

**Address by the Deputy Minister of Justice and Constitutional Development,
The Hon JH Jeffery, MP
at the 7th Annual General Meeting of the South African National Association of
Progressive Sheriffs (SANAPS),
held at The Square Boutique Hotel & Spa, 250 Umhlanga Rocks Drive, La Lucia
Umhlanga KZN on
10 August 2013**

Programme Director

Chairperson of SANAPS, Mr Anthony Makwetu

Deputy Chairperson of SANAPS, Mr Lewellyn Sharp

Members of the Executive Committee of SANAPS

Members of the South African Board For Sheriffs, Mr Thami Tembe and Mr
Humphrey Ntsikeni,

Regional Head of the DOJCD in the Western Cape and member of the SABFS, Adv
Hishaam Mohamed

Sheriffs and Deputy Sheriffs

Distinguished guests

Ladies and gentlemen

To all Muslims present – Eid Mubarak.

I would like to thank you for your invitation to me to address you at your 7th Annual
General Meeting of the South African National Association of Progressive Sheriffs.

Yesterday was the 57th Anniversary of the 1956 Women's March where more than
20 000 Women marched against the discriminatory pass laws that restricted the
movement of black people in their country of birth. This year's commemoration
focused on the role of women in achieving democracy in our country and I trust that
SANAPS will, as part of your agenda for the next year, discuss and adopt resolutions
on ways and means to accelerate and fast-track the appointment of women to
sheriffs' profession. I will return to this later in my address.

Programme Director

It is often said that the sheriff is the public face of the justice system.

In the majority of cases, the very first person that a party to a civil suit encounters is the sheriff. For many defendants or judgment debtors, especially those who are illiterate or poor, the prospect of being faced with legal action is particularly daunting. On the other hand, for the other party, who is the plaintiff or the judgment creditor, the success of their action or the resolution of their dispute is also dependent on the work of the sheriff.

The Office of the Sheriff, through its interaction with legal practitioners, court officials, the police, judgment creditors and debtors, provides an important interface between the public and the justice system. Sheriffs and their deputies are at the coalface of service delivery and have a direct impact on the realisation of the rights of our people. As sheriffs and deputy sheriffs are also officers of the court, it is imperative that they not only share the values embodied in the Constitution, but also give effect and real meaning thereto in the execution of their duties.

With the dawning of our new Constitutional dispensation came a promise of a better life for all our people. A better life, where all could enjoy the rights and freedoms promised by the Constitution and, with it, a justice system that treated all South Africans equally, unlike the past, where the vast majority were treated as second class citizens with virtually no access to justice. The Constitution has changed that. But we can only turn these Constitutional promises and guarantees into a practical reality if our justice system lives up to these ideals.

Social responsibility is an important part of an effective and accessible justice system. I know many of you are familiar with the matter of *Coetzee v the Government of the Republic of South Africa and Matiso and others v Commanding Officer, Port Elizabeth Prison and Others, 1995 (10) BCLR 1382(CC)*. In this matter our Constitutional Court had to examine the constitutional validity of the provisions of sections 65A to 65M of the Magistrates Court Act, 1944 (Act 32 of 1944) relating to the imprisonment of judgment debtors. Kriegler J at par 8 held:

“The system at issue is used most often for the collection of small debts usually of those who are poor and either illiterate or uninformed about the law or both. In the nature of things they do not enjoy legal representation. Imprisonment can and has been ordered without the debtor ever having notice of the original judgment or the notice to appear at the hearing. It can also be ordered without the uninformed or illiterate debtor having sufficient knowledge about the possibility of raising defences or the means of doing so. In the result, the provisions of the law can be used to imprison the debtor who is unwilling to pay his debt even though he has the means to do so, but can also be used (and they are indeed used) to imprison the debtor who simply is unable to pay the debt.”

He continues at par 66:

“To penalize the workless and the poor so as to frighten those a little better off would be exactly the kind of instrumentalising of human beings which the concept of fundamental rights was designed to rebut. To suggest that thousands of people would rather go to jail than satisfy relatively small debts within their capacity to pay, strains the imagination. There is thus support for [Mr Navsa’s] the claim that the object of the system would be to send to jail those who could not pay in order to get money out of those who could pay. The borderline between ability to pay and refusal to pay would be a shadowy one; resigned and bewildered debtors, confused by complicated and technical notices, would inevitably get caught up with the truly recalcitrant debt-dodgers who defiantly refused to pay even when they could.”

What this highlights is the fact that all role-players in the justice process must be cognisant of and embrace our constitutional values in both word and deed.

American journalist, Carl T Rowan, correctly pointed out that - “It is often easier to become outraged by injustice half a world away than by discrimination half a block from home.” It is imperative that the sheriff, their deputies and their staff members,

execute their duties mindful of and sensitive to the realities of society, and with respect, dignity, compassion and diligence and without fear or favour. It is the duty of sheriffs to serve all people, rich and poor, with empathy and dignity at all times.

