

**ADDRESS BY MRS N SINDANE, DIRECTOR-GENERAL  
ON THE OCCASION OF THE SOUTH AFRICAN BOARD FOR SHERIFFS  
STAKEHOLDER ENGAGEMENT  
MONDAY, 4 NOVEMBER 2013**

**VENUE: PROTEA MIDRAND HOTEL, MIDRAND**

Programme Director

Chairperson of the Board: Mrs Charmaine Mabuza

Chief Magistrates

Members of the Board for Sheriffs

Board member and Regional Head of Western Cape, Hishaam Mohamed

Regional Head of Gauteng, Ms Emily Dhlamini

Nic Swart of Lead SA

Members of the Banking Council

Members of the Rules Board

Chief Executive Officer of the SASSETA, M Moroka and other members of SASSETA

Representatives from the legal fraternity

Sheriffs and Deputy Sheriffs

Newly appointed sheriffs

Representatives of the Justice Family

Ladies and gentlemen

Sawubona! Dumelang! Molweni! Goeie aand ! Good Evening!

It is indeed a pleasure for me to be with you today at the South African Board for Sheriffs Stakeholder Engagement. I note that this is the 4<sup>th</sup> Roadshow that the Board has hosted throughout the country. I believe that this Stakeholder Engagements will go a long way to bridge the divide between the Board and the sheriff profession and improve relationships.

On the 4<sup>th</sup> of July this year the Minister Radebe **appointed 68 persons as sheriffs** to various offices around the country, with effect from 1 October 2013. May I take this opportunity to congratulate all the newly appointed sheriffs on your appointments and I welcome you to the Justice family. All of you, as sheriffs, form an indispensable part of the justice system of our country, a justice system which seeks to assist all South Africans, in accessing and enforcing their constitutionally guaranteed rights.

We would like to extend our sincere appreciation to the sheriffs that have set time aside to provide guidance and **mentorship** to the newly appointed sheriffs. We wish to extend our appreciation to the Board and its staff, lecturers from Justice College, lectures from various academic institutions, as well the pool of sheriffs that have made time available to share their experience and expertise with the new appointees over the past few weeks. A large number of experienced sheriffs have also expressed their willingness to serve as mentors. This bodes well as we enter into a new era for the sheriff's profession.

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 often 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 plays a big part in how people perceive the law and the legal 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.

## 1. **CODE OF CONDUCT**

Also of fundamental importance to the work of a sheriff is the **Code of Conduct**. The Code seeks to explain how a sheriff should perform his or her duties, for example, a sheriff may serve or execute process only within the area of jurisdiction or the portion of an area of jurisdiction for which he or she has been appointed. There are new developments in the area of standards for sheriffs in the performance of their duties, as the Board has recently completed a new draft Code of Conduct for Sheriffs. The South African Board for Sheriffs has now requested the Minister to approve amendments to the Code of Conduct for sheriffs as the Code of Conduct was last revisited 23 years ago.

The proposed Code of Conduct contains provisions regarding:

- The conduct of a sheriff entrusted with the service or execution of a process must act without avoidable delay in accordance with the Rules of Court and provided that any process, requiring urgent attention shall be dealt with immediately.
- A very important provision, namely that trust money must be paid out to the person entitled thereto without avoidable delay.
- A sheriff may not perform any act as sheriff in any matter in which he or she has a direct or indirect interest.
- A Sheriff must at all times act in an impartial, unbiased and fair manner towards all parties and must ensure that deputy sheriffs in his or her employ do the same.
- A sheriff must serve members of the public in the official language in which he or she is addressed or otherwise communicated with.
- Furthermore, a sheriff may not act in any way that will bring the good name and esteem of the office of sheriff **in particular** and the administration of **justice in general** into disrepute or cause it to appear in a bad light.

Should the Minister approve the proposed Code of Conduct as it currently stands, it will be implemented with effect from 1 January 2014.

## **2. GUIDELINES FOR THE APPOINTMENT OF DEPUTY SHERIFFS**

The Board is also, in consultation with the sheriffs' profession and the Department, in the process of drafting **Guidelines for the Appointment of Deputy Sheriffs**.

## **3. REDESIGNATION OF COURTS AND MAGISTERIAL DISTRICTS**

In 2009 Acting Justice Sardiwalla headed a task team to investigate the **re-designation of courts and magisterial districts** and make recommendations on establishing sheriff offices in these areas.

Following the implementation of the recommendations of the task team and subsequent representations received from sheriffs and other role players, a project manager, Mr E Petersen, was appointed to investigate approximately **22 identified sheriff areas** where there have been challenges in respect of the point-to-point description and economic viability of these offices. Thus far, Mr Petersen has reported that he consulted with the affected sheriff offices in Gauteng, Limpopo, Mpumalanga, KwaZulu Natal and North West. He is currently busy consulting with the affected sheriff offices in the Western Cape. I trust that those of you who were affected by this process have consulted with Mr Petersen and thank you for your invaluable cooperation and support in this regard. The preliminary findings thus far have shown that when the Minister appoints sheriffs, then the Department must provide clear point-to-point description of the offices accompanied by the relevant map of the area to which they have been appointed. We are in the process of drafting clear point-to-point descriptions on those areas where there appears to be a "no man's land" as a portion of the area was erroneously excluded from the current point-to-point description.

