

Address by Jeff Radebe, MP, Minister of Justice and Constitutional Development, At the occasion of the Annual General Meeting of the South African Board for Sheriffs, Sibaya Lodge, Durban Thursday 15 September 2011

Programme Director,

Acting Chairperson and Members of the South African Board for Sheriffs Acting Judge Sadiwalla, Judge President Mlambo and distinguished members of the judiciary present here; Acting Chief Executive Officer Mr N Swart and members of the legal profession, Members of the Rules Board, Chairpersons and representatives of the various Sheriffs' Associations, Ladies and gentlemen

It is my pleasure to be here today at this very important occasion, being the Annual General Meeting of the South African Board for Sheriffs. Allow me to first take this opportunity to congratulate Chief Justice Mogoeng on his appointment as the new Chief Justice for the Republic of South Africa. His appointment has come at a critical time as we are stepping up the pace in our quest to transform the judicial landscape so that it is consistent with the text and spirit of the supreme law of our land, the constitution. We, in the judicial sector, of which the sheriffs are part, are delighted at the Chief Justice Mogoeng's appointment. We are nonetheless pleased that at the end our Supreme Constitution and the rule of law won the day, and that we are now able to shift our focus to the national transformation agenda as it should be.

I also wish to thank former Chief Justice Ngcobo for entrenching the foundation upon which the transformation discourse will continue to find expression. One of the important programmes geared to enhance access to justice which Justice Ngcobo achieved in his short stint at the helm of the judiciary is the hosting of the Access to Justice Conference in July 2011. I am grateful that the sheriffs' profession and the legal profession participated in this historic event. The significance of the Access to Justice Conference is the joint participation and collaboration by the three Branches of the State to implement programmes that are aimed at enhancing access to justice. The Conference adopted 18 resolutions of which the following are fundamental to the initiatives underway to transform the civil justice system, which include the role of sheriffs:

That a committee, comprising of all key stakeholders in the justice system be established to set benchmarks and performance standards for access to quality justice and to monitor implementation; The Judiciary to uphold the integrity and accountability of the judicial system supported by the other two branches of the State, namely, the Executive and the Legislature, as required by the Constitution; Judicial case management be implemented to ensure that the justice to which South Africans are given access is of a high quality and delivered with reasonable speed; Steps be undertaken to introduce alternative dispute resolution, preferably court-annexed mediation or the CCMA kind of alternative dispute resolution, into the court system; and More use to be made of restorative justice and diversion programmes.

I trust that we, in the civil justice sector, will uphold the firm commitment we made at the Conference, to strive for the implementation of these very important resolutions.

Distinguished guests,

Let me express my heartfelt appreciation to the Chairperson and her fellow Board members for their resolve to present the Boards' 2010/112 Annual Report in today's open gathering, in the presence of the members of the judiciary, the social partners involved in the civil justice value chain and the general sheriff community. This is more so noting the obvious fact that an Annual Report of an

institution is an important instrument to articulate its annual activities and resource utilisation during a given year. And very importantly, it is a reflection of what the organisation stands for, how it contributes to the cause of those who depend on its existence, how it justifies its relevance in the changing environment and whether it continues to satisfy the expectations of those who sponsor its continued existence, both materially and intellectually. I am confident that all present here will have the rarest opportunity today, of reflecting on the Board's performance report and give their own account on how the sheriffs' profession continue to impact on their own work space within the broad civil justice value chain. It is not uncommon for any Institutions similar to the Board, to review its vision, change its strategy and reposition itself to align itself with and be relevant to the environment it operates in. I therefore implore upon the Board, if it has not yet done so, to redefine its role within the administration of justice. The sheriffs' profession, which is a privatised body of the old messenger of the court's dispensation, is a creation of Statute, promoted and enacted at the height of the struggle for freedom and justice for the disenfranchised majority. As its founding principle, the Act created a body of civilian police, who provide their own offices to operate the civil justice enterprise, police vans to convey civil dockets and custodial facilities to store attached goods. Prior to the advent of the Constitution they were conferred equal powers to that of the State's police to arrest and commit to prison any debtors, who, due to their inability to meet their financial obligations, became criminals without contravening any law. These debtors were not accorded an opportunity to put their case before the court or have a legal representative assigned to them before they were deprived of their freedom.

