

REPUBLIC OF SOUTH AFRICA

JURISDICTION OF REGIONAL COURTS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 30399 of 22 October 2007)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 48B—2007]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Magistrates' Courts Act, 1944, so as to confer on courts for regional divisions jurisdiction in respect of certain civil disputes, including matters currently regulated by section 10 of the Administration Amendment Act, 1929; to repeal the Administration Amendment Act, 1929; to effect consequential amendments to certain other laws; and to provide for matters connected therewith.

PREAMBLE

SINCE the Divorce Courts established under section 10 of the Administration Amendment Act, 1929, have their origins based on race;

AND SINCE these Courts, although now open to all races, are not geographically distributed throughout the national territory;

AND SINCE courts for regional divisions only deal with criminal matters, while courts for districts deal with criminal and civil matters;

IT IS CONSEQUENTLY THE PURPOSE of this Act, as an interim measure, pending the further rationalisation of the lower courts, to—

- enhance access to justice by conferring jurisdiction on courts for regional divisions which are distributed throughout the national territory to deal with certain civil matters, including matters currently dealt with in the Divorce Courts established under section 10 of the Administration Amendment Act, 1929; and
- promote the development of judicial expertise among the ranks of magistrates with the view to broadening the pool of fit and proper persons qualifying for appointment to the superior courts,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 32 of 1944, as amended by section 1 of Act 53 of 1970, section 1 of Act 4 of 1991 and section 1 of Act 66 of 1998

1. Section 1 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for the definition of "court" of the following definition:
 " 'court' means a magistrate's court for any district or for any regional division;".

Substitution of section 2 of Act 32 of 1944, as substituted by section 2 of Act 53 of 1970 and amended by section 7 of Act 102 of 1972, section 2 of Act 34 of 1986 and section 2 of Act 66 of 1998

2. The following section is hereby substituted for section 2 of the Magistrates' Courts Act, 1944:

“Minister’s powers relative to districts, regional divisions and courts

2. (1) The Minister may, by notice in the *Gazette*—
- (a) create districts, define the local limits of each district, which may consist of various non-contiguous areas, and declare the name by which any district shall be known; 10
 - (b) create regional divisions consisting of a number of districts, or of a district together with one or more sub-districts, and declare the name by which any regional division shall be known;
 - (c) increase or decrease the local limits of any district;
 - (d) increase or decrease the limits of any regional division; 15
 - (e) for all purposes or for such purposes as he or she may declare, annex any district or any portion thereof to another district;
 - (eA) for all purposes or for such purposes as he or she may declare, annex any regional division or any portion thereof to another regional division; 20
 - (f) establish a court for any district for the purposes of—
 - (i) the trial of persons accused of committing any offence which shall have jurisdiction contemplated in sections 89 and 92; and
 - (ii) adjudicating civil disputes contemplated in section 29(1);
 - (g) establish a court for any regional division for the **[purpose]** purposes of— 25
 - (i) the trial of persons accused of committing any offence, which shall have increased jurisdiction **[as hereinafter provided]** contemplated in sections 89 and 92; and
 - (ii) adjudicating civil disputes contemplated in section 29(1) and 29(1B); 30
 - (h) appoint one or more places within each district for the holding of a court for such district, and may by like notice prescribe the local limits of an area in a district, which area may include any portion of an adjoining district, and declare the name by which such area shall be known, and appoint one or more places in such area for the holding of a court for such district; of which places, if more than one is appointed, one shall be specified as the seat of the magistracy; 35
 - (i) appoint one or more places in each regional division for the holding of a court for **[such regional division]** the adjudication of offences contemplated in section 89(2); 40
 - (iA) appoint one or more places within each regional division for the holding of a court for the adjudication of civil disputes contemplated in—
 - (i) section 29(1); or 45
 - (ii) section 29(1B); or
 - (iii) section 29(1) and (1B),
 and prescribe the local limits within which such courts shall have jurisdiction, and may include within those limits any portion of an adjoining regional division; 50
 - (j) within any district appoint places other than the seat of magistracy for the holding of periodical courts, and prescribe the local limits within which such courts shall have jurisdiction, and include within those limits any portion of an adjoining district;
 - (k) detach a portion of a district or portions of two or more adjoining districts as a sub-district to form the area of jurisdiction of a detached court, and declare the name by which such sub-district shall be known, and appoint the places where such detached court is to be held; 55

(l) withdraw or vary any notice under this section and abolish any regional division, district, sub-district or other area of jurisdiction and the court thereof.