As I said at the start of my speech, the sheriff is the public face of the justice system. We must continuously enforce the fact, in the minds of the public, all users of the justice system and within the sheriff's profession itself that sheriffs are unbiased officials of the court, responsible for the serving of all court documents including summonses, notices, warrants, orders and execution of judgements and orders.

It is important that members of the public are aware that the South African Board for Sheriffs monitors the service provided by sheriffs and their deputies in ensuring that it is executed in a humane manner in terms of the Code of Conduct for Sheriffs. If a person is of the view that a sheriff has not acted fairly, they must be encouraged to report the incident to the SABFS. Sheriffs have the duty to explain the contents of the document they are serving and what the person being served is required to do next. They are there to help explain the legal process, but cannot give legal advice.

Equally important is that all sheriffs and their deputies act within their mandate. The most common complaints of improper conduct against sheriffs are the abuse of trust funds, the delayed service and execution of court process and failure to communicate properly and timeously with attorneys and judgment debtors.

We should not lose sight of the fact that the sheriff's profession, within the South African context, is unique - or sui generis for those who like using Latin, and therefore there rests an even greater responsibility amongst sheriffs and the SABFS to ensure that they comply with and act within their mandate. For example, sheriffs, like public servants, remain in office until they reach the age of 65 (or 70 if appointed before 1990); they are appointed by the Minister and can be suspended and removed from office by the Minister after due process; they are required to open and manage a trust account in the same manner as an attorney; and sheriffs have a monopoly in the service and execution of most of the court processes.

Since the 1986 Sheriffs Act commenced on 1 March 1990 there were certain practical problems relating to the sheriffs profession. For this reason Parliament passed the Sheriffs Amendment Act of 2012 (Act 14 of 2012). The Act was assented to by the President on 11 December 2012, and will contribute to better governance of the profession. Certain sections of the Act are expected to come into operation at the end of next month.

It must be noted that the Amendment Act was passed as an interim measure, pending a comprehensive review of the 1986 Sheriffs Act. The amendments seek to address various gaps in the Sheriffs Act. The 1986 Act limited the Minister to make acting appointment only where a sheriff was unable to perform his or her functions. It did not explicitly provide for acting appointment to be made in a case of a vacancy. There was a need for acting appointments in instances of a vacancy which has been caused by any reason and this has now been addressed.

Furthermore, the new Amendment Act identifies State officials who may be eligible to be designated to serve court processes. The appointment of 'State Sheriffs' will be limited to the serving of court processes, and not the attachment of property, in areas where it is not possible to appointment a sheriff, for example, due to the non-economic viability of that area.

The Amendment Act also strengthens the governance framework of the Board. The restructuring of the SABFS in terms of the Amendment Act will promote the participation of vital role- players and enhance the transformation of the sheriff's profession. The new Board will consist of 11 members: 5 sheriffs; an official from the DOJCD designated by the Minister; an attorney in private practice designated by the Law Society of South Africa; one person designated by the National Credit Regulator; and 3 persons designated by the Minister of whom at least one must have extensive experience in the field of finance and accounting.

A further amendment provides for empowerment programmes, by the Board, to assist previously disadvantaged communities to qualify for Fidelity Fund Certificates. These programmes may include training on entrepreneurship assisting potential applicants to access funding to start up a sheriff's practice. This enjoins the Board to

develop measures to enhance the opportunity of previously disadvantaged persons to have access to Fidelity Fund accreditation.

The Board is now also required to develop guidelines for the appointment of deputy sheriffs as most of the court documents are served by deputy sheriffs. Of the current 768 deputy sheriffs the great majority are males and white. In terms of the current provision of the Sheriffs Act, a sheriff may appoint a deputy sheriff after approval by the SABFS. However, no guidelines exists to ensure that deputy sheriffs, who are first and foremost an officers of the court when they perform duties, are a fit and proper persons and broadly reflects the demographics of South Africa in terms of race and gender. The guidelines should be finalized by the SABFS as soon as possible after consultation with all the relevant role players and I am looking forward to receiving a report from the SABFS in this regard.

It is a constitutional imperative that the sheriffs, like all sectors of state and society, must reflect the demographics of South African society in respect of its racial and gender composition. The task of advancing the transformation of the profession requires that progressive programmes be designed to improve its racial and gender profile.

Before 1994, there were 465 sheriffs operating nationally. Of these 465 sheriffs, 22 (4,73%) were women and 443 (95, 27%) were men. The racial demographics of these 465 sheriffs were as follows: 414 were White (89, 03%); 44 were African (9, 46%); 5 were Coloured (1, 08%) and 2 were Indian (0, 43%).

In 2009 the Department conducted a nationwide audit of the sheriffs' profession which entailed the collation and analysis of information pertaining to sheriffs, including the racial and gender composition. The audit also revealed that most sheriffs who are White were appointed in the most lucrative offices which were situated in the metropolitan areas and affluent cities and suburbs, while the majority of sheriffs who are Black were appointed in former Homelands and traditionally Black townships and rural villages which generated a low income.

