

**Address by the Deputy Minister of Justice and Constitutional Development,
The Hon JH Jeffery, MP
at the South African Sheriff Society's Annual General Meeting,
held at Glenburn Lodge
7 September 2013**

Master of Ceremonies, Mr Thaka Seboka

Judge President of the Gauteng Division of the High Court of South Africa,
Justice Dunstan Mlambo

The outgoing President of SASS, Mr Nicholas Nxumalo

The incoming President of SASS, Mr Fanie van Wyk

Ms Charmaine Mabuza, Chairperson of the South African Board for Sheriffs
and other Board Members,

Executive members of SASS

The Regional Head of the Department of Justice and Constitutional
Development and Board Member, Adv Hishaam Mohamed

The Chairperson of SANAPS, Mr Marks Mangaba

Sheriffs and deputy sheriffs

Ladies and gentlemen

Thank you for the kind invitation to join you here today and to be part of your 2nd Annual General Meeting. It is a pleasure for me to be here and to be able to interact with you, as the sheriffs are a very important stakeholder in the justice system. I am reminded that it was in June last year that the Minister of Justice and Constitutional Development attended the inauguration ceremony of SASS in Mangaung. So, although it is just a little over a year since the inauguration ceremony, let me take the opportunity of wishing SASS a happy 1st birthday. May the organisation, and the sheriffs' profession as a whole, go from strength to strength.

On a lighter note, if you talk about Sheriffs, the association that most people are familiar with is the famous song by Bob Marley called "I shot the sheriff".

From that one could draw the conclusion that the sheriff is not one of the most popular court officials. However, more seriously, when asked about the song, Marley said that it was a protest song, a song about justice and injustice.

It is concerning to note that within the South African perspective, some of our sheriffs or their deputies have been shot at or assaulted in the execution of their duties. An attack on a sheriff or a deputy sheriff, as an officer of the court, is also an attack on the justice system.

Bob Marley says the song is about justice and injustice. That is why we are here today, to share some thought on justice. There are many in our society who feel, rightly or wrongly, that the justice system has failed them and subsequently they do not respect it. There may be a perception in some of our communities that justice is not always done and they feel that therefore they must take the law into their own hands. There may be a perception of ineffectiveness of the Criminal Justice System in dealing with those who commit crimes, as translated by a number of times the courts grant bail to the accused persons who sometimes, while being out on bail, commit further and even more serious crimes. This has resulted in vigilante justice taking place in various communities across our country.

For us, in the Department of Justice and Constitutional Development, access to justice and building confidence and trust in our justice system is of the utmost importance. It is a constitutional imperative. Access to justice is a fundamental right that unlocks access to all the other rights enshrined in our Constitution. This right has the power to transform our society into a just and equitable one and to correct the injustices of our past. Especially in a relatively young democracy such as ours, access to justice, along with a strong rule of law and trust in the judiciary, is crucial to the development of the country and to the provision of socio-economic rights for the poor and marginalised.

Access to justice can help reduce poverty and inequality. We have made remarkable progress in the transition from apartheid to democracy. Healing

the wounds of the past and redressing the inequities caused by centuries of racial exclusion are constitutional imperatives. We are building an inclusive society, we are pushing back the frontiers of poverty and broadening opportunities for all. Access to services has been broadened, the economy has been stabilised and a non-racial society has begun to emerge. Millions who were previously excluded now have access to education, water, electricity, health care, housing and social security.

However, South Africa remains a highly unequal society where too many people live in poverty and the legacy of apartheid continues to determine the life opportunities for the vast majority. These immense challenges can only be addressed through a change in the country's performance. For this reason, South Africa has adopted a National Development Plan. The plan aims to accelerate progress, deepen democracy and build a more inclusive society by translating political emancipation into economic wellbeing for all.

Key to the success of our National Development Plan is an active and vocal citizenry. We recognize the need for state to actively support and incentivise citizen engagement and for citizens to actively seek opportunities for advancement and opportunity, whilst holding government, business and all leaders in society accountable. All sectors of society, including the legislatures and judiciary, have to ensure that the fruits of development accrue to the poorest and most marginalized.

Access to justice is a fundamental right that unlocks access to all the other rights enshrined in our Constitution. As President Jacob Zuma has rightly said: "Access to justice is the cornerstone of orderly co-existence of citizens of any country. Access to justice is not necessarily the ability to walk to and reach the building where justice is administered. It only becomes complete when one's dispute is settled speedily, in an unbiased manner and when one feels he or she has had access to qualitative justice."

The President is correct when he says that most people find the legal process hostile and traumatic. We should strive to make the process easier and less daunting. And this is where the sheriff has a pivotal role to play. Very often the

first person that a defendant or judgment creditor will encounter at the start of a legal dispute is the sheriff. The sheriff is an important interface between the public and the justice system. The sheriff or deputy sheriff should, in the execution of his or her duties not only serve court process simply like a messenger, but should also inform the judgment debtor, who is often amongst the poorest of the poor and illiterate, of the duties and responsibilities of a sheriff and explain the contents of the summons, judgement or execution order and the rights of the judgment debtor in this regard.