(2) The Minister may, by notice in the *Gazette* and after consultation with the Magistrates Commission, join any group of districts together to create an administrative region for administrative purposes.”. 5

Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967 and amended by section 24 of Act 94 of 1974, section 2 of Act 34 of 1986, section 17 of Act 90 of 1993, section 3 of Act 66 of 1998, section 1 of Act 62 of 2001 and section 1 of Act 28 of 2003 10

3. Section 9 of the Magistrates’ Courts Act, 1944, is hereby amended by the deletion of paragraph (c) of subsection (1).

Amendment of section 12 of Act 32 of 1944, as amended by section 9 of Act 40 of 1952, section 25 of Act 94 of 1974 and section 5 of Act 66 of 1998

4. Section 12 of the Magistrates’ Courts Act, 1944, is hereby amended— 15

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) may hold a court, provided that a court of a regional division may, subject to subsection (6), only be held by a magistrate of the regional division;”;

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) shall possess such powers and perform such duties conferred or imposed upon magistrates [as he is not expressly prohibited from exercising or performing either by the Minister or by the magistrate of the district] by law.”;

(c) by the repeal of subsection (5); and

(d) by the addition of the following subsections:

“(6) Only a magistrate of a regional division whose name appears on the list referred to in subsection (7), may adjudicate on civil disputes as contemplated in section 29(1) and 29(1B). 30

(7) The Magistrates Commission must enter the names of magistrates of regional divisions on a list of magistrates for the adjudication of civil disputes contemplated in section 29(1) and 29(1B).

(8) The Magistrates Commission may only enter the name of a magistrate on the list in terms of subsection (7) if— 35

(a) the head of the South African Judicial Education Institute has issued a duly signed certificate that the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or 40

(b) the Magistrates Commission is satisfied that, before the establishment of the Institute referred to in paragraph (a), the magistrate has successfully completed an appropriate training course in the adjudication of civil disputes; or

(c) the Magistrates Commission is satisfied that the magistrate, on account of previous experience— 45

(i) as a magistrate presiding over the adjudication of civil disputes; or

(ii) as a legal practitioner with at least five years’ experience in the administration of justice, 50

has suitable knowledge of, and expertise in, civil litigation matters to preside over the adjudication of civil disputes contemplated in section 29(1) and 29(1B).”.

Insertion of section 13A in Act 32 of 1944

5. The following section is hereby inserted into the Magistrates' Act, 1944:

“Registrar of regional division

13A. (1) The Director General of the Department of Justice and Constitutional Development must appoint for each regional division a registrar and so many assistant registrars as may be necessary. 5

(2) Any clerk of the court and any assistant clerk of the court may also be appointed as the registrar or an assistant registrar of a regional division.

(3) A refusal by a registrar or assistant registrar to do any act which he or she is by any law empowered to do shall be subject to review by the court of the regional division in question on application either *ex parte* or on notice, as the circumstances may require. 10

(4) Any reference in any law to a “clerk of the court” is, in so far as that law relates to a court of a regional division, deemed to be a reference to the registrar or assistant registrar of that regional division.”. 15

Substitution of section 28 of Act 32 of 1944, as amended by section 12 of Act 40 of 1952

6. The following section is hereby substituted for section 28 of the Magistrates' Courts Act, 1944:

“Jurisdiction in respect of persons 20

28. (1) Saving any other jurisdiction assigned to a court by this Act or by any other law, the persons in respect of whom the court shall, subject to subsection (1A), have jurisdiction shall be the following and no other[—]:

(a) Any person who resides, carries on business or is employed within the district or regional division; 25

(b) any partnership which has business premises situated or any member whereof resides within the district or regional division;

(c) any person whatever, in respect of any proceedings incidental to any action or proceeding instituted in the court by such person himself or herself; 30

(d) any person, whether or not he or she resides, carries on business or is employed within the district or regional division, if the cause of action arose wholly within the district or regional division;

