



SOUTHERN AFRICAN CHIEF JUSTICES FORUM

**MEETING OF CHIEF JUSTICES FROM SOUTHERN AND EAST AFRICA
HELD IN WINDHOEK, NAMIBIA, ON 11 - 13 AUGUST 2005**

**The Conference of the Southern African Judges Commission on
Judicial Training Institutions in the Southern African region
Constitutional Court, Johannesburg, South Africa**

24 – 25 June 2005

**The report to the full board of members of the Southern African Judges
Commission**

1. Introduction

1.1 The Conference on Judicial Training Institutions in the Southern African region was held on 24-25 June 2005 in Johannesburg South Africa, under the auspices of the Southern African Judges Commission (the Commission). The conference was attended by delegates from Angola, Lesotho, Mauritius, Malawi, Namibia, Swaziland, South Africa, Uganda, Zambia and Zimbabwe.

These delegates are the heads of the judicial training institutions and persons who have in-depth knowledge of the training programmes which are conducted in their respective judiciaries, if any. The Chief Justices nominated the persons who participated in this conference, as agreed to at the Conference on Modernising the Judiciary in Entebbe, Uganda, in February 2005.

1.2 The opening and welcoming address was delivered by the Honourable Justice Yvonne Mokgoro, a justice of the Constitutional Court of the Republic of South Africa.

2. The Terms of Reference for the Conference: Background

2.1 At the beginning of the two-day discussions, Ms Ruth Makhambeni gave a short presentation on the mandate of the conference as sanctioned by the Judges Commission. She set out the framework for the Conference by explaining that the SAJC Chief Justices met in Entebbe, Uganda in February 2005. This was the Conference on Modernising the Judiciary.

2.2 One of the major issues discussed at the meeting was the establishment of a regional judicial training institution where judges, magistrates and the courts' support staff would participate in training and skills development programmes. The popular view amongst the members of the Commission is that the respective judiciaries should try to establish and strengthen their own national judicial training institutions, rather than attempting to establish a regional judicial training institute.

2.3 This view was adopted after thorough consideration of the various problems involved in the establishment of such a structure: Problems such as finding a location for the institute, having consistent and sustainable donor funding, establishing an administrative body which will run the institution and the permanent staff to provide the training, to state but a few.

2.4 Wherefore it was resolved that the various heads of the various judicial training institutions in the region should come together for discussions on how best the Commission and various judiciaries can assist each other, as well as discussions on how they can assist those judiciaries which are yet to establish their own training institutions.

3. The Discussions

3.1 The first two working sessions of the conference dealt with *the State of Judicial Training Institutions in the region* more particularly, *presentations by various participants on the status of each judiciary's training programmes and a plenary discussion on identifying the strengths and*

shortfalls of the institutions and/or programmes. Both topics are essential to the improvement in the delivery of justice and in achieving optimum levels in the standards of expertise amongst the judicial and non-judicial officers of the courts. The discussions on the next day were a continuation of the first day's theme with specific regard to the drafting of a report, which report shall be presented to the SAJC at their annual general meeting in Namibia

3.2 The discussions on the state of and the challenges in the establishment of a national judicial training institute revealed the following common themes and / or key issues emerged:

3.2.1 Funding

Budgetary constraints often determine whether the training objective is successfully achieved by the various training institutions or programmes.

3.2.2 Support

There is insufficient material and financial support made available to the training institutions by the key role players, i.e. the Minister of Justice, the Chief Justice, government, etc.

3.2.3 Appointments

In most countries, the appointment of judges and/or magistrates is not done at regular intervals. The number of appointments made is also small making it impossible to put on induction training programmes for such appointees – this may lead to institutions with little or no work to do.

3.2.4 The Judiciary and the Executive

The constant tension between the judiciary and the executive adversely affects the smooth execution of judicial education programmes – the judiciary should explore ways to keep the interference from the executive to a bare minimum.

3.2.5 Independence

The independence of judicial training institutions needs to be recognised. This may be achieved through constitutive legislation as in the case of

Zimbabwe or simply through other legal instruments such as a Memorandum of Understanding with the Executive.

3.2.6 The Institution's controlling body

Although independent, the training institutions would be expected to implement measures through which stakeholder participation is ensured. An inclusive controlling executive board should be constituted, chaired by the Chief Justice, and drawing its membership from the stakeholders, including representatives of the Executive. Through this controlling executive board, checks and balances would be imposed on the training institutions.

3.2.7 The human resources element

It was generally recognised that there is a serious shortage of sufficiently skilled facilitators and lecturers to carry out the training programmes.

