



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

NATIONAL COUNCIL OF PROVINCES

QUESTION: WRITTEN

PARLIAMENTARY QUESTION NO: 152

DATE OF QUESTION: 30 AUGUST 2024

DATE OF SUBMISSION: 13 SEPTEMBER 2024

Mr J H P Britz (Eastern Cape: DA) to ask the Minister of Justice and Constitutional Development:

Question:

- (1) What are the reasons for the proposed relocation of the Eastern Cape Division of the High Court from Makhanda to Bisho (details furnished);
- (2) whether new premises for the High Court building in Bisho has been identified; if not, (a) how much will the estimated costs be to construct the new building and (b) what is the (i) total cost for procuring new premises and (ii) estimated total cost of the proposed relocation?

CW224E

REPLY:

the court system that existed in South Africa prior to the democratic transition, was left intact following the adoption of the new Constitution. The main and local seats of the former provincial divisions of the Superior Court and Supreme Courts in the former homelands were retained and incorporated in the new judicial system.

The Constitution, however envisaged, in Item 16 (6) of Schedule 6 to the Constitution, that as soon as practically possible, the structure, composition, functioning and jurisdiction of all courts would be rationalised with a view to establishing a judicial system suited to the requirements of the Constitution. The requirements of the Constitution that our judicial system must meet include giving full effect to the right of access to justice as well as the rights and foundational values of dignity and equality.

The legacy of colonialism and apartheid continues to plague South Africa with spatial injustice and impedes access to courts by communities that reside in the areas that formed part of the now defunct homelands and self-governing territories as well as remote rural villages. These communities are frequently forced to travel long distances, at a huge cost, to access courts.

In order to comply with the constitutional injunction, during the 6th administration, the then Minister of Justice and Correctional Services established a Committee on the Rationalisation of Areas under Jurisdiction of the Divisions of the High Court and Judicial Establishments chaired by Hon. Justice Dikgang Moseneke, with a view to resolving this unjust situation and complying with the constitutional injunction to rationalise the jurisdiction of all courts to establish a judicial system suited to the requirements of the Constitution. Following a thorough consultative process with various stakeholders, the Committee recommended in this report, amongst others, that the main seat of the Eastern Cape Division of the High Court should be moved from Makhanda to Bisho.

- (1) We need to place it on record that the Rationalisation Committee did not recommend the relocation of the Eastern Cape Division of the High Court from Makhanda to Bisho. Therefore the Department is not planning to relocate the Eastern Cape Division of the High Court, Makhanda to Bisho. What the Rationalisation Committee recommended is moving the main seat of the Eastern Cape Division of the High Court from Makhanda to Bisho. What this means is that, if the recommendation is implemented, Bisho will become the main Division of the Eastern Cape Division of the High Court, while Makhanda will become the Local Division of the Eastern Cape Division of the High Court. So it is therefore inaccurate for the Honourable Member to suggest that there is a proposed relocation of the Eastern Cape Division of the High Court, Makhanda to Bisho and the Department has not considered any suggestion to relocate the

Makhanda Division of the High Court to Bisho as such a move will reverse the gains that we have made of enable our people access to justice.

The reasons for the proposed move of the main seat of the Eastern Cape Division from Makhanda to Bisho are contained in the report and can be summarised as follows: currently: the main seat at Makhanda exercise jurisdiction over the territories that constituted the former South Eastern Cape Province (pre-1994). It has concurrent jurisdiction all the local divisions (Bisho, Gqeberha and Mthatha). The Bisho local seat exercises jurisdiction over the magisterial districts of the former Ciskei. The proposed dismantling of the pre-1994 jurisdictions through the rationalisation of the areas of jurisdiction of the Bisho local seat will increase the size of the area to be served by this court. This will likely increase the case load of the court. The court will as a result serve almost 40% of the entire Eastern Cape Province population.

The report of the Committee further demonstrates through comparative data, the beneficial impact of lessened travelling distance for the users of the High Court Division within the province if the main seat of the Division were to be moved from Makhanda to Bisho.

In their view the current status quo does not advance the constitutional objective of access to justice. The Eastern London/ Bisho corridor is also the most central in the province. It is also a known fact that, most of the population of the province is concentrated in the east, west and middle of the province, with the local seats at Mthatha, Bisho and Gqeberha.

The move of the main seat of the Division of the Eastern Cape High Court remains part of the reconfiguration of the country and particularly the Eastern Cape Province, which has been ravaged by the colonialism apartheid and the realignment for the institution with the prescripts of the Constitutions.

According to the Committee's reasoning the move of the main seat to Bisho is purely motivated by the imperative of access to justice for all citizens of that province. Bisho is the most central town/ city. Owing to the fact that the seat of the division has concurrent jurisdiction, it is only fair that the main seat be easily accessible by all

litigants. Bisho is the most appropriate location to achieve this objective. Many citizens and residents need to travel to, or use, courts, without consideration of lawyers` s fees.

- (2) The recommendations of the Rationalisation Committee have still to be consulted upon with the relevant stakeholders such as the (Judicial Service Commission), Office of the Chief Justice and the National Treasury and in terms of Item 16 (6) (b) of Schedule 6 to the Constitution. It is only after these consultative processes that I will be able to make a decision on how to implement the recommendations, including whether the move of the main seat from Makhanda to Bisho will be implemented. Should it be decided that the main seat will be moved from Makhanda to Bisho, the existing court will have to be expanded with additional facilities such as offices and courts rooms.
- (a) As indicated above, there is no new court building to be constructed but there would be costs for the expansion of the Bisho court.
- (b) (i) According to our estimation, the total costs for the expansion of the Bisho High Court would be R310 million.
- (ii) as indicated, there is no relocation of the Makhanda Division of the High Court to Bisho. If the recommendations of the Rationalization Committee were to be implemented, Makhanda will remain the Local Division of the Eastern Cape Division of the High Court, while Bisho will be the main Division of the Eastern Cape High Court. The costs to be incurred for the moving of the seat would involve the expansion of the Bisho Court, which is alluded in the answer in (b) (i) which is R310 million.