(e) any party to interpleader proceedings, if—

(i) the execution creditor and every claimant to the subject matter of the proceedings reside, carry on business, or are employed within the district or regional division; or 35

(ii) the subject-matter of the proceedings has been attached by process of the court; or

(iii) such proceedings are taken under [sub-section (2) of section sixty-nine] section 69(2) and the person therein referred to as the “third party” resides, carries on business, or is employed within the district or regional division; or 40

(iv) all the parties consent to the jurisdiction of the court;

(f) any defendant (whether in convention or reconvention) who appears and takes no objection to the jurisdiction of the court; 45

(g) any person who owns immovable property within the district or regional division in actions in respect of such property or in respect of mortgage bonds thereon.

(1A) For the purposes of section 29(1B) a court for a regional division shall have jurisdiction if the parties are or if either of the parties is— 50

(i) domiciled in the area of jurisdiction of the court on the date on which proceedings are instituted; or

- (ii) ordinarily resident in the area of jurisdiction of the court on the said date and has or have been ordinarily resident in the Republic for a period of not less than one year immediately prior to that date.
 (2) ‘Person’ and ‘defendant’ in this section include the State.”.

Substitution of section 29 of Act 32 of 1944, as substituted by section 27 of Act 94 of 1974 and amended by section 1 of Act 56 of 1984, section 35 of Act 88 of 1984, section 3 of Act 25 of 1987, section 2 of Act 157 of 1993 and section 172 of Act 34 of 2005 5

7. The following section is hereby substituted for section 29 of the Magistrates’ Courts Act, 1944: 10

“Jurisdiction in respect of causes of action

29. (1) Subject to the provisions of this Act and the National Credit Act, 2005 (Act No. 34 of 2005), [the] a court in respect of causes of action, shall have jurisdiction in—

- (a) actions in which is claimed the delivery or transfer of any property, movable or immovable, not exceeding in value the amount determined by the Minister from time to time by notice in the *Gazette*; 15
- (b) actions of ejectment against the occupier of any premises or land within the district or regional division: Provided that, where the right of occupation of any such premises or land is in dispute between the parties, such right does not exceed the amount determined by the Minister from time to time by notice in the *Gazette* in clear value to the occupier; 20
- (c) actions for the determination of a right of way, notwithstanding the provisions of section 46; 25
- (d) actions on or arising out of a liquid document or a mortgage bond, where the claim does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*;
- (e) actions on or arising out of any credit agreement as defined in section 1 of the [**Credit Agreements Act, 1980 (Act No. 75 of 1980)**] National Credit Act, 2005 (Act No. 34 of 2005); 30
- (f) actions in terms of section 16(1) of the Matrimonial Property Act, 1984 (Act No. 88 of 1984), where the claim or the value of the property in dispute does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*; 35
- (fA) actions, including an application for liquidation, in terms of the Close Corporations Act, 1984 (Act No. 69 of 1984);
- (g) actions other than those already mentioned in this section, where the claim or the value of the matter in dispute does not exceed the amount determined by the Minister from time to time by notice in the *Gazette*. 40

(1A) The Minister may determine different amounts contemplated in subsection (1)(a), (b), (d), (e), (f) and (g) in respect of courts for districts and courts for regional divisions.

(1B) (a) A court for a regional division, in respect of causes of action, shall, subject to section 28(1A), have jurisdiction to hear and determine suits relating to the nullity of a marriage or a civil union and relating to divorce between persons and to decide upon any question arising therefrom, and to hear any matter and grant any order provided for in terms of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998). 45

(b) A court for a regional division hearing a matter referred to in paragraph (a) shall have the same jurisdiction as any High Court in relation to such a matter. 50

(c) The presiding officer of a court for a regional division hearing a matter referred to in paragraph (a) may, in his or her discretion, summon to his or her assistance two persons to sit and act as assessors in an advisory capacity on questions of fact. 55

(d) Any person who has been appointed as a Family Advocate or Family Counsellor under the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), shall be deemed to have also been appointed in respect of any court for a regional division having jurisdiction in the area for which he or she has been so appointed. 5

(1C) Jurisdiction conferred on a court for a regional division in terms of this section shall be subject to a notice having been issued under section 2(1)(iA) in respect of the place for the holding, and the extent of the civil adjudication, of such court.