Honourable Members of the Board and sheriffs present here today, I have been enlightened of the current debates within the sheriffs' sector that focuses largely on the institutional arrangements of the profession. I challenge the profession to an open dialogue that seeks to unpack the overriding principle that underlie the value of Access to Justice, namely that every one is entitled to equal protection and benefit of the law. Access to justice is a social justice phenomenon, which seeks to establish an equal and prosperous society envisaged by the Constitution. The enforceable Bill of Rights is a vehicle through which the socio-economic transformation imperatives are sought to be achieved. Therefore the activist role of the state establish the non racial, non sexist, equal and prosperous society is explicit in the application provisions which prefaces the Bill of Rights in the Constitution, and I quote: "The Bill of Rights is a cornerstone of democracy in South Africa, it enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom. The state must respect, protect, promote and fulfil the rights in the Bill of Rights."

Ladies and gentlemen, what is patently clear is that the important function designated to the Sheriff must find practical application in a manner that does not promote the perception that the justice system favours the rich and the powerful. The Sheriff must be seen as a friend of the poor and an important chain link to ensure justice is attained in all conflictual matters.

Chairperson,

Let me share some of the initiatives which Government is embarking upon, aim to revolutionise the entire legal justice system, and in doing so, I will pinpoint those that will fundamentally change the landscape of the sheriff's profession. High on our transformation agenda is the reorganisation of the court system which is the central axis around which all different sectors in the justice system, namely the judiciary, the prosecution, the legal profession, litigants and the sheriffs claim their space. The

Constitution Seventeenth Amendment Bill and the Superior Courts Bill provides the framework for the transformation of the Superior Courts. These Bills seek to consolidate the outstanding aspects relating to the transformation of the judiciary and the strengthening of the independence of the judiciary and the rule of law. These Bills are now before Parliament and it is anticipated that they will be enacted before the end of this year. The enactment of the Bills will ensure that the Superior Courts are aligned to the provincial dispensation, thereby providing for a Division of the High Court in each province. In turn, each Division will have a main seat as well as a number of local seats and circuit courts where this is necessary to enhance access to the courts. This Act will require that all law enforcement agencies including sheriffs to align themselves to the changed court environment. The constitutional amendments, among others, seek to accord the Chief Justice, as the head of the judiciary, the authority to develop and monitor the norms and standards for all the courts for the effectiveness of the justice system.

The rationale for assigning responsibility on the Chief Justice is not hard to find. It may be necessary for the Board to, if it has not one so yet, to explore the development of outcome based performance standards for sheriffs which can respond to some of the challenges that are reflected in the annual report. I have observed that usual complaints that relate to sheriffs relate to embezzlement of trust funds and complaints lodged by those who suffered prejudice at the hands of sheriffs, and are mainly brought to the fore through complaints received by the Board.

The Superior Courts Bill sets a broad framework for the transformation of the lower courts, where most of the sheriffs are appointed. The areas of the jurisdiction of the lower courts, which informs the appointment sheriffs, are still based on the Magistrates Court Act, of 1944. The programme of the rationalisation of the lower courts is, in the main, initiatives to correct the demarcations which were based on the defunct Homeland and self governing states that excluded the majority of our people from accessing equal to their counterparts in the RSA territory. It is unavoidable that any re-organisation of the areas of jurisdiction of the lower courts will have consequential effect on the sheriffs that are appointed in accordance with the flawed system of the court. The on-going process of re-designating Branch Courts into proper courts to provide full services to under developed areas in the rural villages and traditionally Black townships, have similar consequences. Fifteen of the 90 Branch Courts countrywide which were re-designated as full services courts in August 2009 including the 3 that will be re-designated during the course of this month will require that sheriffs be appointed to serve the portion or areas excised from the main court of the Branch Court concerned. These newly appointed sheriffs will, due to the diminished economic viability of the impoverished areas, struggle to generate sufficient revenue to provide and sustain dignified and quality service for the communities residing in the affected areas. I am encouraged by the positive response from the profession to the call we made, of allowing state employees to be designated to serve court processes where it has proven futile to attract any person for appointment as a sheriffs due to the weakened economic status of the area.