It is anticipated that the project manager will conclude his investigation by January 2014; where after a comprehensive report will be submitted to the Minister advising of the outcome of the investigation.

#### **4. TAX CLEARANCE CERTIFICATES, RESIDUE/UNCLAIMED TRUST FUNDS AND INCREASE OF TARIFFS**

We are also aware of a number of challenges such as the issue of **tax clearance certificates** and **unclaimed trust funds**. 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 are receiving our on-going attention. In fact, I am happy to announce to you today that the Minister has recently (just last week) instructed the Department to investigate the legislative reform process to ensure that there is uniformity in the conditions of sale in both the Magistrates and High Courts. We believe that this will duly address the concerns regarding the **unclaimed trust funds**. The Department is also currently liaising with the South African Revenue Services (SARS) in order to exempt the sheriff's profession from the requirement of producing a **tax clearance certificate** in order to receive payment for services rendered. I have been advised that SARS has submitted the Department's request to National Treasury to consider same and we are currently awaiting their response herein.

#### **5. THE SOUTH AFRICAN BOARD FOR SHERIFFS**

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.

We also 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 the Board is the **ultimate regulatory authority** for the sheriff's profession.

## 6. SHERIFFS AMENDMENT ACT OF 2012

The **Sheriffs Amendment Act of 2012** now makes it obligatory for the Board to develop guidelines for the appointment of deputy sheriffs. It is the intention of the Department to put the remaining sections of this Amendment Act into operation by early next year.

Key features of the Sheriffs' Amendment Act include the following:

- To provide for the regulation of acting appointment in cases of vacancies.
- To amend the object clause to provide for creation of opportunities to advance the transformation of the sheriffs profession.
- To strengthen the governance framework of the Board to enhance accountability arrangements relating to the management of the Fidelity Fund.

The sections of the Amendment Act that will come into operation, relate to:

- the circumstances under which the Minister may appoint a person / sheriff to act as sheriff "*in a particular suite*";
- the Board's responsibility to develop and implement appropriate measures, including support programmes, for purposes of issuing fidelity fund certificates to sheriffs who have the potential to establish and operate an office of a sheriff successfully;
- the Board's responsibility to develop guidelines for the appointment of deputy sheriffs;

- allowances that are payable to members of the committees of the Board (and not only Board members as previously provided for);
- the Board's ability to make rules regulating the conduct of its proceedings;
- the maximum amount that can be recovered by the Board from the Fidelity Fund to be utilised for "the expenses involved in the control and management of the Fund";
- the auditing of records and statements of the Fidelity Fund; and
- the non-compliance of requesting permission from the Minister in order to perform remunerative work outside of the office of a sheriff is now regarded as improper conduct.

## 7. **SERVING OF MAINTENANCE COURT PROCESSES**

We are aware that some sheriffs have requested the Minister to address their concerns around the **service of maintenance court process** by the Maintenance Investigators and that of the **domestic violence court processes** by the South African Police Services (SAPS). The Department has since obtained a legal opinion advising that the service of these court processes is not the exclusive domain of the sheriffs. Bearing in mind the challenges raised by the sheriffs regarding the economic viability of their offices, in particular in the rural areas where the service of these processes is vital to the sustainability of their sheriff office, I will be appointing a reference group to develop a departmental policy in the use of the Maintenance Investigators and SAPS officials in serving these court processes.

## 8. **HANDING-OVER PROCESS**

As I have mentioned earlier, the Minister announced the new sheriff appointments which took effect from 1 October 2013. Newly appointed sheriffs, during the period 1 July to end of September, met with the outgoing sheriffs, the court manager, the magistrate, the attorneys and all other stakeholders to ensure a smooth handing over and transition. We are pleased that this **handing-over process** has been largely successful.

## 9. **ADVERTISEMENT OF VACANT SHERIFF OFFICES**

The Department is also being pro-active in that **additional vacant sheriff offices** that have become vacant in 2013 and 2014 were **advertised** with a closing date of **22 October 2013**. As we speak the various Provincial Advisory Committees are meeting to conduct the short listing of applicants. It is anticipated that the interviews for these vacant posts will take place during the last week of November 2013 and that new sheriffs will be appointed with effect from 1 April 2014.

## 10. TRANSFORMATION

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. Before 1994, 95, 27% of the sheriffs were men and 89, 03% were white.

During August 2012 and July 2013, after the moratorium on the appointment of sheriffs was lifted, the Minister appointed 195 persons to vacant posts of sheriffs.

These newly appointed sheriffs bring the total number of permanent sheriffs currently operating in the country to 340. Of these 340 sheriffs, 171 are White (50, 3%), 120 African (35, 3%), 26 Indian (7, 6%) and 23 Coloured (6, 8%). Women now represent 76 (22%) of the total sheriffs and men 264 (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 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.

## **11. CONCLUSION**

On behalf of the Minister, Deputy Minister and the Department, I wish you well in transforming the Sheriffs Profession even further and good luck during your deliberations at your Board Meeting tomorrow.

**NONKULULEKO SINDANE**

**DIRECTOR-GENEAL**

**DEPARTMENT OF JUSTICE & CONSTITUTIONAL DEVELOPMENT**