(2) In subsection (1) 'action' includes a claim in reconvention." 10

Amendment of section 46 of Act 32 of 1944, as amended by section 5 of Act 19 of 1963, section 28 of Act 94 of 1974, section 2 of Act 56 of 1984 and section 4 of Act 25 of 1987

8. Section 46 of the Magistrates' Courts Act, 1944, is hereby amended by the repeal of subsection (1). 15

Transitional provisions

9. (1) Any proceedings instituted in a court established under section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929), before the commencement of this section and which are not concluded before the commencement of this section must be continued and concluded in all respects as if this Act had not been passed. 20

(2) On the date of the commencement of this section—

(a) each court established under section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929), becomes a court of the regional division designated by the Minister in respect of that court;

(b) any person holding office as a presiding officer of a court referred to in paragraph (a) shall, subject to any condition regarding his or her term of office and any condition of service applicable to his or her appointment to that office, hold office as a magistrate of the regional division contemplated in paragraph (a); and 25

(c) any person who is an officer of a court referred to in paragraph (a), continues to hold such office as an officer of the regional court in question. 30

(3) Notwithstanding subsection (2)(a)—

(a) the area of jurisdiction of any court referred to in that subsection shall, subject to any subsequent amendment thereof, remain as it existed immediately before the commencement of this section; 35

(b) in so far as such area of jurisdiction overlaps with the areas of jurisdiction of regional divisions other than the regional division of which such court has become a court of, those other regional divisions or the relevant portions thereof are deemed to have been annexed to the regional division of the court in question in terms of section 2(1)(eA) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); and 40

(c) the place or places of sitting of such court must be deemed to have been designated in terms of a notice contemplated in section 2(1)(iA)(ii).

(4) The rules in force on the date of the commencement of this Act in respect of the courts established under section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929), remain in force until they are repealed or amended by a competent authority. 45

(5) Any reference in any law to a Divorce Court established in terms of section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929), is deemed to be a reference to a court of a regional division. 50

(6) (a) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), must, within six months after the commencement of this Act, review and amend the existing rules of the magistrates' courts and the rules referred to in subsection (4), in order to ensure that courts of regional divisions can exercise the jurisdiction conferred on them under the Magistrates' Courts Act, 1944, as amended by this Act, effectively and efficiently. 55

(b) Any rules made or amended as a result of the amendments to the Magistrates' Courts Act, 1944, by this Act, must be aimed at enhancing access to the courts by, amongst others and as far as is reasonably possible—

- (i) providing for simplified and expeditious procedures;
 - (ii) providing for clerks or registrars to assist litigants;
 - (iii) limiting the costs associated with the litigation processes; and
 - (iv) retaining or improving the measures introduced by the rules referred to in subsection (4) in order to facilitate and promote access to the courts referred to in subsection (1). 5
- (c) The rules referred to in paragraph (a) must be submitted to Parliament.

Repeal and amendment of laws, and saving

10. (1) The Administration Amendment Act, 1929 (Act No. 9 of 1929), is hereby repealed. 10

(2) The laws referred to in the first column of the Schedule are hereby amended to the extent mentioned in the third column thereof.

(3) Nothing in this Act affects any of the powers exercised by the Minister in terms of section 2 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), before the commencement of this Act. 15

Short title and commencement

11. (1) This Act is called the Jurisdiction of Regional Courts Amendment Act, 2007, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different regional divisions for the purposes of section 2(1)(g)(ii) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), as inserted by section 2 of this Act. 20

