

Public Service Accountability Monitor (PSAM)  
Rhodes University

17 August 2023

**Re: PSAM submission to the Committee on the Rationalisation of Areas under the Jurisdiction of the Divisions of the High Court and Judicial Establishments (“the Committee”)**

Attention: Hon. Minister of Justice & Correctional Services, Mr Ronald Lamola c/o Ms. Moraba  
[DeMoraba@justice.gov.za](mailto:DeMoraba@justice.gov.za) and [BSarela@justice.gov.za](mailto:BSarela@justice.gov.za)

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- 1) The Public Service Accountability Monitor (PSAM) prepared a submission which was emailed to the Committee on 30 January 2023. Mr. Moagi confirmed receipt of the submission via email on 31 January 2023. (We attach a copy of the submission for ease of reference.)
- 2) PSAM has since considered the [Report of the Committee on the Rationalisation of Areas under the Jurisdiction of the Divisions of the High Court of South Africa and Judicial Establishments](#) and notes with concern that there is no reference to our submission.
- 3) The PSAM submission objected to the proposed move of the main seat of the Eastern Cape Division from Makhanda to Bhisho for various reasons. PSAM noted historical underfunding of government services and the impacts this has had and that inter alia: *“the Committee has not fully considered the real costs of implementing such a recommendation, including whether scarce Justice Department budgets could not be better used to improve for instance, access to lower courts for communities, or upgrading the infrastructure of such courts, or committing greater resources to historically neglected maintenance budgets.”*

The Committee appear to have ignored our budget-related concerns and reasoning (see paragraphs 4, 5 and 6 of our submission) and, therefore, not referenced and responded to it in the Final Report. For the Committee to recommend such significant changes without proper consideration of the budget implications is a significant oversight, especially considering that the Committee’s terms of reference required that it consider *“the affordability of any proposed outcome”*.<sup>1</sup>

A search of the Committee’s Final Report to consider the use of words like “budget”, “costs” and “affordable” does not reveal substantial content that delves into the affordability of the recommendation to relocate the main seat of the Eastern Cape Division of the High Court. This occurs, despite certain submissions describing the significant budgetary implications that certain Committee’s proposals will have on for instance Legal Aid South Africa (often the primary enabler of access to justice for indigent clients) who have routinely been underfunded. At no stage does the Committee consider how Legal Aid South Africa will be able to afford its revised functions if the Committee’s recommendations are actioned. The Committee chose not to engage meaningfully with submissions that “the cost of building facilities in Bhisho is estimated at about R1billion” opting rather to superficially remark that “If

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<sup>1</sup> Referenced at paragraph 9 of the Committee’s [Interim Report](#) and again at paragraph 10 of the Committee’s [Report with Recommendations](#)

Bhisho answers to the main attributes for enhancing access to justice for many people, steps must be taken, and resources put up for the gradual realisation of that public good.” It appears that the Committee occupied itself largely with travel costs associated with its proposals and not on the affordability of significantly costlier aspects of its proposals.

The PSAM has seen the serious and negative impacts that result from making recommendations, plans and policy reforms when there is inadequate regard for the approximate funding required, and whether in fact, what is proposed can be afforded. The final report has shortcomings in the light of the Committee’s failure to note and respond to our submission and its own terms of reference requiring that it consider affordability. Had the Committee considered more thoroughly the affordability of its proposed outcomes, the recommendations would have read differently.

Shifting the seat of the Eastern Cape Division of the High Court without having undertaken a thorough affordability exercise will result in a range of serious and negative consequences, including but not limited to access to justice. As such, we request that Committee’s recommendation in this regard, not be actioned.

Regards,



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