to be delivered within one day of the release issued, and the number of Judicial Case Flow Management Performance reports to be produced.

In an attempt to ensure cooperation and better synergy in court performance, and to support our Magistrate courts, we established a Court Optimisation Committee in 2020 to bring together stakeholders and the Magistrates judiciary in order to address challenges and bottlenecks in our courts.

The Court Optimisation Committee consisted of the Court Services and Corporate Services Branches of Department of Justice and Constitutional Development, the Regional Court Presidents’ Forum, the Chief Magistrates’ Forum, the South African Police Service, the National Prosecuting Authority, Legal Aid SA, the Department of Social Development, the Department of Health, the Department of Correctional Services and the nine Regional Offices of the Department of Justice and Constitutional Development.

The Court Optimisation Committee worked well, until the Regional Court Presidents decided to withdraw from the structure, despite our best efforts to convince them to remain.

We will continue to do whatever we can to strengthen and support our Magistrates Courts and our magistrates.

We need to ensure that the Department moves more expeditiously in providing the Magistracy with the necessary tools of trade and the necessary equipment so that courts can function optimally.

We are constitutionally bound to improve our efficiency in this regard.

The creation of inclusive and integrated magisterial districts and sub-districts in respect of the outstanding provinces of the Eastern Cape, Free State, KwaZulu-Natal and the Western Cape through the Rationalization of Magisterial Districts Project has been finalised and was gazetted by the Minister and came into effect on 1 April 2022.

Of paramount importance going forward is the rationalisation of the judicial establishment of the lower courts as it will impact not only on vacant posts in which persons are appointed to act, but also on permanent posts of magistrates that will become vacant in the near future.

Chairperson, Honourable Members,

As I stated earlier for our courts to function optimally and for cases to be disposed of speedily we also rely on a number of other stakeholders and role-players, such as the Department of Public Works and Infrastructure, the SAPS, the Department of Correctional Services, Legal Aid SA and the legal profession.

We shall continue our efforts to ensure proper and improved coordination between ourselves and these stakeholders.

We also continue to support the Magistrates Commission in its work.

I feel I want to respond to what the Hon Yako of the EFF has said about the Chief Justice. I think it is something that this House should investigate as members are not to attack the judiciary.

People should refrain from attacking the integrity of the judiciary and should not attack the judiciary without a basis or without facts. We should be protecting the judiciary. Rumours do not help and ultimately it affects the legitimacy of the institution.

Chairperson,

We will continue to support and strengthen our courts and our judiciary. In the words of the late Chief Justice Ismail Mahomed –

“The Constitution articulates a culture of rights and freedoms especially meaningful for a people deeply traumatised and agonized for so long by the denial of such rights.

But the articulation of such rights would afford no protection against abuse in the absence of Constitutional agencies with the power to police abuse and to protect the victims of abuse. The judiciary is the cornerstone of that protection. Its Constitutional power is formidable.”

I thank you.