SCHEDULE

Laws amended by section 8(2)

| No and year of law | Short title | Extent of amendment | |
|--------------------|---------------------|---|---------------------------------------|
| Act No. 53 of 1979 | Attorneys Act, 1979 | <p>1. The amendment of section 8 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Any candidate attorney who has satisfied all the requirements for the degree referred to in paragraph (a) of section 2(1), or for the degrees referred to in paragraph (aA) of that section, or for a degree or degrees referred to in paragraph (aB) of that section in respect of which a certification in accordance with that paragraph has been done, shall be entitled to appear in any court, other than any [division of the Supreme] High Court, and before any board, tribunal or similar institution in or before which his or her principal is entitled to appear, instead of and on behalf of such principal, who shall be entitled to charge the fees for such appearance as if he or she himself or herself had appeared: Provided that such a candidate attorney shall not be entitled to appear in a court of a regional division established under section 2 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), [or a Divorce Court established under section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929),] unless he or she—</p> <ul style="list-style-type: none"> (i) has previously practised as an advocate for at least half a year; or (ii) has served for at least one year under his or her articles or contract of service; or (iii) has at least one year’s experience as a state advocate, state prosecutor or magistrate.”. | 5 10 15 20 25 30 35 |
| Act No. 70 of 1979 | Divorce Act, 1979 | <p>1. The amendment of section 1 by the substitution for the definition of “court” of the following definition:</p> <p>“‘court’ means any High Court as contemplated in section 166 of the Constitution of the Republic of South Africa, 1996 [(Act 108 of 1996)], or a [divorce] court [established under section 10 of the Administration Amendment Act, 1929 (Act 9 of 1929)] for a regional division contemplated in section 29(1B) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), which has jurisdiction with respect to a divorce action;”.</p> | 40 45 50 |
| Act No. 90 of 1986 | Sheriffs Act, 1986 | <p>1. The amendment of section 1 by the substitution for the definition of “lower court” of the following definition:</p> <p>“‘lower court’ means a court established under the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), and a divorce court established under section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929);”</p> | 55 60 |

| No and year of law | Short title | Extent of amendment | |
|---------------------|--|--|----------------------------------|
| Act No. 24 of 1987 | Mediation in Certain Divorce Matters Act, 1987 | 1. The amendment of section 1 by the insertion before the definition of “Family Advocate” of the following definition: “ ‘court’ means the court having jurisdiction in any action or proceedings referred to in section 4;”. | 5 |
| Act No. 78 of 1997 | Qualification of Legal Practitioners Amendment Act, 1997 | 1. The amendment of section 11 by the substitution for subsection (2) of the following subsection: “(2) Any candidate attorney who at the commencement of this Act— (a) has satisfied the requirement for the degree of <i>baccalaureus procurationis</i> ; or (b) was registered as a student at any university in the Republic with a view to obtaining the degree of <i>baccalaureus procurationis</i> and provided that he or she has satisfied the requirements for the said degree on or before 31 December 2004, shall be entitled to appear in any court, other than any [division of the] High Court, a court of a regional division established under section 2 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), [or a Divorce Court established under section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929),] and before any board, tribunal or similar institution in which his or her principal is entitled to appear, instead of or on behalf of such principal, who shall be entitled to charge the fees for such appearance as if he or she himself or herself had appeared.”. | 10 15 20 25 30 35 |
| Act No. 99 of 1998 | Maintenance Act | 1. The substitution for section 3 of the following section: “ Maintenance courts 3. Every magistrate’s court for a district, established in terms of section 2(1)(e) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), [shall] is within its area of jurisdiction [be] a maintenance court for the purposes of this Act.”. | 40 45 |
| Act No. 116 of 1998 | Domestic Violence Act | 1. The amendment of section 1 by the substitution for the definition of “court” of the following definition: “ ‘court’ means any magistrate’s court for a district contemplated in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944) [or any family court established in terms of an Act of Parliament] .”. | 50 55 |
| Act No. 120 of 1998 | Recognition of Customary Marriages Act, 1998 | 1. The amendment of section 1 by the substitution for the definition of “court” of the following definition: “ ‘court’ means a High Court [of South Africa, a family court established under any law or a Divorce Court established in terms of section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929)] or a court for a regional division contemplated in section 29(1B) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);”. | 60 65 70 |

| No and year of law | Short title | Extent of amendment |
|--------------------|--|--|
| Act No. 12 of 2004 | Prevention and Combating of Corrupt Activities Act, 2004 | 1. The amendment of section 1 by the deletion of paragraph (g) of the definition of “ judicial officer ”. |

