

**ADDRESS TO THE SOUTH AFRICAN SHERIFF SOCIETY ON 27 MAY 2016 AT 14H00 IN PORT ELIZABETH.**

**TOPIC: THE IMPACT OF THE RATIONALISATION OF COURTS AND DEMARCATION OF MAGISTERIAL DISTRICTS ON SHERIFFS.**

**DEAR MR PRESIDENT, LADIES AND GENTLEMEN,**

It is indeed an honour and a privilege to be with you today and to address you on this real, and for many of you, a worrying problem. I say it is a real problem because rationalisation of magisterial districts has been completed in some provinces and is to be rolled out in the remaining provinces in the very near future. I say some provinces as I do not know how far the process has really proceeded in Limpopo and Mpumalanga. It is a worrying problem because I have seen the effect of the rationalisation process on some Sheriffs` service areas in the Gauteng and North West Provinces I and the task team have been working on up to now.

You could have asked any one of a number of speakers knowing more about the topic than myself to address you. I can think of a number of people in the Department of Justice who were and are intimately involved in the rationalisation process. I can also think of a number of Sheriffs of long standing who would have been able to inform you of the effects or possible effects of the demarcation and the rationalisation processes. I think however that I am in the fortunate position that I have worked with both sides, i.e. the Department of Justice and the Sheriffs` profession and that I know how their minds work. I can also assure you that I will not favour any one of the two parties. I will remain impartial and objective.

**BACKGROUND TO THE RATIONALISATION PROCESS, INCLUDING CONSTITUTIONAL AND POLICY REQUIREMENTS, AS WELL AS THE APPLICATION OF SOME KEY PRINCIPLES THERETO**

In order to understand why a process of demarcation of Magisterial districts and the rationalisation of the jurisdictional areas of the courts had to be

embarked upon, it is of the utmost importance to keep in mind, not only the political, economic and social history of the country, but also the constitutional demands and related policy requirements. In doing so you as Sheriffs will immediately realise where you fit in in the bigger picture. You will also realise that you are not the only profession or individuals affected by this process. I trust that you will then understand why the Task Team of which Fanie and I were members followed a specific procedure when we consulted with you and why we insisted, and are still insisting, on your fullest co-operation in this process. I will deal with the process we followed very briefly later herein.

Following the democratic changes in 1994 which led to a unitary Republic, the erstwhile eleven administrations were rationalised into a unitary state consisting of nine provinces. Consequently, in 1995 this led to the transformation, reform and rationalisation of the Public Service. As a result of that process the Department of Justice and Constitutional Development became a single national department. It is now known as the Department of Justice and Correctional Services.

The rationalisation of the courts were however not part of that process. The reason for the delay in the rationalisation of the courts could be attributed to various reasons, including the following:

- The complexity of the process and the investigation that needed to be done;
- The importance of awaiting the rationalisation of municipalities and its boundaries which was itself an important but a tedious process conducted by the Municipal Demarcation Board. This process has been completed. As with the rationalisation processes of magisterial districts and Sheriffs` service areas, it will, however, always be an ongoing process.
- The need to enact legislation to inform and guide the rationalisation exercise which was eventually achieved through the enactment of the Constitution Seventeenth Amendment Act, 2012 and the Superior Courts Act, 2013.

Consequently, prior to any rationalisation, the areas of jurisdiction of all courts were still defined in terms of the old demarcations which were based on racial and geopolitical separation which was part of the segregation policy of the erstwhile government. Most of the jurisdictional areas are still so defined. This created, and is still creating, vast distortion in human settlement and

development patterns, created unequal access to various types of courts and services rendered at these courts.

In the new South Africa this caused a disjuncture between the Magisterial Districts and the area of jurisdiction of municipalities, even worse so within the context of the disjointed High Court structure.

Based on the apartheid system the Republic was divided into 384 Magisterial Districts and 50 Sub-Districts, 90 Branch Courts and 230 Periodical Courts. The 384 Magisterial Districts were created mainly in cities and towns.

On the other hand Branch Courts and Periodical Courts were established in the former Black and rural areas, rendering limited service, i.e. the adjudication of criminal cases only. For all the other services people had to travel to the courts in the towns and cities. The system was designed with little or no regard to people's rights to access to courts.

The Constitution of the Republic of South Africa, 1996, provides in section 34 thereof as follows: "Access to courts – Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum."

This must of necessity relate to all aspects of all courts of law such as the provision of structures, the geographical accessibility, the jurisdictional areas thereof, composition, functioning as well as all services related to such courts.

Schedule 6 of the Constitution deals with transitional arrangements. Clause 16 thereof deals specifically with courts of law.

