

**Speech by the Deputy Minister of Justice and Constitutional Development, The Hon JH Jeffery, MP during the Debate on Vote 24: Justice and Constitutional Development National Assembly**

16 Jul 2014

Deputy Speaker / Chairperson

Honourable Minister

Members of the Judiciary

Honourable Members

Various departmental heads and representatives Distinguished guests

Colleagues, friends, ladies and gentlemen,

Former Chief Justice Sandile Ngcobo once outlined the characteristics of an accessible justice system: it is a justice system that is just in the results that it delivers; that is fair to all litigants regardless of their station in life; that is inexpensive; that delivers results in the shortest possible time; that is understood by the people who use it; that responds to their needs; and that is effective.

Justice has in the past been a commodity which was accessible only to the state and the privileged few, to the exclusion and detriment of the majority of our people, the poor and the marginalised.

Fortunately, as Government's 20 Year Review describes, we have emerged from a deeply divided and violent past into a vibrant democracy. We think of the words our Nobel Prize-winning author and anti-apartheid activist, Nadine Gordimer, who sadly passed away at the weekend. She once said: "Time is change, we measure its passing by how much things alter."

Our society has changed over the past 20 years. We promised that we would create a better life for our people and we have done so.

Access to justice is a vital component of a vibrant democracy and it is pivotal to the rule of law. Access to justice can in the first instance be effectively achieved only if all prospective litigants have an unfettered right to bring a case before a court and if they are aware of their rights. A recent survey conducted by the Foundation for Human Rights concludes, alarmingly, that only 46% of South Africans have ever heard of the Constitution or the Bill of Rights and a mere 10% of people have read the Constitution or had it read to them.

Improving access to justice for all and enhancing the rule of law have been critical priorities for Government and consequently, in the last two decades, specific initiatives were undertaken to extend access to justice to the 90% of the population who had previously been excluded.

Former Chief Justice Ngcobo said that an accessible justice system must respond to the needs of the people. In this regard, we have fundamentally improved access to justice through the creation of new courts, particularly in previously disadvantaged communities.

Other characteristics of an accessible justice system, in the words of Ngcobo, are that it must be inexpensive, easy to understand and deliver results speedily. This is exactly what our Small Claims Courts do. Small Claims Courts are a speedy, simple and cost-effective way to resolve disputes. These courts have been a success story in the drive to make justice more accessible. In 1994 the Small Claims Courts were mostly in white and urban areas.

We currently have 301 Small Claim courts. Thirty Small Claims Courts were established in the last financial year and 8 Courts have been established since 1 April 2014.

Of the 30 courts which were established last year the overwhelming majority are situated in rural and traditionally black areas. Areas which now have Small Claims Courts include Msinga (KZN), Madikwe (NW), Peddie (EC), Clocolan (FS), KwaMhlanga (MP), Mutale (LP), Vanrhynsdorp (WC), Williston (NC) and Tsakane (GP), to name but a few.

The number of people enjoying the benefits of access to justice through Small Claims Courts has increased steadily. For example, if one looks at the size of the population in the areas within which the 30 new courts were established in 2013, it amounts to more than 2,8 million people. These are 2,8 million people who now have enhanced access to justice by having a forum available to them to resolve civil disputes free of charge.

The monetary jurisdiction of the Small Claims Courts was also increased earlier in this year from R12 000.00 to R15 000.00. The words "small claims" are somewhat misleading as R15 000 is, for the majority of our people, not a small amount and thus very much a "bread and butter" issue.

The Commissioners who preside in these courts are drawn from a pool of experienced legal professionals and academics, who work on a pro bono basis. I want to convey our sincere appreciation to each of the 1705 Commissioners countrywide, of whom 9 are magistrates - 1 of whom is a Chief Magistrate and 1 a Regional Court magistrate - and 189 Legal Aid SA lawyers, who make our Small Claims Courts a success and we urge other practitioners, magistrates and academics to make themselves available to serve as Commissioners.

New Small Claims Courts are continually being established and only 92 new Small Claims Courts are still needed to meet our target for every magisterial district to have a Small Claims Court. This year we will be focusing on improving the functioning of these courts and we also intend to conduct a comprehensive review of the Small Claims Court legislation which was drafted in 1984 - long before our progressive Constitution. I would also like to thank the Swiss Agency for Development and Corporation for their continued support of our Small Claims Court Project.

Chairperson, honourable Members,

As part of our quest for access to justice for all Legal Aid SA has over the past few years been revamped and remodelled to one of the best legal aid systems in the world. It has grown significantly and in many instances its performance is higher than the set targets. Where there were a total of only 79 501 matters dealt with in 1993/94, the number of total cases dealt with has grown dramatically to 736, 679 in 2012/13. We are also pleased to announce that the Legal Aid Bill will be introduced in Parliament this week.

Chairperson,

Many representations are made to Parliament for increased funding and for increasing staff. Where increased funding is not possible, institutions have to look at ways to deliver improved services within the allocation they receive.

The aim of Programme 5: Auxiliary and Associated Services is, amongst others, to fund transfer payments to the South African Human Rights Commission and the Office of the Public Protector. Where possible, there have been increases in funding. For example, the SAHRC budget has been increased from

R 119 million in 2013/14 to R128 million for 2014/15, while the budget for the Office of the Public Protector has been increased from R 199 million in 2013/14 to R 217 million for 2014/15.

I have noted the request made by the Public Protector to the Portfolio Committee for increased funding. Members will recall that the Office of the Public Protector was given significant increases in transfers in the recent past, up from R114 million in 2010/11, to R217 million in this financial year. The increases in transfers were mainly for growing the investigative capacity within the Office of the Public Protector. The harsh reality for all of us is that we face limited resources. Our national fiscus simply does not have a bottomless purse. We must all cut our coat according to our cloth.

