



**JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
REPUBLIC OF SOUTH AFRICA**

**Budget Vote Speech by Mr Andries Nel, MP  
Deputy Minister of Justice and Constitutional Development,  
On Wednesday, 24 June 2009,  
National Assembly,  
Parliament**

Speaker;

Honourable Minister;

Honourable Members;

Distinguished Guests;

Comrades and Friends;

Ladies and Gentlemen;

As I stand here to participate in this policy debate, I want to reiterate that our programmes, as the Department of Justice and Constitutional Development, the institutions we created, the legislation we have promulgated and our judicial system are intended to serve the purpose of expanding the frontiers of freedom and the fulfillment of all the people of South Africa.

The challenge for all of us is to make certain that we deliver on the promises of our Constitution - to build a South Africa that belongs to all who live in it.

That, Honourable Members, is our national covenant – a covenant with one another as citizens of this country.

Speaker,

The Constitution establishes certain important Institutions designed to provide meaningful support for our constitutional democracy. Section 181(1) of the Constitution contained in Chapter 9 lists six important institutions. The Chapter 9 Institutions functionally linked to the Justice and Constitutional Development portfolio are the Public Protector, the South African Human Rights Commission and the Commission for Gender Equality.

The Department, enjoined by section 181(3) of the Constitution, continued to provide assistance to these Institutions in order to ensure their independence and effectiveness. Financial assistance was provided to the South African Human Rights Commission and the Public Protector in meeting their obligations of upgrading their personnel in terms of the Occupation Specific Dispensation. In the case of the Commission for Gender Equality, assistance was sought from the Department in respect of their financial arrangements. A senior official of the Department was seconded to the Commission to act as Chief Financial Officer. In this regard, several mechanisms were put in place to address some of the challenges faced by the CGE. These include financial policy development and implementation, budget management and financial reporting, human resource issues and the alignment of the programmatic work of the institution.

The Chapter 9 Institutions need to always be viewed, examined or reviewed within the historical context of the legacy of our oppressive and discriminatory past and as products of our negotiated settlement. In this regard I look forward to continuing the engagement with Parliament on the review of

Chapter 9 and Associated Institutions with a view to making concrete recommendations on their effectiveness in a dynamic and evolving constitutional democracy.

I would like to express my appreciation to Commissioners in the South African Human Rights Commission, as well as the Public Protector whose terms are coming to an end. These men and women have laid an excellent foundation for the new Commissioners and Public Protector, who will be appointed by the President of the Republic during this financial year. Three vacancies have also arisen in the Commission for Gender Equality, including that of the Chairperson.

## **Law Reform**

Honourable Members,

I also wish to recognise the work done by the South African Law Reform Commission and the Rules Board for Courts of Law in their respective law reform and rule-making mandates. Members would be interested to know that one of the key projects of the Law Reform Commission relates to the investigation into the compliance and consistency of our legislation with the Constitution. In this process legislation which is not consistent with the Constitution and redundant and obsolete provisions on the statute book are identified and government departments consulted to verify these provisions. To indicate the magnitude of this exercise which is likely to take some time to complete, more than 3 000 Acts administered by the national departments are being analysed, this includes 385 statutes administered by the Department of Justice and Constitutional Development, 218 statutes administered by the Department of Transport, and 624 statutes administered by National Treasury. One of the significant rules to be finalised by the Rules Board are the rules on the Promotion of Administrative Justice Act, 2000 (PAJA) and Promotion of Access to Information Act, 2000 (PAIA), which are

the cornerstone of transformation and access to justice. The Rules Board, in conjunction with the Department and the South African Law Reform Commission will soon commence with the review of the civil justice system to establish an accessible and transformed civil justice system.

### **Small Claims Courts**

As part of our programme to enhance access to quality, affordable, prompt, efficient and effective justice, we will continue to strengthen the capacity in our Small Claims Courts. The improvement of the functioning of the Small Claims Courts is therefore one of our key priority areas. The Small Claims Courts constitute an inexpensive tool that was created to settle minor civil disputes (currently for claims under R7000) in an informal manner. We currently have 188 Small Claims Courts established, and it is our intention to gradually roll out it to cover all the magisterial districts. In this regard, Government would like to extend our sincere appreciation to the legal practitioners who serve as Commissioners for Small Claims, for their invaluable service as they provide their services after hours, on a voluntary basis, and without remuneration.

The Department, in partnership with representatives of the legal fraternity and the Swiss Agency for Development and Cooperation, and with a view to further strengthen the capacity in our Courts, is in the process of finalising (within the next three months) Manuals for Commissioners for Small Claims and for Court Officials, which will followed by training programmes in conjunction with Justice College.

### **Masters Offices**

The Masters' Offices play an important role in the social and economic lives of our people and it is therefore crucial that we ensure that they that they are accessible and efficient so that those, who are entitled to this service, receive it without undue delays.

In this regard, I am pleased to announce that the management and administration of the Guardian's Fund has been automated and the erstwhile manual system is in the final stages of being phased out. The Master's Office, Pretoria, was the last office to be automated. The computerisation of the administration of the Guardian's Fund will allow for more accurate reporting on the activities of the Fund at the push of a button. Of great importance, is that it will also reduce the opportunity to manipulate the system for purposes of committing fraud and corruption.

As part of the right-sizing project initiated a few years ago in order to increase capacity, 600 new posts were created and filled nationally in the last two years. Many of these were filled during the course of the year under review. There are, however, still numerous vacancies which must and will be filled in so far as the budget allows.

