



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

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

Speaker;

Honourable Members;

Distinguished Guests;

Comrades and Friends;

Ladies and Gentlemen;

Yesterday, 15 years ago, South Africa was welcomed back by the United Nations Organization (UNO) to the international family of nations. On the 23 of June 1994, the General Assembly of the United Nations invited South Africa to resume participation in its activities after decades of international isolation as a pariah state.

Today South Africa is a democratic state that respects the rights of all her people and the supremacy of the constitution and the rule of law. Today, working together we continue to seek ways to improve the lives of the people of this country.

Today I present to this House the budget of the Department of Justice and Constitutional Development. As I do so, I would like to assure South Africans that we remain committed to the ideals contained in our Constitution. Accordingly, we continue to seek ways to utilise effectively the resources at our disposal so that we make a positive impact on the lives of all South Africans.

Combating Crime

Speaker,

There is a constitutional obligation on all spheres of government and all organs of state within each sphere to cooperate in mutual trust and good faith and collectively fight crime. As one of my primary challenges, I will seek to restore mutual trust and good faith between the National Prosecuting Authority (NPA) and the other law enforcement agencies. Criminals should not escape because of the infighting between law enforcement agencies. Therefore, I envisage taking this matter up in the Criminal Justice Cluster so that we can come up with concrete and workable solutions to create a spirit of cooperation in the fight against crime.

Last year was marked by deliberations regarding the relocation and disbandment of the Directorate of Special Operations (DSO). We wish to commend those individuals who continued to fulfil their duties diligently and effectively despite the uncertain environment they worked in during this period. We wish those DSO members who have already moved on, success in their endeavours. We are also encouraged by the commitment shown by those who have agreed to transfer to the Directorate of Priority Crime Investigations (DPCI) to make a success of the new unit under the South African Police Service (SAPS).

The NPA, DSO and NPA Task Team will focus on ensuring that the transition to the new Directorate of Organised Crime in the SAPS is smooth and without prejudice to the successful investigation and prosecution of cases.

In the past year the Asset Forfeiture Unit (AFU) made a significant impact in the fight against crime. The AFU had a good year in terms of the value of its cases and exceeded most of its targets. It had the best year ever for the number and value of deposits into the Criminal Assets Recovery Account (CARA) at R66m, the highest ever number of seizures and total orders, the highest ever numbers for forfeitures applied for and forfeitures completed. In this regard our message is consistently that we will relentlessly pursue those who organize crime and hope to benefit from it.

Honourable Members,

The Honourable Members will also be reminded of the work of the Cluster in ensuring the efficiency of the Criminal Justice System. A lot of work has been done in the Review of the Criminal Justice System in conducting initial research of the changes required. The results of this research will be made available very soon. My Department, together with the Cluster, will as required, commence implementing some of the recommendations arising from the Review. In this regard, we will also push ahead with the processing of the Bill dealing with the collection and analysis of fingerprints and DNA. This Bill is currently before Parliament.

The Prevention and Combating of Trafficking in Persons Bill has been published for comment. The Bill is intended to give effect to the South African Law Reform Commission's legislative recommendations relating to trafficking in persons. It will offer protection to the most vulnerable in our society, against highly organised crime syndicates. The current law is fragmented with

low reporting and conviction rates. The Bill also gives effect to our international obligations as a signatory to the United Nations Protocol to prevent, suppress and punish trafficking in persons, especially women and children. The Department has published a modified version of the Commission's Bill in the *Government Gazette*. The Department is currently engaging in a consultation process, and the closing date for comments was 15 June 2009.

Access to Justice

Honourable Members,

We take very seriously our obligation to ensure that access to justice does not become the sole preserve of those that can afford to hire the services of lawyers. In fact our Bills Rights provides that: *"Everyone is equal before the law and has the right to equal protection and benefit of the law."* As a Department we are therefore continuously seeking innovative ways to ensure that all South Africans have access to justice. Failure to improve access to justice for all, especially the indigent, would be an unforgivable betrayal of the poor and vulnerable in this country. But worse still, it would undermine one of the founding principles of our Constitution; that of equality before the law.

The Department has since the advent of our democracy worked to eradicate a legacy of the past that continues to be a challenge to us today – a lack of access to justice. Our efforts in the first decade of democracy and our future endeavours are premised on ensuring complete access for all, especially children, the vulnerable women, the elderly and those living in rural and underprivileged areas. The lack of access to justice is a consequence of several factors. Some of these are:

- historical legacy of building courts in traditional white areas and cities.
- the prohibitively high cost of litigation
- delays in the legal process and undue formalities in the legal process

- continuing social inequality, which combined with the high costs of litigation, placed severe restrictions on access to justice for a large percentage of the population. Ironically, the excluded are often those that needed justice the most.

