

Evaluating the efficiency of the South African judicial system

Executive Summary

A country's judicial system is a critical component of governance. It spurs development and is crucial to the functioning of an economy. Unfortunately, South Africa's judicial system is prone to various dysfunctions, including congestions and backlogs, delays and lack of incentives to influence productivity. This state of affairs can impede citizens' access to justice. While efforts have been made to address the challenges that plague the South African judicial system, challenges persist.

The purpose of this study was to assess the level of efficiency characterising the South African judicial system. The Financial and Fiscal Commission found that the judiciary has experienced a deterioration in the number of resolved cases, an expansion of cases in backlog, and longer case processing times. Results from the data envelopment analysis (DEA) confirm the inefficiency of the courts. The Commission's recommendations, which aim to enhance efficiency, call for an audit to identify the extent of shortages in the number of judges and magistrates, the need for appropriate quality control measures to manage the performance of judges and magistrates, and the introduction of methods to leverage existing technology, including standardising the use of electronic systems across the judicial system.

Background

A country's judicial system is a critical component of governance. It spurs development and is crucial to the functioning of an economy. The importance of a well-functioning judiciary lies in its ability to create an environment that is stable, predictable and attractive for investors and firms. To this end, the protection of property rights and strong contract enforcement are key elements that make for a stable, less risky business environment. Hence, a positive association exists between the performance of a

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The vision of the Commission is to provide influential advice for equitable, efficient and sustainable intergovernmental fiscal relations between national, provincial and local spheres of government. This relates to the equitable division of government revenue among three spheres of government and to the related service delivery of public services to South Africans.

Through focused research, the Commission aims to provide proactive, expert and independent advice on promoting the intergovernmental fiscal relations system using evidence-based policy analysis to ensure the realisation of constitutional values. The Commission reports directly to both Parliament and the provincial legislatures, who hold government institutions to account. Government must respond to the Commission's recommendations and the extent to which they will be implemented at the tabling of the annual national budget in February each year.

The Commission consists of commissioners appointed by the President: the Chairperson and Deputy Chairperson, three representatives of provinces, two representatives of organised local government and two other persons. The Commission pledges its commitment to the betterment of South Africa and South Africans in the execution of its duties.

country’s judicial system and its economic growth, investment activities, the availability of financing and the size of firms. Unfortunately, South Africa’s judicial system is prone to various dysfunctions, including congestions and backlogs, delays and a lack of incentives to influence productivity. This state of affairs can impede citizens’ access to justice.

As reflected in the National Development Plan (NDP), South Africa is aware of the significance of an efficient and productive judicial system. As a result, efforts have been made to address the challenges that plague the South African judicial system. This includes the need for judicial reform. As part of the Commission’s Submission for the 2025/26 Division of Revenue, research was undertaken to assess progress in improving the efficiency of South African courts as a result of the implementation of the judicial reform stipulated in the NDP. The analysis focused on two years: 2016/17 and 2022/23. The selection of the years 2016 and 2023 allowed for an evaluation of progress prior to and after the implementation of strategic reforms within the judicial system as recommended in the NDP.

Research findings

In undertaking the analysis, lessons were extracted from country reforms, a trend analysis of the performance of the South African judicial system was undertaken and the DEA technique was employed. The findings are arranged by method.