We also hope to finalise a legislative framework relating to some of the services which are rendered by the Masters of the High Courts, most notably the revision of the law of insolvency. The current legislative framework relating to the winding up of insolvent estates is outdated and requires urgent revision. Although it has been adapted over the years, our Insolvency Act dates back to 1936.

One of the medium to long term projects of the Masters is the roll-out of the Guardian's Fund services to all 14 offices. Of the 14 Masters' offices, only six

offer Guardian's Fund services. Johannesburg, Durban and Mafikeng are being targeted for roll-out this year.

Another medium to long term project is the establishment of a Masters' office in Mpumalanga. Mpumalanga is the only province which does not yet have a Master's office of its own. This establishment of an office in the province will ensure that people in that province will not have to travel long distances to access these services.

### **Legal Aid**

Honourable Speaker,

During this period the Legal Aid Board extended its national footprint by 3 new Justice Centres (in Botshabelo, Bellville and Soshanguve) to 62 Justice Centres countrywide and by 8 Satellite Offices (mostly in rural areas) to 55 Satellite Offices.

Although it is clear that there is great demand for civil legal aid services in our communities, the limited capacity to render civil legal aid work remains one of our greatest challenges. For example, only 7% (30,309) of new matters taken on by the Legal Aid Board during this period were civil matters and the rest (404,613) were criminal matters.

The LAB has prioritised the representation of children for both civil and criminal matters. 10.5% (45,268) of new matters taken on by the Legal Aid Board were on behalf of children. As a result, dedicated children's units have been established at a number of the Justice Centres to ensure specialised representation for children.

## **Sheriffs' Profession**

Honourable Members,

As you are no doubt aware, the sheriff's profession is one of the important role players in the civil justice system. The transformation of the sheriffs' sector will become a focal point of the review of the civil justice system.

The Sheriffs' profession, as an institution entrusted with the service and execution of court process, is a vital link in the civil justice chain. In the apartheid era Sheriffs, like the rest of the enforcement agencies of the time, enforced the orders of courts which were perceived illegitimate in the eyes of the majority of the people. Since the inception of democracy they have assumed a very important role as a vital interface between the justice system and the public. Without a Sheriff, it would be impossible to secure the attendance of the defendants in court or have the court decisions and orders enforced. It is therefore important that sheriffs themselves are legitimate and exercise their powers in terms of the law and the Constitution. The Department published in December 2008 amended Regulations providing for a new transparent and objective appointment mechanism and a training programme for all Sheriffs. Subsequent to the finalisation of the Regulations, we have advertised 96 vacant offices for appointment of sheriffs. The substantial vacant offices provide the opportunity to change the historical imbalances which have resulted in the concentration of white sheriffs in the affluent cities and suburbs, and black sheriffs to the under developed remote rural areas.

Also significant is the finalisation and publication of the rules of courts that allow for promoting a competitive profession. These rules enable the Minister to appoint, in deserving areas, two or more Sheriffs. There are in all, 14 areas identified as possible competition sites and which will be investigated by the Department and the Board for Sheriffs. Firstly this exercise will provide an

opportunity for the creation of additional posts which will be filled by candidates whose appointments will advance transformation, and secondly competition will enhance efficiency and accountability. All to be investigated is the sub division of large areas in the metropolitan magisterial areas into smaller, effective and manageable offices where a number of sheriffs will be appointed to ensure an equitable distribution of work.

The legal requirement introduced into law that sheriffs must attend a compulsory training course will bring enhanced efficiency and ensure compliance and respect for constitutional values to a profession characterised by past abuse and disrespect of civil liberties and human rights.

Another big challenge facing service of court processes relates to the non economic viability of some of the areas, mainly in rural villages and former Black townships which do not attract suitable applicants who are interested in being appointed as sheriffs. This limits access to justice for the communities living in these areas. The Department, in conjunction with the Board for Sheriffs is considering appropriate measures, including the possibility of the designation of Registrars and Clerks of Courts to serve court processes in certain designated areas to provide services to marginalised communities. I wish to thank the chairperson of the Board, Judge Nathan Erasmus and his fellow Board members for their contribution in the transformation of the sector which is still largely untransformed and is not reflective of the social dynamics of a democratic society.

### **Legislative Development**

Honourable Members,

Significant strides have been made in developing legislation in respect of a number of important areas, including the protection of vulnerable groups, in particular, women and children. The Department intends finalising four very

important outstanding pieces of legislation this year. These are the Traditional Courts Bill, the Criminal Law (Forensic Procedures) Amendment Bill and the Superior Courts Bill together with a Constitution Amendment Bill.

The Traditional Courts Bill is intended to regulate anew the role and functions of traditional leaders in the administration of justice in accordance with Constitutional imperatives. In finalising this Bill, extensive work is required from the Department, which is represented on a Subcommittee appointed by the Portfolio Committee on Justice and Constitutional Development, consisting of representatives of various groups. The Department will, during this session of Parliament, be required to brief the Committees and Provincial Legislatures, when requested. This Bill will ensure improved access to justice.

In conclusion, I would like to thank the Minister for his leadership, guidance and wisdom.

I would also like to associate myself with the Minister in thanking the Chairperson of the Portfolio Committee, Advocate Ngoako Ramatlhodi and committee members for their role in finalising our budget. We look forward to strengthening our working relationships with the chairperson and the committee. I would also like to thank the Director General, Adv Menzi Simelane and the staff in the department.

Chairperson, Honourable Members, I urge this House to whole heartedly and unequivocally support the Budget of the Department of Justice and Constitutional Development for this financial year.

I thank you.