MEMORANDUM ON THE OBJECTS OF THE JURISDICTION OF REGIONAL COURTS AMENDMENT BILL, 2007

1. BACKGROUND

1.1 The Magistrates' Courts Act, 1944 (Act No. 32 of 1944), establishes and regulates the structure and functioning of magistrates' courts, which consist of District Courts and Regional Courts. The Act empowers the Minister for Justice and Constitutional Development (the Minister) to establish—

- (a) magisterial districts [section 2(1)(a)];
- (b) regional divisions, each division consisting of a number of districts [section 2(1)(b)];
- (c) magistrates' courts for the various districts [section 2(1)(f)]; and
- (d) courts for the various regional divisions “. . . for the purpose of the trial of persons accused of committing any offence, which shall have increased jurisdiction as provided for in this Act” [section 2(1)(g)].

1.2 Being creatures of statute, these courts have jurisdiction only in respect of matters specified by statute. In terms of the existing legislation, District Courts have criminal jurisdiction to try all offences except treason, murder and rape, and they can impose sentences for a period not exceeding three years or a fine not exceeding R60 000, while Regional Courts can try any offence except treason and can impose sentences for a period not exceeding 15 years or a fine not exceeding R300 000. District Courts have jurisdiction to deal with certain specified civil cases where the amount involved does not exceed R100 000. Regional Courts have no similar civil jurisdiction.

1.3 Section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929) (the 1929 Act), which established Divorce Courts, was amended in 1997. Before this amendment, section 10 regulated the establishment and functioning of the so-called Black Divorce Courts, giving them jurisdiction to hear divorce and related matters in respect of a single population group. The amendment “de-racialised” these Courts, opening them up to all races. However, the “de-racialisation” of these courts does not alter the historical fact that they were established, in terms of the ideology of apartheid, separately from the structure of the main-stream lower courts, namely the magistrates' courts. As a result of this, the geographical distribution of the Divorce Courts is limited, and they still exist as remnants of an objectionable and oppressive system. The following provisions relating to Divorce Courts are pertinent for purposes of the Bill:

- (a) The President may, by proclamation in the Gazette, establish Divorce Courts “which shall have jurisdiction to hear and determine suits relating to the nullity of a marriage and relating to divorce between persons and to decide upon any question arising therefrom, and to hear any matter and grant any order provided for in terms of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998)”.
- (b) Divorce Courts have the same jurisdiction as any High Court in relation to these matters.
- (c) Every Divorce Court consists of so many divisions as the Minister may determine from time to time. A division of a Court consists of one or more presiding officers, one of whom is the President of the Division, who must be fit and proper persons appointed by the Minister in a permanent capacity, after consultation with the Magistrates Commission. These presiding officers are deemed to be Regional Court magistrates.

2. OBJECTS OF BILL

2.1 The Bill aims to bestow extended civil jurisdiction on the Regional Courts. This includes jurisdiction to deal with all matters currently falling within the jurisdiction of the Divorce Courts. The latter Courts will be merged with, and become part of, the Regional Courts.

2.2 The proposed amendments would contribute towards enhancing access to justice for all and to transform justice, the State and society, recognising the need for the lower courts to mirror their counterparts, the superior courts, where appropriate. By increasing the jurisdiction of Regional Courts as envisaged in the Bill, the judicial expertise of magistrates will also be further developed, thereby creating a greater pool of suitable candidates from which appointments could be made to the Bench of the superior courts.

2.3 The provisions of the Bill are dealt with below.

3. DISCUSSION OF PROVISIONS OF BILL

3.1 Clause 1 replaces the existing section 2 of the principal Act, dealing with the Minister's powers relating to the establishment of the lower courts. A new section 2(1)(eA) is inserted in order to enable the Minister to annex any regional division or any portion thereof to another regional division for such purposes as he or she may declare. This provision mirrors the Minister's power in respect of magisterial districts, and would enable the Minister to "roll out" the extended civil jurisdiction of Regional Courts in an incremental manner. Section 2(1)(f) is amended to make it clear that district courts are established for the purposes of trying persons for any offence contemplated in sections 89 and 92 of the principal Act, and for adjudicating on civil disputes contemplated in section 29(1) of that Act that is within the monetary limits prescribed by the Minister from time to time by notice in the *Gazette*, "pitched" at District Court level. This is nothing more than a confirmation of the existing position. Section 2(1)(g), dealing with the establishment of Regional Courts, is also being amended to make it clear that these Courts are established, not only for purposes of trying persons who have committed offences (the position at present), but also for the purposes of—

- (i) adjudicating on civil disputes contemplated in section 29(1) of the principal Act within the monetary limits prescribed by the Minister from time to time by notice in the *Gazette*, "pitched" at Regional Court level; and
- (ii) adjudicating on matters contemplated in the proposed new section 29(1B) of the principal Act—family-related matters which are currently dealt with by Divorce Courts arising from the application of section 10 of the 1929 Act (see paragraph 1.3 above).