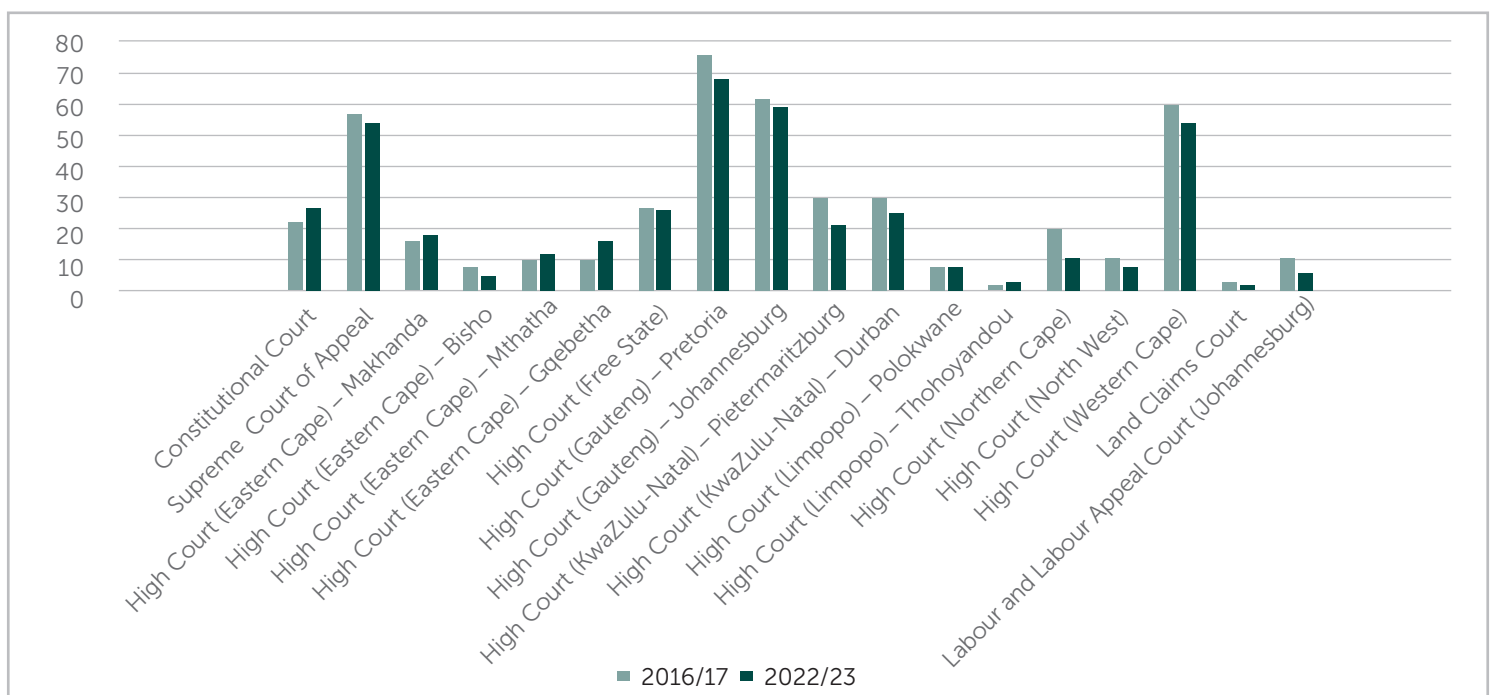
1. Lessons from country reforms

An analysis of reforms to the judicial systems of four countries (Kenya, Nigeria, Norway and Portugal) was undertaken to identify successful reforms from other countries from which South Africa can learn as it reforms its own system. The introduction of high-speed compatible technology via information and communication technology (ICT) services is a key findings from the Commission’s analysis. This forms an integral part of the operations in the judiciary and is a catalyst for improving administration efficiency in the courts and reducing the duration of court proceedings. The Kenyan, Norwegian and Portuguese case studies emphasise this aspect.

2. Trends analysis of performance

Figure 1 illustrates changes in the number of judges in superior courts. Generally, the number of judges was moderate across all superior courts assessed. The Gauteng High Court division recorded a downward change in the number of judges from 138 in 2016/17 to 127 in 2022/23.