I trust that the Public Protector will ensure that given the limited resources, that there will be no overlap in investigations between her office and other institutions such as the Public Service Commission and the South African Human Rights Commission. I have noted that 24 642 reports were finalised by the Public Protector in the last financial year. I hope that the Annual Report will reflect full details as to what the nature of these complaints were, so that Government can look at ways of systemically improving its service delivery. From the side of the Department of Justice we are eager to see proposals from the Public Protector on how we can eliminate whatever the problems, that are giving rise to the complaints about our Department. I trust that these kind of reports can be made available to the relevant Portfolio Committees in Parliament to assist them with their oversight work.

Chairperson, Honourable Members,

The sheriff's profession is another one of the critical components of the justice system and contributes immensely to the quality and accessibility of justice. One of the major focuses of government's transformation agenda was the sheriff's profession, which at the time was the domain of mostly white males. Significant progress has since been made with regards to transforming the profession. According to the South African Board for Sheriffs as at 1 October last year 51% of the current 348 sheriffs' are black.

Although we have also made strides in making the sheriffs' profession more efficient and professional, more needs to be done. The sheriff's role goes beyond that of just being a mere messenger. Central to the new Code of Conduct for sheriffs is the requirement for all sheriffs to constantly hold in high regard the rights of all citizens in performing their functions. In line with this, sections of the Sheriffs' Amendment Act which have not yet been put into operation, along with the new regulations dealing with the sheriffs' profession, will come into operation on the 18th of this month, in other words, later this week.

One of the other pieces of legislation that needs to be finalised by Parliament is the Traditional Courts Bill. The Bill sustained criticism from certain quarters when it was being considered by the National Council of Provinces and it subsequently lapsed. It was unfortunate that the critics did not seek to propose amendments to the Bill to address their concerns, but rather sought to attack the Bill as a whole.

The crucial point that cannot be overlooked is that Traditional Courts exist in many parts of the country and provide access to dispute resolution to many people to whom the current court system is alien and expensive. These courts need to be brought in line with the Constitution. Further work is being done on the Bill to address concerns raised and I trust when the Bill is reintroduced into Parliament all stakeholders will contribute in ensuring that the legislative framework is strengthened.

Chairperson, Honourable Members,

The National Development Plan states that the “Most prospective litigants do not possess the necessary legal skills or finances to institute or defend a case. Affordable legal representation is a critical and integral part of access to justice.” I have already indicated how we have transformed legal aid services, but that is only one pillar of legal representation. There also needs to be transformation in the provision of private legal representation and services.

Our Department is fully aware of this and for this reason we have the Legal Practice Bill. The reality is that lawyers’ fees, restrict access to justice for the poor and even the “not-so-poor,” in other words persons who earn more than the means test used by Legal Aid SA and who therefore do not qualify for legal aid.

We are hoping that the Legal Practice Bill will make legal services more affordable and more accessible to our people and that it will also facilitate entry into the legal profession for people who were previously excluded from it.

Our legal profession is still largely untransformed. Looking at the attorneys’ profession, from figures obtained from the Law Society of South Africa, of the more than 22 000 practicing attorneys in the country, the majority – namely 14 189 - are white and only 4930 are African. Whilst the number of graduates last year was majority African, at 2039 as opposed to 1092 white graduates, it is still white graduates who obtain the majority of articles of clerkship. There were 1000 African candidate attorneys to 1048 white candidate attorneys for the period 1 April 2013 to 1 April 2014. This is an improvement on previous years, but still does not reflect the position with regard to graduates. Similarly, amongst the largest attorneys’ firms in the country there is not one that is predominately African owned – if one looks at the titles of the so-called big 5 law firms, one will not spot a single African surname in the title. Can this still be the situation 20 years after the end of apartheid?

With regards to gender representation, it appears as if the attorneys’ profession is making progress, as more female attorneys (167) than male attorneys (126) were admitted to the profession last year.

However, the advocates’ profession is still a matter of concern when it comes to gender. According to the race and gender statistics of the General Council of the Bar of South Africa, only a quarter (645) of our country’s total 2571 advocates at the Bar are female. Of these only 4,5% (116) are African females. Of the silks, or senior counsel, only 27 are female, of which only 4 are African. That is less than 1% of our country’s 451 senior counsel. This is a concern, particularly since many of our judges come from the ranks of the advocates’ profession.

Chairperson, I conclude,

It is important that each of the above areas of our work is viewed in the context of the Manifesto of the ruling party, Government’s Programme of Action and the National Development Plan.

Ultimately everything we do should be to improve the lives of our people. Let all of us here today, as members of the Executive and the Legislature be mindful of these few lines from the poem “Freedom” by poet Afzal Moolla:

“Today we reaffirm, the promise of freedom.  
From want.  
From hunger.  
From eyes without promise.  
Today we pledge.  
To stand firm.

To keep the pressure turned on.  
To remind those in the corridors of power,  
that we the people need to savour the fruits of the tree of freedom.”

Chairperson, Honourable Members,

Freedom under a Constitution is only meaningful if people are free from poverty and inequality, free from injustice, free from hunger and free to exercise their rights. We therefore call upon this House to support the budget vote. The budget which is before this House today will, no doubt, allow our Department to help our people to exercise their rights and to further savour the fruits of the tree of freedom.

As Cicero said: “Let the welfare of the people be the ultimate law.”

I thank you.

Issued by: [Department of Justice and Constitutional Development](#)