Fifteen years into our democracy, Limpopo and Mpumalanga are the only two provinces that still do not have divisions of the High Courts. In practical terms this means that people in these two provinces have to travel long distances and at great cost in order to access justice services that are only available in the divisions of the High Courts. For example, people in Polokwane have had to travel over 200 Km to Pretoria in order to access civil and family law matters.

Some of the steps we have taken to remedy this malady consisted of inter alia, building more court buildings within communities where the need is more acute and urgent. We are also upgrading existing ones based on the need to address their unsatisfactory state. It is for this reason that in the last ten years, a conscious decision was taken to build and improve the majority of court facilities in previously disadvantaged rural and urban areas of the country. These are the areas where there is an acute need for courts and related facilities for the dispensation of justice. In the year 08/09, the department completed 2 new courts in Daveyton and Limpopo. The Limpopo Circuit High Court was opened and plans are already underway for the construction of a fully fledged High Court that will service the people of Limpopo. The department is also working with the Department of Public Works on establishing a new High Court in Mpumalanga. In addition, 3 major addition projects were completed in the year 08/09 in Augrabies, Mitchells Plain and Richmond Magistrate office.

A similar transformative initiative we have undertaken which warrant mentioning is the extension of civil jurisdiction to the regional courts. This legislation will also transform the Black Divorce Courts which continue to undermine the dignity and self worth of people intended to be assisted by these courts. People have to travel to remote courts, in most instances outside their own provinces to seek divorce or solutions to family law related matters, including custodial and guardianship of children. Additional 21 regional magistrates and 58 registrars and assistant registrars will be appointed during the current financial year to provide capacity in the regional courts to exercise civil jurisdiction. The commencement of the Act, planned for October this year, will effectively dissolve the Divorce Courts and confer family law and divorce jurisdiction on the Regional Courts.

Speaker,

Our Constitution, and not only the Polokwane resolutions, enjoins us that when considering appointments to the bench, we need to ensure that the *“need for the judiciary to reflect broadly the racial and gender composition of South Africa...”* In his inaugural State-of-the-Nation address, our President, Mr Jacob Zuma underscored Government’s commitment to the transformation and independence of the judiciary. Clearly then, the transformation of the judiciary is a constitutional imperative and our individual or collective preferences and choices of the justice system we desire must succumb to a judicial system consistent with the values underpinning our constitutional democracy which reflect the aspirations and wishes of the people of this country.

It is important to acknowledge the significant progress made with regard to the enactment of legislation required by the Constitution to provide for the training of judicial officers and the complaints handling mechanism about judicial officers. The South African Judicial Education Institute Act, which

commenced in January this year, provides for the establishment of an Institute to train both aspirant and serving judges and magistrates to improve the quality of the outputs of the courts. A building has procured in Johannesburg to house the Institute. A 23 member Council, chaired by Chief Justice Langa, composed of representatives of the judiciary, the legal profession, the academic institutions, traditional leaders and persons who are not involved in the administration of justice, has been established. The training of aspirant judicial officers will go a long way in establishing the much needed pool of black and women practitioners from which judges and magistrates may be appointed.

Honourable Speaker, while still at this point may I also thank the Chief Justice and fellow commissioners of the Judicial Service Commission for agreeing to my request for the postponement of the interviews which were scheduled earlier this month to allow me the opportunity to obtain more information about the progress of transformation in the judiciary. I wish to reiterate the Government's appreciation and support of the work of the Judicial Service Commission in pursuing the agenda of a transformed judiciary.

The Judicial Service Commission Amendment Act, 2008 assented to law by the President in November 2008 will soon come into operation. The Act establishes internal systems for judicial accountability. At present the Judicial Service Commission rely solely on its constitutional mandate to deal with any matter involving impropriety or incompetence and its mandate extend only to impeachable conduct on the part of a judge. The absence of a legislative framework coupled with the non existence of an enforceable Judicial Code of Conduct prescribing minimum standards of conduct to promote access to justice, weakens the judicial system and undermines the independence of the judiciary and the rule of law. Some of the high profile matters which have confronted the Judicial Services Commission in the recent past have exposed

the inadequacy of the current framework for handling complaints about judges. The new administration is moving steadfast to implement the Act to fill the gap. Very soon, I will table in this House, for your approval, a Judicial Code of Conduct for judges and Regulations providing for disclosure of financial interests by judges.