This becomes even more important as the summons or order of the court is most often not issued in the language of the defendant or judgment debtor. If a person understands the process, the process becomes less hostile and traumatic for them. The conduct of the sheriff or deputy sheriff will play a big part in how people perceive the law and the justice system. If people view the law and the justice system as hostile, negative and ineffective, there will be no respect for the rule of law. All of our people must be able to have confidence in the justice system and have the belief that the system will protect their rights and that they will be treated fairly and equally.

On 23 August 2013, the President signed into operation the Constitution Seventeenth Amendment Act, as well as the Superior Courts Act. These two Acts will forever change the landscape of our judicial system and our court system. These two pieces of legislation will make access to our courts and access to qualitative justice, as stated by President Zuma, a reality. These amendments will also impact, directly or indirectly, on the sheriffs' profession.

First and foremost, the Constitution Seventeenth Amendment Act further entrenches the independence of the Courts and acknowledges the Chief Justice as the head of the judiciary who exercises responsibility over the establishment and monitoring of norms and standards for the exercise of the judicial functions of all courts. The Constitutional Court may now, over and above constitutional matters, also decide on any other matter if it grants leave

to appeal on the grounds that the matter raises an arguable point of law of general public importance which ought to be considered by that Court.

The Superior Courts Act not only rationalises and consolidates the laws relating to the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa, but also recognises the desirability to provide for a uniform framework for the judicial management, by the judiciary, of all courts. This includes the Magistrates Courts that were, before 1994, not constitutionally recognised as part of the judicial authority and were largely dealt with as an extension of the public service.

Both the Constitutional Court, with its seat in Johannesburg, and the Supreme Court of Appeal, with its seat in Bloemfontein, may if it is expedient or in the interest of justice, decide to hold its sitting at any other place. This is not only symbolic, as it will now, for the first time, be possible for the Chief Justice to hold a sitting of the Constitutional Court in Mthatha if, for example, the matter it must adjudicate on, affects the people from that area. The Superior Courts Act also provides for the constitution of a High Court Division in each of the nine Provinces, including Limpopo and Mpumalanga. It is therefore also important for all sheriffs to ensure that they refer to the correct name and seat of the High Court in their area of service.

I am very pleased that Judge President Mlambo is with us today. In terms of the Superior Courts Act, the Judge President of a Division is now also responsible for the co-ordination of the judicial functions of all Magistrates' Courts falling within the jurisdiction of that Division, and this may include any matter affecting the dignity, accessibility, effectiveness, efficiency or functioning of the courts, including case flow management.

Sheriffs should therefore not be surprised if they get a call or an invite from the Judge President in his or her area to discuss any matter that affects the functioning of the courts, such as, for example, a delay in or the non- service of a court document, or to discuss initiatives to improve access to justice, as

sheriffs have a wealth of experience in the practical implementation of the Rules of Court, especially when it comes to the execution process.

Master of Ceremonies,

Speaking about access to justice, allow me to pause and raise a matter of serious concern. During the course of this week I have requested my office to contact some of the sheriffs in Gauteng with a view to ascertain whether it would be possible to visit their offices and to engage with them on matters that affect their day-to-day functions.

I have been astounded to learn from my office that one of the Sheriffs indicated that she is unfortunately not available on that day as she stays in Cape Town, 1500 kms away from the area for which she has been appointed by the Minister to execute her responsibilities. The sheriff also informed my office that she only travels to Gauteng when there are auctions and if and when circumstances so require, but that she is in daily contact with her office via telephone and email and that she has capable deputy sheriffs and an office manager who runs the office. The sheriff also informed my office that there are many sheriffs that operate in the same manner. For the sake of a better description, I will refer to these sheriffs as the 'remote control sheriffs'. If a concerned member of the public would like to address a concern with the sheriff in person he or she will not be able to do so immediately; if an attorney would like to discuss the matter with the sheriff in person, he or she will not be able to do so immediately; if the head of the court urgently wants to meet with the sheriff, it will not be possible. And so I can go on.

In terms of the Sheriffs Act, the Minister appoints a sheriff for a lower or superior court and the sheriff shall perform, within the area of jurisdiction of the lower and superior court for which he has been appointed, the functions assigned by or under any law to a sheriff of that court. Clearly the sheriff should be working and, therefore needless to say, be present in the office for which he or she has been appointed, otherwise the Minister would never have appointed him or her in the first place. Such a practice may create the untenable precedent that as soon as a fit and proper candidate from, let's say

for example, Port Elizabeth has been appointed in Cape Town by the Minister to promote representivity in terms of race and gender in that Province, has set up office in the Western Cape, he or she then returns to their home in Port Elizabeth. It is therefore no wonder that one of the most common complaints from the members of the public and from attorneys is that they cannot get hold of or speak to the sheriff. This is a matter that I will be taking up with the SABFS in due course.