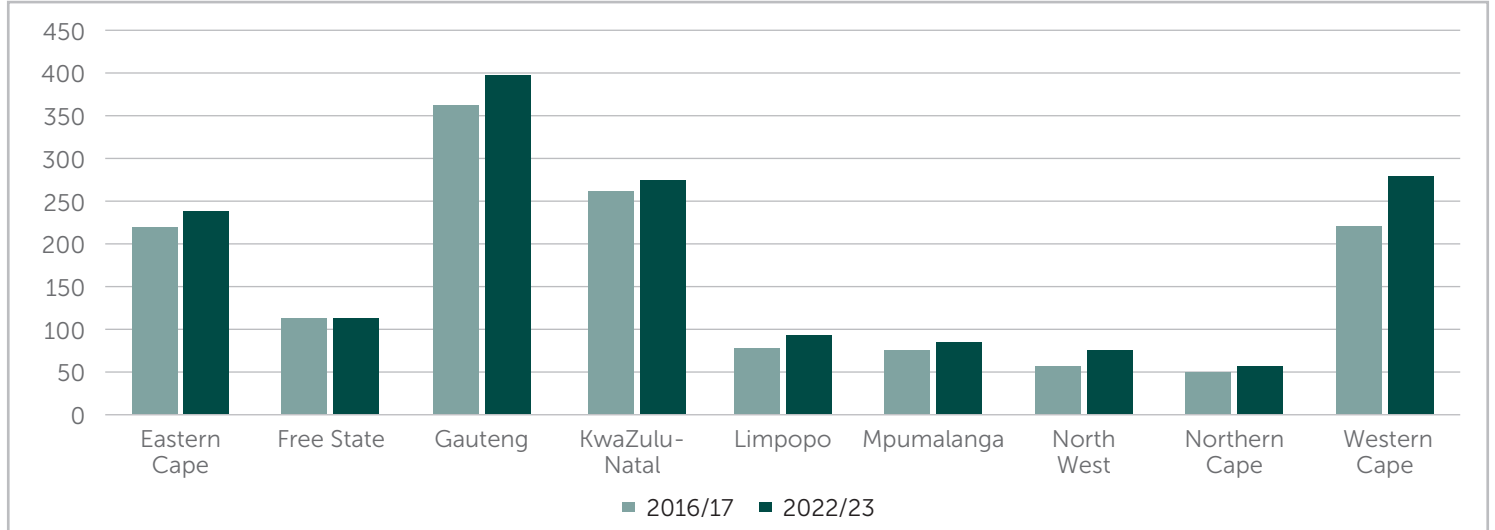
Figure 1. Number of judges in superior courts in 2016/17 and 2022/23



Source: Commission’s compilation based on data from the Office of the Chief Justice and the Department of Justice and Constitutional Development.

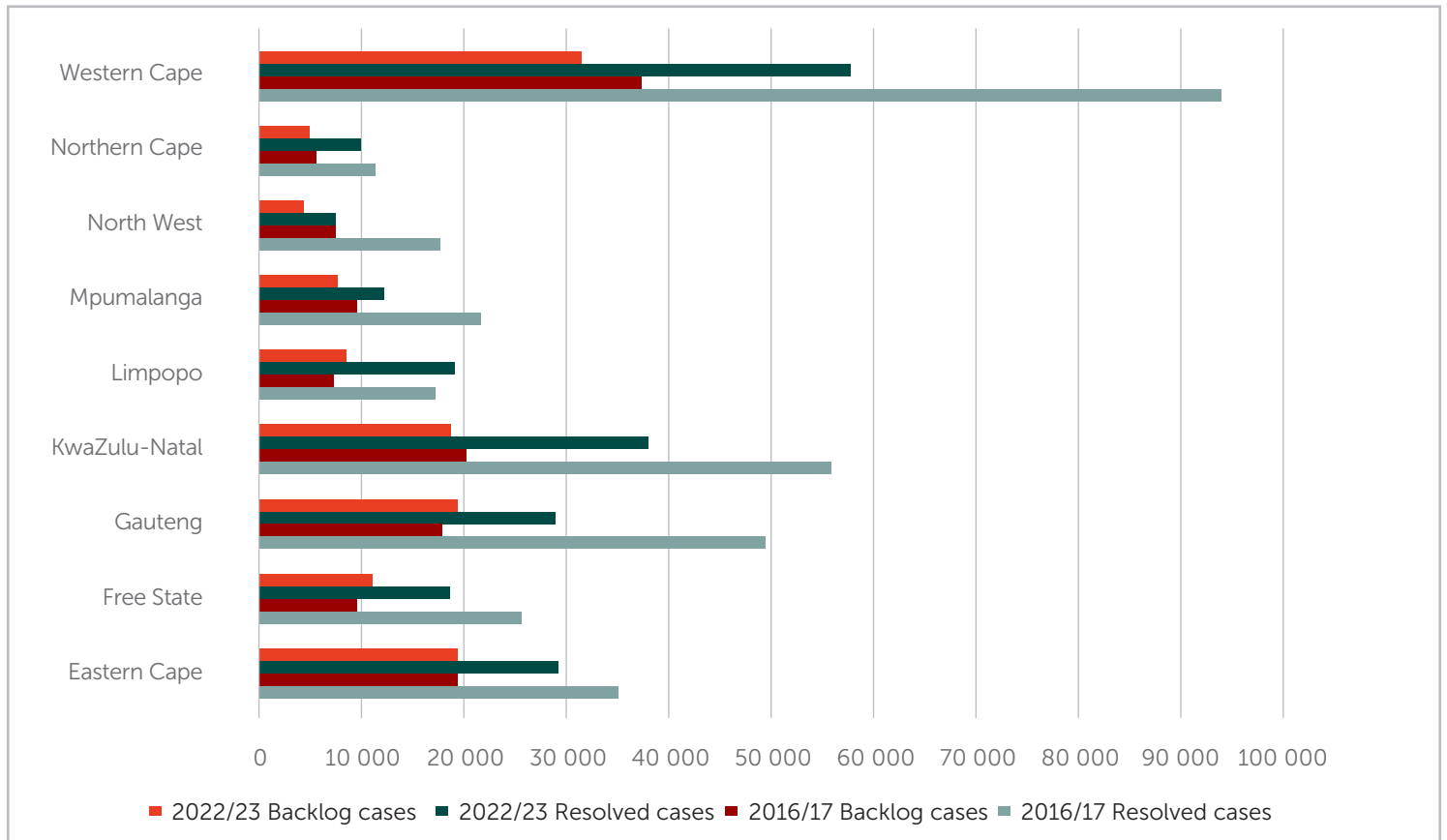
In terms of magistrates' courts, Figure 2 shows that the number of magistrates was relatively low across all provinces, with the Free State experiencing a decline of 3 per cent in the number of magistrates from 2016/17 to 2022/23. The challenge of the dire shortage of judges and magistrates across the court system is highlighted in the 2021/22 Annual Judiciary Report. Given the labour-intensive nature of the judiciary, the low number of magistrates is a likely contributor to the increasing number of backlog cases, as the number of backlog cases is about half the number of resolved cases across the different magistrates' courts (see Figure 2).