3.2 Clause 2 effects a consequential amendment to the Magistrates' Court Act, 1994.

3.3 Clause 3 amends section 12 of the Magistrates' Court Act, 1944, in order to provide that only regional court magistrates who completed a training course in civil adjudication shall be competent to preside in matters involving the extended civil jurisdiction of Regional Courts.

3.4 Clause 4 amends section 28 of the principal Act, which currently regulates the jurisdiction of Magistrates' Courts in respect of persons. The amendments to subsection (1) give effect to the proposal that Regional Courts be given jurisdiction to deal with civil matters.

3.5 Clause 5 amends section 29 of the principal Act, which currently regulates the jurisdiction of Magistrates' Courts in respect of causes of action. Again, the proposed amendments are intended to give effect to the proposal that Regional Courts deal with civil matters, but at a higher level than District Courts, hence the proposed new subsection (1A), which provides that the Minister may determine different maximum amounts in respect of District Courts and Regional Courts. The proposed new subsection (1B) gives Regional Courts jurisdiction in respect of a new cause of action, namely "to hear and determine suits relating to the nullity of a marriage and relating to divorce between persons and to decide upon any question arising therefrom, and to hear any matter and grant any order provided for in terms of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998)". The remaining paragraphs of this proposed new subsection regulate the following matters:

- (i) Paragraph (b) provides that a Regional Court, for the above purposes, has the same jurisdiction as any High Court in relation to such matters.
- (ii) Paragraph (c) allows a presiding officer to summon assessors to assist on questions of fact.
- (iii) Paragraph (d) makes it clear that Family Advocates and Family Counsellors, appointed in terms of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), are also appointed in respect of proceedings in Regional Courts when exercising family jurisdiction.

3.6 Clause 6 amends section 46 of the principal Act by deleting subsection (1). Subsection (1) provides that a court (Magistrate's Court) has no jurisdiction over matters "in which the dissolution of a marriage or separation from bed and board or of goods of married persons is sought", except under the provisions of the Indian Immigration Law, 1891 (Act No. 25 of 1891). This provision is repealed, as Regional Courts are now being given jurisdiction to deal with family-related matters, including divorce.

3.7 Clause 7 contains transitional provisions. Because clause 8(1) envisages the repeal of the 1929 Act, clause 7(1) regulates the finalisation of cases pending in Divorce Courts when this proposed legislation comes into operation. Provision is made for

existing Divorce Courts to be merged with existing regional divisions. These courts will therefore become the first Regional Courts exercising jurisdiction in divorce matters.

3.8 Clause 8(1) repeals the 1929 Act and clause 8(2) refers to the Schedule in which a number of Acts of Parliament are amended consequentially, as a result of the provisions of the Bill.

4. CONSULTATION

The extension of civil jurisdiction to Regional Courts was extensively discussed with members of the lower courts' judiciary.

5. IMPLICATION FOR PROVINCES

None.

6. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The presiding officers and other personnel attached to Divorce Courts will be retained in their new capacity as members and officers of the Regional Courts which they will become part of. The development and implementation of appropriate training courses, as well as human resource implications emanating from increases in the case loads of regional courts, will be managed by the Department in the ordinary course of the administration of justice.

7. FINANCIAL IMPLICATIONS FOR STATE

Financial implications should result from the development and implementation of training courses for Regional Court magistrates, as well as the creation of more posts of Regional Court magistrates, should this be required. Such implications will be dealt with within the Department's allocated budgetary framework.

8. COMMUNICATION IMPLICATIONS

None.

9. PARLIAMENTARY PROCEDURE

9.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

9.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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