Chairperson,

We take cognisance that sheriffs receive instructions in the form of court orders via attorneys, except in fewer unrepresented matters where they will be engaged directly by the litigants and judgment creditors. It is for that reason that the transformation of the Legal Profession is of importance to the sheriff's profession. The Legal Practice Bill, which seeks to transform the legal profession, which is being passaged through to Parliament. The Bill addresses elements of institutional democratisation,

equalisation of access to the profession and ensuring that legal services are within reach of the South African community. The Bill set out a vision for the attainment of a unified legal profession, underscored by uniform norms and standards that facilitate easy access to justice. The parliamentary process will afford further opportunity for the profession and other interested parties to make further inputs to the Bill to influence its end state. I am confident that the views of the sheriffs' sector that interact closely with the larger body of lawyers will enrich the desired legislation. An important programme that will have huge impact on the sheriffs and the civil justice system at large is the reform of the civil justice system, which, among others, will explore the optimum use of the Information and Communication Technology (ICT) to establish efficient and modern civil justice system. The court-to-door service of court processes contribute to the long delays in the finalisation of cases and result in the huge legal costs associated with litigation. The modernisation of the civil process also requires the harmonisation of the rules of courts to replace the archaic court practices and streamline the rules of the High Courts and the Lower Courts.

Distinguished guests,

It is a constitutional imperative that the sheriffs, like all sectors of State and society, must reflect the demographics of the South African society in respect of its racial and gender composition, among constitutional attributes. The task of advancing the transformation of the profession requires that progressive programmes be designed to improve the racial and gender profile of the profession. From the records updated regularly by the Department the numbers have not changed since 2005, when a moratorium was placed on the appointment of permanent sheriffs. This was to allow a time to amend the Regulations to bring them in line with the constitutional imperatives. The process of drafting these amendments became a protracted exercise which I am told was due to a lack of consensus between the Department and the profession regarding the Regulations which were published in December 2008.

I am pleased to announce that I have approved amendments to the Regulations which were published in the Gazette yesterday, the 14th of September 2011. The Regulations provides for the establishment of advisory committees which will interview candidates who have applied for vacant positions of sheriff. I thank the Board, the sheriffs' profession and legal profession for their meaningful contribution in the finalisation of the published rules. Through the publication of the Regulations, the moratorium has fallen away and the new appointment mechanism came effective from yesterday. There is no longer any reason to keep vacancies for a period of more than three months.

Distinguished guests,

Please allow me to announce that this morning the Department dispatched to all courts countrywide the instruction to place the advertisement of 248 vacant positions of sheriffs in the courts' Notice Boards by the end of business day today. The vacant offices were also posted on the Department's website today. They will also be carried in the national newspapers this coming Sunday. I trust that the Board and the legal profession will act with speed to designate the sheriffs and attorneys to be part of the advisory committees to meet the strict deadlines we have set ourselves to fill all the posts, which is the end of November 2011. I wish to thank all the sheriffs who availed themselves for continued service beyond their retirement age on acting basis, and more importantly the sheriffs in active service who took an extra burden by accepting acting appointments in their adjacent vacant offices. Let me also thank the few deputy sheriffs who seized the opportunity for acting stints when

they were required to do, some took the responsibility to set up the infrastructure within a short space of time.

I have also been advised that the Board and the profession accepted the recommendations of the investigation to consider the desirability for subdividing certain vacant offices and designating some for the purpose of appointing two or more sheriffs. I am informed that there was general consensus regarding the subdivision of Randburg, Sandton, and Centurion in Gauteng, Bellville and Kuilsriver in the Western Cape and Durban Central, just a stone throw from where we have converged today. I also trust that the lessons that we will derive from the Pretoria West pilot site for the appointment of two or more sheriffs will assist in determining the rollout of this dispensation to other areas and courts. Of the total number of 525 sheriffs appointed for the lower courts and the Superior Courts, 76% are White and predominately male and women comprise less than 9%. The above vacancies provide opportunity to change this unsatisfactory situation.

Distinguished Guests, before concluding, let me also thank the Board for their invaluable inputs on the proposed Sheriffs Amendment Bill which I intend to submit to Cabinet soon. Importantly the Bill seeks to enhance organisational efficiency and accountability and will hopefully address some of the challenges which the Acting Chairperson Mrs Mabuza had alluded to in her address. I am taken aback to learn that a member of the Board instituted a court action against the Board over a matter that was capable of being resolved internally, and which could have been brought to my attention if it remained unresolved. I trust that the Board will be able to resolve this unfortunate occurrence which has a negative impact on the integrity of the Board and the administration of justice in generally. I have noted the adverse remarks in the Annual Report regarding this matter in particular, and I will ensure that appropriate corrective steps are taken to address this issues

Lastly, let me thank all the members of Board for Sheriffs as well as the Rules Board for Courts of Law which is represented here, for availing themselves to serve on the respective Boards and for their profound contribution in the civil justice system. I am confident they leaving behind solid foundations on which their successors will build on when they succeed them at the end of their respective terms later this year.

I thank you.