3.2.8 The training institution needs a wider mandate.

Institutions need a broader mandate to conduct the training of judges and/or magistrates, as well as clerks of the courts, interpreters, paralegals, and sheriffs of the courts. This may very well be possible because most of the judiciaries are small enough to achieve this. In return, this will ensure that there is optimum use of the available resources.

3.2.9 Training of persons who take on acting appointments

The training of legal practitioners who take on appointments as acting judges and/or magistrates needs to be more systematic.

The training of such legal practitioners needs to be designed with the aim of bringing them up to par with the standard of work produced by the permanent judges and magistrates. This would be applicable to those instances where:

(a) Retired judges/magistrates, advocates and attorneys are appointed as acting magistrates / judges in their own countries.

(b) Retired judges and magistrates, as well as those who are still on the bench, advocates and attorneys are appointed as acting magistrates / judges in a neighbouring country.

4. The Proposed Solutions

4.1 The starting point to achieving best practices, the rule of law and capacity building would be to create institutions, which have relatively similar structures, even though curriculum may differ. The institutions should have certain basic generic standards, based on certain similar and common standards, and this would go a long way to resolving some of the matters which were raised and during this conference, more particularly as mentioned below.

4.2 By creating institutions based on certain basic common standards, training programmes can be successfully coordinated through out the region. The smaller groups of trainees would be able to travel to wherever a particular training programme may be offered within the region because the programmes are structured in such a manner that they cover the subject matter in which they require the training.

4.3 A group of resource persons must be established to administer and coordinate the training programmes. This group would meet regularly, as a coordinating body, to discuss training details, curriculum, needs and other related matters, which may arise. This coordinating committee will conduct training programmes or projects jointly in the region, with the support of the SAJC.

4.4 Such regional cooperation will be instrumental to the implementation of the proposed solutions.

4.5 The coordinated effort will ensure that the approaching of donors for funding easier. This will also put pressure on the individual governments to streamline their efforts to ensure that judicial education achieves what it sets out to do for the judiciary.

4.6 As a basic minimum, every judiciary should have a training institution, committee or body.

4.7 The structure of the judicial training institution should be such that it includes all judicial officers, other stakeholders in the legal profession and the courts support or administrative staff.

4.8 Each institution should strive to achieve a set minimum standard to ensure that all parties trained at such institutions adhere to a set of basic standard requirements, in line with the quality of work that they will be required to produce in the fulfilment of their duties and functions.

4.9 The ideal would be a judicial training institution with a statutory basis to its existence.

This would guarantee the institution's independence and protect its independence.

4.10 If such a statutory basis is unachievable, the next step would be to harmonise the national curriculum with that of the neighbouring judiciaries.

4.11 A trans-border curriculum should be developed in each judicial training institution, supplemented by a more specific curriculum to cover the subject matter, which is peculiar to certain judiciaries and not to some.

- **Such trans-border curricula would go a long way in the ultimate achievement of a harmonised curriculum system in the region.**

- **This in turn will ensure that the desired cooperative initiative is achieved amongst the judicial training institutions.**

4.12 The institution must be free of interference from the executive, be independent and enjoy perpetual existence, which may all be achieved and protected by means of:

- **National policies to the said effect;**

- **Policies that are sure to pave the way to the eventual enactment of judicial education legislation; and**

- **Judicial education legislation to entrench such policies.**

4.13 The Portuguese speaking countries, notwithstanding their civil law systems and already existing regional training institutes, will remain part of this cooperative initiative.

- The other institutions in the region can learn from the structure that already exists in these countries' and vice versa.

- These countries have set a precedent upon which this proposed cooperative initiative could be modelled and then adapted to give us the required outcome.

4.14 Enhanced communication systems and networks would enable the initiative to achieve the desired outcome.

4.15 All the existing institutions in the region should establish a system of exchanging training materials and workbooks. Such materials can be used, edited and adapted to suit the relevant legal system and judicial structure. This would be done in aid of –

- harmonising the curricula; and
- assisting, as guidelines and precedents upon which their own institutions can be modelled, those judiciaries which are yet to establish an independent training institution

5. Conclusion

5.1 The judicial training institutions in the region will require the support of the SAJC if this cooperative initiative is to be a success. The support should include, amongst other things, assistance in the lobbying for donor funding to: (a) establish institutions where none exist, (b) set up libraries, (c) print training materials, and (d) generally to ensure that the required resources are available to the training officers.

5.2 The Conference expressed its gratitude to the SAJC and the Constitutional Court of South Africa for organising this Conference and allowing them an opportunity to exchange views on how to improve the state of judicial training and education in the region, and hope that the SAJC will continue