Honourable Speaker,

The Superior Courts Bill, presumably the only Bill that has stretched beyond the tenure of the two previous Parliaments, will be re-introduced in this House during this year. The Bill seeks to consolidate all outstanding aspects relating to the transformation of the judiciary, including the rationalisation of the courts, establishing an efficient court administration model consistent with our constitutional democracy and the rationalisation and harmonisation of the rules of courts to enhance access to justice. I have agreed to the request by the Chief Justice and the Heads of Courts that pending the finalisation of the rationalisation of the superior courts envisaged in the Superior Courts Bill, certain areas of jurisdiction of the High Courts will be rationalised to alleviate the hardships experienced by communities in certain provinces to access the High Courts. This will ensure that certain areas of jurisdiction demarcated in terms of the defunct TBVC territories and areas of jurisdiction extending beyond provincial boundaries are aligned with the area of jurisdiction of the High Courts within the province concerned.

Honourable Members,

The pursuit of a transformed judiciary is also largely dependent on the legal profession which constitute the main pool from where judicial officers are appointed. You will recall that in the pre-1994 era judges were appointed solely from silk, while the prosecution was a career-path for promotion to the position of a magistrate. The constitutional order has brought with it significant changes in this regard. The Bar and the side Bar are equally

eligible to feed to the High Court bench. However, there are still challenges as women are still under-represented in the high courts. I am pleased to learn that most of the women practitioners have volunteered to participate in the judicial education programme initiated by my predecessor, former Minister Mabandla and led by a committee of the Heads of Courts, which is designed to enhance opportunities of women for appointment to the bench.

I also intend to introduce during the current financial year, the Legal Practice Bill, which has endured prolonged discussion and negotiation. I have stepped-up consultations with all stakeholders to finalise the fundamental principles underlying the transformation of the profession. These principles include the need to establish a rationalised, single legal profession, ensuring equal access to the profession, in particular, the previously disadvantaged persons; establishing an accountable and responsive legal profession and measures to promote access to justice for the end users of the justice system.

Equality Courts

Honourable Speaker,

In giving effect to our commitment to improve access to justice, the Department will, in the current financial year, designate the remaining magisterial districts as equality courts. Honourable Members, will recall that equality courts were established pursuant to the provisions of section 16 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000. These courts are aimed at eradicating the legacy of inequality and at the same time enhance our ability to bring justice closer to an increasing mass of our people. The designation of all the magisterial districts will not only ensure that the Department complies with its legislative requirement of having a designated equality court in all the magisterial districts, but will also serve as a solid demonstration of the determined efforts by the Department to

eradicate all forms of discrimination and ensure equality for all citizens of this country.

Furthermore the Department will also designate magistrates' courts that will hear disputes arising out of administrative decisions as contemplated in section 1 of the Promotion of Administrative Act, 2000. The designation of these courts will improve access to justice for the poor in that our people will no longer be expected to approach the High Courts whenever they seek remedial action arising as a result of administrative action. This will mean that our people, especially in the rural areas will no longer have to travel to the cities to access High courts to hear disputes relating, for example, to termination of their social grants. They will be able to get recourse from courts within their residential areas.

Language Use in Court

Access to justice embodies more than just the issue of proximity of justice facilities to citizens and communities. It also entails the duration of court proceedings, legal representation in formal court proceedings. It is also about use of language in court proceedings.

Many of you will remember how the language of record was imposed in the courts. This was simply because the prosecutor or the magistrate was not competent enough in speaking in another language. It does not make sense that in a court in Pongola, where all the litigants are isiZulu speaking, the magistrate speaks isiZulu and the prosecutor speaks isiZulu, cases are conducted in English. From February 2009 the Department has been piloting the usage of indigenous in some lower courts in all the regions. This has been working well.

Creation of additional main courts

Honourable Members,

As part of enhancing access to justice we will, by August this year convert 15 Branch Courts into full services courts and by September 2009 implement the legislation extending civil jurisdiction to the Regional Courts. The list of the Branch Courts which have been upgraded to provide full services will be published shortly in the Government Gazette. A further 9 Branch Courts are being upgraded for conversion into full services courts in this current financial year. The conversion of these Branch Courts will alleviate communities living in the rural villages and in the former Black townships of hardship of having to travel to remote courts in the towns and cities to access services which are currently not provided by these courts.

Honourable Members,

In conclusion, I want to thank the Ministers in the Justice Crime Prevention and Security cluster and the chairperson of the Justice Portfolio Committee, Honourable Advocate Ngoako Ramathlodi. I also wish to convey my gratitude to members of the Committee.

Furthermore I wish to thank the Deputy Minister, Andries Nel, for his support, Chairpersons and members of the Chapter 9 Institutions, the Chief Justice, Heads of the Courts and members of statutory bodies for their commitment to the cause of justice. I wish to thank the staff of my Department and senior management under the leadership of the Director-General for their sterling work. Lastly but not least, I also want to thank my family and wife for their support.

Honourable Members I am indebted to this House for support of this budget vote.

I thank you!