Clause 16(1) provides that "Every court, including courts of traditional leaders, existing when the new Constitution took effect, continues to function and to exercise jurisdiction in terms of legislation applicable to it, and anyone holding office as a judicial officer continues to hold office in terms of legislation applicable to that office, subject to –

- (a) any amendment or repeal of that legislation; and
- (b) consistency with the new Constitution."

Clause 16(6) in turn provides as follows:

"(a) As soon as is practical after the new Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all

relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution.

(b)The Cabinet member responsible for the administration of justice, acting after consultation with the Judicial Service Commission, must manage the rationalisation envisaged in paragraph (a).”

From the extracts from the Constitution it should be clear that access to justice is an inalienable human right which underlies the Rule of Law. It is also clear from the Constitution that the justice system is required to be transformed to suit the requirements of the Constitution. The cornerstone of rationalisation you will now realise, is the protection, promotion and fulfilment of the right of access to justice.

Furthermore, in order to fully understand the reason behind the demarcation of municipal boundaries and the rationalisation of magisterial jurisdictional areas, it is of the utmost importance to keep some policy imperatives in mind.

The rationalisation project was intended to contribute to the achievement of the goals set out in the National Development Plan Vision 2030 in particular with regard to:

- Spatial Justice – the exercise is aimed at reversing the effect of historic policy of confining particular groups or categories of people to defined spaces and the unequitable and unfair allocation of public resources;
- Spatial investment framework – the outcome of the rationalisation process supports the long term infrastructure investment strategy of the NDP. Building of new courts in previously marginalised areas is part of this strategy;
- Promoting better coordination between the different spheres of Government and other agents – through this process the different spheres of Government, branches of State and institutions are able to work together towards a common goal;
- Building an active citizenry – it is important that courts become part of a people-centred approach through which communities participate in problem solving and dispute resolution. By aligning courts to municipal centres, communities are able to participate in community structures, including community courts to build stable communities and promote social cohesion.

In the rationalisation process a number of key principles were followed. They are:

- Access to justice is an overarching constitutional value;
- As a rule, Magisterial Districts must follow Provincial and Municipal boundaries;
- Magisterial Districts may be apportioned to establish sub-districts where this is necessary to increase access to justice. The limits of such sub-districts to be described in such a way as to bring full justice-related services within reach of communities;
- Periodical Courts(local circuit courts) to be established to provide for trials to be conducted as near as possible to where people live;
- Every municipality must have a Magistrates Court with the seat of the court in the same area as the seat of the municipality. In respect of large municipalities (metros) more than one Magisterial District may be considered.
- The rationalised districts are to be aligned with judicial administrative regions to establish an effective and efficient governance framework. This will enable Judges President to co-ordinate judicial functions at the Magistrates Courts as required by the Superior Courts Act.

I trust that after this long but very necessary discussion of the background to the entire process of rationalisation, which is aimed at enhancing access to justice, you as Sheriffs will understand and accept that not only you, but many other professions, groups of people, individuals, State Departments, NGO`s, etc. are affected by this process, either detrimentally or beneficially.

Let me try to explain, in practical terms, how rationalisation will enhance access to justice and how it will affect the people and groups of people referred to above. In some instances people had to, prior to rationalisation, take a number of taxis to get to the court having jurisdiction over them for the hearing of, for example, a maintenance claim. On the way to court they pass a number of other courts, some of which are within walking distance from home. If the matter is postponed and the trip is to be undertaken once or twice again, you will realise that the expenses to go to court outweighs any benefit that may be received from having gone to court. In some instances a person can see a court across a road or railway line but is forced to go to court

many kilometres away. The result is that people use false addresses in order to go to a nearby court. This had to and must be put right in the rationalisation process.

An attempt was therefore made to assist citizens by reducing the distances they need to travel to court. That will make it cheaper and easier to go to court. In other instances note was taken of peoples` workplaces and where they do their shopping and visit a hospital, clinic or doctor. The availability of taxis, buses, other public transport, roads, railway lines, etc. played major roles in deciding how to rationalise magisterial districts.

Of importance were also the location of police stations, health facilities, court buildings, legal aid offices, correctional service facilities, Social Development facilities and all other related services.

In instances it appeared that due to the rationalisation process some court buildings may not have enough court rooms to accommodate all matters, some police stations will have to serve more magisterial districts than before, accused will have to be transported from a number of correctional facilities instead of one as before, members of the prosecuting authority will have to be re-located, a legal practitioner`s client base may be affected, presiding officers, such as Magistrates, may have to be relocated. If required court facilities must be provided and State institutions will have to cope with an additional work load.