Figure 2. Number of magistrates in magistrates' courts by province, 2016/17 and 2022/23



Sources: Commission's compilation based on data from the Office of the Chief Justice and the Department of Justice and Constitutional Development.

Figure 3. Resolved and backlogged cases in magistrates' courts by province

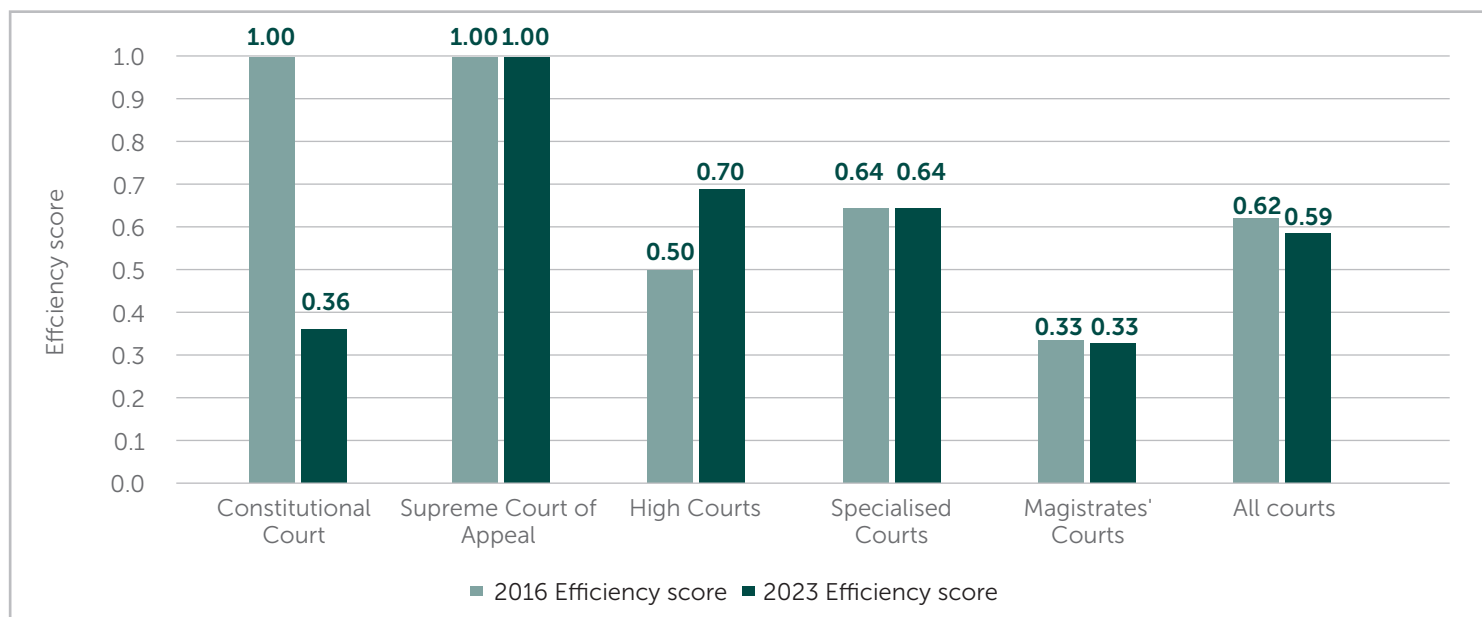


Sources: Commission's compilation based on data from the Office of the Chief Justice and the Department of Justice and Constitutional Development.

3. DEA efficiency analysis

The DEA was undertaken to confirm the state of efficiency of the South African judicial system. Figure 4 presents the efficiency scores by court category for 2016 and 2023, providing an overview of the South African courts. Overall, the efficiency of the courts declined in 2023 relative to 2016. The inefficiencies of the courts raise concerns about the utilisation of current resources and the quality of those resources, especially with respect to judges and magistrates as they are a key component in determining the outcomes of the courts. As shown in the scores, the Constitutional Court showed the largest reduction in efficiency between 2016 and 2023, while magistrates' courts are the most inefficient of all court types.

Figure 4. Efficiency scores by court category for 2016 and 2023



Sources: Efficiency scores based on Commission's computation using Stata.

Honing in on magistrate courts, Table 1 presents the efficiency scores by provincial division. According to the results, the Eastern Cape Division was the most inefficient, while the Western Cape Division was the most efficient in 2016. In 2023, the Western Cape Division, while showing a decline in efficiency, remained the most efficient relative to the other divisions. The Eastern Cape Division showed an improvement in its level of efficiency in 2023, with the North West showing a significant deterioration, becoming the most inefficient relative to the other divisions in 2023. Out of 307 magistrates' courts, only Chatsworth, Grabouw and Swellendam operated at their optimal level in the period studied. This level of performance is concerning due to the strategic position of magistrates' courts as first-instance courts. This means that the poor efficiency of magistrates' courts can potentially influence the efficiency of superior courts. These inefficiencies could be the result of inadequate or suboptimal utilisation of existing resources or deficiencies in the quality of resources. It is therefore advisable that the quality of all inputs be assessed, especially in relation to magistrates and judges who are critical to fulfilling the mandate of the judicial system.

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Table 1: Efficiency scores of magistrates' courts by province, 2016 and 2023

Provincial division	2016 VRS scores	2023 VRS scores
Eastern Cape Division	0.222	0.269
Free State Division	0.276	0.283
Gauteng Division	0.389	0.308
KwaZulu-Natal Division	0.295	0.312
Limpopo Division	0.258	0.352
Mpumalanga Division	0.327	0.249
North West Division	0.344	0.196
Northern Cape Division	0.278	0.307
Western Cape Division	0.626	0.574

Source: Commission's compilation (using Stata).

Conclusion and recommendations

The Commission made the following recommendations:

1. Given the low level of efficiency across South African courts, the Office of the Chief Justice and the Department of Justice and Constitutional Development should undertake an audit to identify the extent of shortages in the number of judges and magistrates. Alongside this, an appropriate quality control framework should be devised to manage the performance of this critical input in the judicial system.
2. As a means of enhancing the efficiency of the judiciary, the Office of the Chief Justice and the Department of Justice and Constitutional Development must introduce methods to leverage existing technology. At a minimum, this should include standardising the use of electronic systems for registering cases, tracking case progress, record keeping and report writing.

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