During August 2012 after the moratorium on the appointment of sheriffs was lifted, the Minister appointed 124 new sheriffs to fill vacant posts of which 61 (49, 2%) were African, 44 White (35, 5%), 12 Coloured (9, 7%) and 7 Indian (5, 6%). Women represented 32% of the new appointees and men 68%. This was followed by the appointment of a further 71 sheriffs by the Minister in July 2013. Of these 47 are African (66%), 11 White (16%), 6 Coloured (8%) and 7 Indian (10%).

These newly appointed sheriffs bring the total number of permanent sheriffs currently operating in the country from 298 to 365. Of these 365 sheriffs, 175 are White (48%), 139 African (38%), 27 Indian (7%) and 24 Coloured (7%). Women now represent 22% of the total sheriffs and men 78%. . Although there has been an increase from 4.7% to 22% in the appointment of women much more needs to be done to attract women to a profession that has in the past been viewed as the exclusive domain of men.

Of great importance of the appointments made during 2012 and 2013 is that Black persons and women were appointed to the larger and most economically viable areas. Whilst there is still a long way to go, particularly in certain provinces where the levels of representivity are not yet an adequate reflection of our society, these appointments have gone a substantial way to making the profession more representative, in line with the transformative vision and goals of our Constitution.

The, division, and the re-designation and alignment sheriffs' areas with certain courts and magisterial districts will be completed towards the end of 2013.

As you are aware, the Minister appointed a task team on 1 September 2009 to investigate the division and re-designation of certain areas and to make recommendations in order to address issues which impact on access to justice on the poorest of the poor and the efficient functioning, service and execution of court processes.

Following the adoption of some of the recommendations of the Task Team, it came to the attention of the DOJCD that certain challenges remain in some of these areas. The Department, in partnership with the SABFS, has therefore appointed a project manager to undertake a study and review of these identified areas and other areas which are viewed as not being economically viable.

In addition, there have been various disputes between sheriffs regarding the jurisdictional boundary of their respective offices. Some of these disputes relate to non-serviceable areas as a result of incorrect point-to-point descriptions of the sheriff's office resulting in a "no man's land" area, as well as historic factors relating to clearly defined demarcated serviceable areas.

The project manager will be supported by representatives from the DOJCD and the SABFS and will consult with the identified sheriff offices that form part of this investigation as well as other role-players. We appeal to all sheriffs to assist the project manager in his investigation in order to ensure that the above-mentioned outcomes are achieved.

Let me take this opportunity to assure you that the Department of Justice and Constitutional Development has committed itself to assist in the consistent improvement of, and enhanced service delivery by, the sheriffs' profession. We are aware of a number of challenges such as the issue of tax clearance certificates and unclaimed trust funds. We know of the problems that are being experienced with Rule 46 and that there is thus no uniformity in conditions of sale. We know of the issue surrounding the increase of tariffs and the problem of travel costs. We know that the sheriffs' profession would like to have a representative on the Rules Board. You can be assured that these matters will be receiving my on-going attention. I will in the next few months also visit a number of sheriffs' offices to get a better understanding of the challenges facing the sheriff profession, especially those in the rural and not so economically viable areas where sheriffs and their deputies have to travel vast distances, sometimes in very difficult circumstances, to deliver court processes and give effect to sale in executions.

We, as a Department, cannot address the problems facing the profession in isolation. We need the cooperation of the role-players if we are to enhance the

status and improve the performance of the sheriffs' profession. Whilst it is so that there are various voluntary sheriffs' associations, such as SANAPS and SASS, it must be stressed that it is ultimately the SA Board for Sheriffs that is the regulatory authority.

The Board is created by law, in terms of section 7 of the Sheriffs Act of 1986 and is empowered in terms of section 8 of the Act to perform certain functions. It is ultimately the responsibility of the Board to ensure the improvement of standards of training and the improvement of the functions performed by sheriffs. The Board is also the disciplinary authority of the profession (section 18 of the Act). It has the powers to issue or cancel fidelity fund certificates and it can launch inquiries into any alleged improper conduct by sheriffs (section 46). In short, the Board has a legal duty to discharge.

It would be in the best interests of all voluntary associations, and indeed in the best interests of the sheriffs' profession as a whole, if there were proper communication and interaction between such associations and the Board. The number of sheriffs (365) in South Africa is very small compared to that of the attorneys profession (21 463) and the question must be asked whether the current dispensation, where there are more than one voluntary sheriff association with the same objective, is in the best interest of a united sheriffs profession.

I wish SANAPS a very successful AGM and I conclude with the words of our former Chief Justice, the much-respected late Pius Langa, who sadly passed away recently. He said:

“We come from a South Africa that has been struggling; a South Africa of two worlds, which we are trying to bring together. We come from a South Africa which resolved that everyone is entitled to social justice. And it is our job to do that.”

I thank you for your attention and trust the rest of your annual general meeting will be successful.