Due to the various factors referred to above the rationalisation process of magisterial districts was a tedious and difficult process to complete. It took a number of years to consult with all the role players and to complete the task. I do not find it necessary to deal with all the work done by the Task Team that dealt with that process. I was part of it for some time and can assure you that everything possible was done to accommodate and consult with all role players.

Looking back, after the completion of the rationalisation process in Gauteng- and North-West Provinces, and having being involved in that process, as well as in the process of the rationalisation of certain Sheriffs service areas, I am convinced that the individual Sheriffs did not partake in the consultation processes in both processes with the Task Teams as they should have. The Sheriffs were invited to the RCC meetings. Only a few attended. That may be because the individual Sheriffs thought they would not be adversely affected

or that their interests would be safeguarded by the SABFS or their respective societies. In at least one instance we found that not only did the Sheriff not know of the rationalisation process, but the Magistrate was also unaware of it. The failure of the Sheriffs, for whatever reason, to fully participate in the rationalisation processes in Gauteng and North-West Provinces caused their voices not to be fully heard.

The Department appreciated that the rationalisation process in respect of the magisterial districts would in instances negatively affect the service areas of Sheriffs. In addition certain Sheriffs service areas in the Eastern Cape, Western Cape, eThekweni, Gauteng and North West had to be dealt with for other reasons than the rationalisation process.

A Task Team for the rationalisation of certain Sheriffs service areas in the rationalised as well as the non-rationalised areas, to which I have frequently referred to so far, was therefore established. I served on this Task Team with Fanie van Wyk, without whose support and assistance I would not have survived. This Task Team soon realised that the effects of the rationalisation process on some service areas would be devastating and that it had to follow a procedure in terms of which it could soften the blows of the rationalisation process on those areas. The main and single most devastating effect was that certain service areas were so reduced in size that no Sheriff could make a living in such a service area. The Team therefore decided to follow a consultative process in terms of which they would engage all Sheriffs, if possible, and where necessary assist badly affected Sheriffs as far as possible with the assistance, co-operation and agreement of their colleagues. The same approach was followed in the other non-rationalised areas it had to investigate. The problems identified by the Task Team in both the rationalised and non-rationalised areas are so similar, many of which, if not all, have to do with the boundaries of service areas, that I decided to include problems in the non-rationalised areas in this address as well.

The Task Team tried to consult with all Sheriffs as far as possible. The Sheriffs were individually invited but still not all of them attended the consultations. In some instances the Sheriffs in the rationalised areas did not see the need to attend as they were of the opinion, in many instances wrongly so, that their service areas were not adversely affected. In other instances, both in the rationalised and non-rationalised areas, I am convinced that there was an attempt to delay the finalisation of the process. In some cases this was done

for personal reasons and financial gain. In other cases it was done in order to stay in a vacant area as acting Sheriffs as long as possible or to try and favour a family member or friend. In instances some Sheriffs failed to attend scheduled meetings, some tried to prolong the consultation process and, in other instances, some initially agreed on a certain way to assist their colleagues and then did an about-turn.

Most of the Sheriffs who attended the consultations co-operated well with the Team and expressed their appreciation for the opportunity to be heard. We did our best to accommodate the Sheriffs and to find solutions for their problems. I will later refer to a possible revised Task Team for the rationalisation of Sheriffs service areas in both rationalised and non-rationalised areas. If that is to realise I herewith urge the Sheriffs to become actively involved in the process for their own benefit and not allow the Department to alone dictate to the Sheriffs what is to happen in their profession.

In respect of Gauteng and North-West Provinces, the only two rationalised provinces at the time, the Task Team concerned with the rationalisation of the magisterial districts had for all intents and purposes completed its task before it was decided that an in depth study by the CSIR may be of great help. An impact analysis of the rationalisation process was undertaken. In an in depth report consisting of 188 pages, there is no reference to the position of the Sheriffs. It is clear that the CSIR did not consider the impact of the rationalisation process on the Sheriffs profession. Sheriffs must look after their own interests and partake in consultations. I am aware of the fact that in the provinces still to be rationalised, CSIR impact reports are obtained at the beginning of the process. Sheriffs must involve themselves in the rationalisation process and insist that their positions also be taken into account in impact studies.

The rationalised Magisterial Districts in respect of Gauteng and North-West were gazetted on 31 October 2014 with effect 1 December 2014. As a result of the contents of a legal opinion provided to the Department, a Government Notice was gazetted on 28 November 2014. In essence it appears to state that until the Task Team's rationalisation process of Sheriffs' service areas has been completed, Sheriffs will continue to serve processes in their pre-rationalised service areas. The rationalisation process of Sheriffs' service areas has not been completed. The Task Team started 10 weeks late with its work due to no



fault of the Team. Until the finalisation of that rationalisation process, Sheriffs can continue as if their service areas have not been affected.