I am encouraged by the various initiatives by all role players in the sheriffs' profession to not only make the profession more accessible, but also to raise awareness about the duties and responsibilities of sheriffs. It is therefore important that sheriffs are invited to, and actively participate, in all the Imbizos and other relevant workshops which are organised by the DOJCD.

I am also encouraged by the support from the SABFS and the voluntary sheriffs' organisations of Government's stance of zero tolerance against corrupt practices. The DOJCD therefore welcomes the sentence of 10 years, three years of which were suspended for 5 years, which was imposed on the former sheriff for Riversdal for fraud and theft of trust monies to the value of 1 million rand.

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 have given an undertaking that I will, in the next few months, 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.

I have already attended my first auction held by a sheriff and found it especially informative. It was held in a shopping mall in Wonderpark in Pretoria North after judgment was obtained against a clothing store. I must admit that I was somewhat surprised by the high prices that some of the items were sold for which, no doubt, augers well for the judgment creditor. You as sheriffs will, of course, have your regular customers that attend these auctions that are well aware of the conditions of the auction. However, you also have many first-time customers and it is therefore important to explain to them what it means if an item is sold 'voetstoots', and that VAT must still be added to the price of the item.

Master of Ceremonies,

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. It is envisaged that some of the amendments, which do not require regulations, will be put into operation on 27 September 2013. The SABFS and the sheriffs' profession will be informed of developments.

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 appointments 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 appoint 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 sheriffs' profession. The 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 provision 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 who are at the coalface of service delivery. 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 exist to ensure that deputy sheriffs, who are first and foremost an officer of the court when they perform duties, are fit and proper persons and broadly reflect the demographics of South Africa in terms of race and gender. The said 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.

There are also other new developments in the area of standards for sheriffs in the performance of their duties, as the SABFS has recently completed a new draft Code of Conduct for Sheriffs. The new Code must be submitted to Minister for approval before it can be implemented. The SABFS is also, in consultation with the Department, in the process of drafting guidelines for the appointment of deputy sheriffs.

With regards to transformation of the profession, 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. We have come along way in making the sheriffs' profession more representative, following a nationwide audit of the sheriffs' profession which entailed the collation and analysis of information pertaining to sheriffs, including their racial and gender composition.

We have moved from a position, before 1994, where only 4,73% of the sheriffs were female and 95, 27% were male and where only 11.11 % were Black; to a position where 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. It is encouraging to note that of the appointments made during 2012 and 2013 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 in making the profession more representative.

As you are aware, the 71 newly appointed sheriffs will assume their duties on 1 October 2013 and have attended induction training programmes throughout the country. The Minister and I would like to extend our appreciation to the

SABFS, the Justice College, SASETA, and especially the sheriffs who have set time aside, away from their offices, to assist with the training, in particular those sheriffs that will provide the week-long practical mentorship to the newly appointed sheriffs, which is taking place next week.

The DOJCD is finalising the next round of advertisements and have already consulted with all role-players. We are, as a Department, concerned that offices are vacant and that the process of filling the vacancies takes too long. Therefore we have decided to be proactive and advertise the vacancies some time before the office actually becomes vacant. We believe that this will ensure a smooth handover from the outgoing sheriff to the incoming sheriff. These vacant offices will be advertised within the next month and the other vacancies, those that are currently the subject of the investigation by the project manager, will be advertised as soon as the project manager has concluded his investigation and the Minister has considered the report.

One important issue that we need to address is the question of how do we attract persons to the sheriffs' profession? Why does it happen that in certain areas, when a vacancy is advertised, there are no applicants who apply? What is being done to encourage people to enter the profession and do people know what the position of a sheriff entails? Do they know if they have the required skills and attributes are to allow them to apply? In my view, this is something that we need to address as a matter of some urgency, particularly if we want to attract young people to the profession and make the profession a chosen career choice for future sheriffs.

In conclusion, I want to repeat here what I said when I met SANAPS last month. There are presently 2 voluntary sheriffs' associations, namely SASS and SANAPS. It would undoubtedly 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 you all the best for your AGM and want to conclude with the words of American political commentator and intellectual, Reinhold Niebuhr, who said that “man's capacity for justice makes democracy possible, but man's inclination to injustice makes democracy necessary.”

Our democracy can only work if our justice system works. You are the very people who make our justice system work by helping the people of our country to enforce and realize their rights and therefore the sheriffs' profession is in integral part of building an efficient, effective and responsive justice system. And we look forward to working with you to achieve this. I thank you for your attention.