In respect of certain areas in the Eastern Cape and eThekweni reports have been submitted to the Honourable Deputy Minister of Justice. The reports deal with the pre-rationalised situation. The Honourable Deputy Minister wishes to involve the community in the process. Further consultations will have to take place in respect of those reports.

The report in respect of certain areas in the Western Cape, also a pre-rationalised area, could not be finalised due to lack of time and the fact that, to my frustration, some Sheriffs did not cooperate as required. Further consultations will also have to be conducted.

Reports were filed in respect of the rationalised Gauteng and North West Provinces. The Team required much more time in these two provinces. We made certain recommendations but the work is not completed. Tshwane, in particular, is a source of great frustration to me. I will refrain from explaining why. Further consultations should take place in both provinces.

Over and above that the Task Team was constituted to investigate the effects of the rationalisation process on service areas it was also constituted to investigate problems with boundaries of service areas in both the rationalised and non-rationalised areas. I mention a few of those problems:

- Maps of some service areas were not available and in many instances did not exist;
- Point-to-point descriptions of service areas were in some instances also non-existent;
- Requests by some Sheriffs to the Department for the supply of maps and point-to-point descriptions had no results;
- Some Sheriffs had entered into so-called “gentlemen`s agreements” with each other in order to create some certainty about their service areas, such “agreements” having no legal validity;
- Because of the uncertainty about service areas, Sheriffs were serving processes outside their own appointed service area, which rendered such service illegal and null and void;
- Sheriffs could face legal action because of “illegal” servicing of processes;

- Sheriffs could face huge claims for damages if, for example, a valuable immovable property was attached and sold in execution following such illegal service of process;
- In September 2012, in an attempt to create more service areas and to rectify some of the problems in respect of the boundaries of service areas, recommendations of the so-called Sardiwala Report were gazetted with, in my view, catastrophic effects. Some of these effects are that service areas overlapped on adjacent service areas, that some service areas encroached into another area, that pieces of so-called no man`s land were created, that disproportionate service areas were created, that non-viable service areas were created, etc.;
- The Sardiwala Report led to one known legal action between Sheriffs because of an incorrect description of a service area in that report with devastating results for one of the Sheriffs;
- Because of a so-called “gentlemen`s agreement” a Sheriff regarded himself free to serve in a neighbouring service area. This led to another court case;
- A certain Peterson was appointed to investigate problems caused by the Sardiwala report and to recommend solutions. That report was never implemented.

As stated above, the Task Team started late with its work. Because thereof, as well as the limited time allowed for the completion of the investigation, we could not complete our work. We are not prepared to have another Sardiwala mishap or an ineffective Peterson investigation. I am also personally of the view that the Department does not have the capacity to deal with the matters of the Sheriffs without outside assistance. I therefore suggested that a smaller, more stream lined team be constituted to, on a semi-permanent basis, assist the Department on matters relating to the Sheriff profession. Ideally this team should consist of an experienced retired Magistrate assisted by Mr Armstrong Nogcinisa as well as a Sheriff from the province where any investigation is to be done. I also suggested that an overseeing body be created consisting of a chairperson with a legal background, assisted by Mr Fanie van Wyk, a member from the Municipal Demarcation Board, a GIS specialist and a chartered accountant. This overseeing body can liaise with the SABFS, scrutinise reports from the smaller team and advise the Department on such reports and the implementation of any recommendation.

A problem our Task Team experienced was how to consider the viability of a service area. We therefore recommended that an in depth investigation be undertaken on how to measure the viability of a service area. I strongly recommend that the SABFS get involved in the exercise and not to leave it to the Department to undertake it on their own. The Sheriffs are in a better position than the Department to decide what factors to consider. I am aware of the mammoth task undertaken by the Sheriffs when the indaba on costs were hosted by the Rules Board some time ago. A similar approach will have to be followed.

We also recommended that some information should be made available to applicants for Sheriffs` posts. A Sheriff should have some idea of the income that can be generated and the size of the service area. This aspect is one of those that need further investigation.

We further recommended that a newly appointed Sheriff should, on appointment, be provided with a map and a point-to-point description of the service area he/she is appointed for. That map and point-to-point description must be signed off and the Sheriff must also undertake to comply with the code of conduct for Sheriffs. It will thereafter be the responsibility of the Sheriff to familiarise him/herself with the boundaries of the service area.

Mr President, Ladies and Gentlemen, I was asked to address you on the impact of the rationalisation of the rationalisation process on the Sheriffs. I hope I have given you some idea of the reasons for the rationalisation process and the effects thereof. I know I have gone wider than the request to me. I did that on purpose because in my dealings with the Sheriffs I have come across matters that I just had to share with you.

I thank you.