

**Keynote Address by the Minister of Justice and Correctional
Services,
Mr Ronald Lamola, MP
at the 2020 Training Programme for Newly Appointed District Court
Magistrates,
hosted by the South African Judicial Education Institute,
held at the Misty Hills Hotel, 7 February 2020**

Programme Director

**The Chairperson of the Magistrates Commission, Deputy Judge
President Aubrey Ledwaba,**

The Chief Executive Officer of SAJEI, Dr Gomolemo Moshoeu,

Chief Magistrates present,

**The Regional Head for Gauteng and current Acting Deputy Director-
General for Court Services, Mr T Malema,**

Ladies and gentlemen,

Good morning and welcome – let me extend a warm welcome to the newly appointed magistrates, not only to this training programme, but also to the magistracy.

With more than 200 new appointees, I believe, this is one of the biggest in take of newly appointed magistrates.

The Magistrates' Commission plays an important role in filling the vacancies of magistrates' posts.

The appointment procedures and processes, which are set out in legislation and accompanying Regulations, are lengthy, appropriately detailed, fair and transparent.

I want to thank Deputy Judge President Ledwaba in absentia and the Commission for their efforts during the appointment processes. Having to interview over 600 candidates over a two month period; is no small feat.

Magistrates are at the coalface of the administration of justice, the majority of our people come into contact with the judiciary through them; their experience, touch and feel of the judiciary is through magistrates.

On the other side; you are also shock absorbers for our society in that you observe on a day to day basis the social ills affecting our society, from violent crime, sexual offences and white-collar crime. Communities look up to you for justice.

In your everyday actions, you are ambassadors of the judiciary, your faults and misconduct stain and bring the whole profession into disrepute.

Such stains mutate and become whispers and conspiracies in our communities. These conspiracies revolve in taxi ranks, churches and all the spheres of our community. In the eyes of society, you are not fallible,

it is for this reason that your work should at all material times withstand the scrutiny of higher courts.

A transformed, robust and independent judiciary is a constitutional imperative and it goes without saying that this forms the backbone of our constitutional democracy.

In terms of section 165 of the Constitution the judicial authority of the Republic is vested in the courts. A magistrate's court is recognized by the Constitution as a court. Section 165 of the Constitution provides:

- (1) *The judicial authority of the Republic is vested in the courts.*
- (2) *The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.*
- (3) *No person or organ of state may interfere with the functioning of the courts.*
- (4) *Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.*
- (5) *An order or decision issued by a court binds all persons to whom and organs of state to which it applies."*

When dealing with these foundational principles the Constitutional Court has said:¹

The Constitution thus not only recognizes that courts are independent and impartial, but also provides important institutional protection for courts. The provisions of section 165, forming part of the Constitution that is the supreme law, apply to all courts and judicial officers,

¹ *Van Rooyen and Others v The State and Others (General Council of the Bar of South Africa intervening)* 2002 (5) SA 246 (CC) at page 268C-269C.

including magistrates' courts and magistrates. These provisions bind the Judiciary and the government and are enforceable by the Superior Courts.

...

In De Lange v Smuts NO and Others, Ackerman J referred to the views of the Canadian Supreme Court in The Queen, on the question of what constitutes an independent and impartial court, describing them as being 'instructive'. In this context, he mentioned the following summary of the essence of judicial independence given by Dickson CJC in Beaugard's case:

'Historically, the generally accepted core of the principle of judicial independence has been the complete liberty of individual Judges to hear and decide the cases that come before them: no outsider – be it government, pressure group, individual, or even another Judge – should interfere in fact, or attempt to interfere, with the way in which a Judge conducts his or her case and makes his or her decision. This core continues to be central to the principle of judicial independence.'

This requires judicial officers to act independently and impartially in dealing with cases that come before them, and at institutional level it requires structures to protect courts and judicial officers against external interference."

The independence of the courts and judicial officers is not only enshrined in our Constitution but it is a universal principle respected by all civilized judicial systems. It is for this reason that the United Nations Bangalore Principles of Judicial Conduct² identify independence, impartiality, integrity and propriety amongst the six core-values of the judiciary. These principles are intended to establish standards of ethical conduct for judges. They provide guidance to judges in the performance of their judicial duties and afford the judiciary a framework for regulating judicial conduct.

The Bangalore Principles of Judicial Conduct provide that:

"a Judge shall exercise the judicial function independently on the basis of the Judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference direct or indirect

² www.undoc.org/judicial group; accessed on 24/1/2019

from any quarter or for any reason.... Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made. A Judge shall ensure his or her conduct is above reproach in the view of a reasonable observer. ...The behavior and conduct of a Judge must reaffirm the peoples' faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done...A Judge shall in his or her personal relations with individual members of the legal profession who practice regularly in the Judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality."

This effectively means that you are allowed to adjudicate on any matter, regardless of the social status or race of an individual. The only constraint you have is the Constitution.

As the Minister for Justice and Correctional Services; I have no shame in saying that constitutional development cannot take shape or form without an independent and dedicated judicial officers.

Judicial officers should not be deterred by slander, or unfounded and baseless criticism. Citizens who are prejudiced or dissatisfied by any outcome and decision of our courts have recourse in the form of an appeal.

My observation as a legal practitioner has always been that those who know that they have a case to make do not shout about it, they make their arguments in the courts, because they understand that is what it means to have reverence for the rule of law.

Strengthening the rule of law through a functioning criminal justice system is necessary for economic growth and development and it is critical in order to build safer communities.

The fair resolution of social and economic disputes through our civil courts create certainty that matters will be adjudicated upon by an independent and impartial court or tribunal.

In recent weeks; we have seen some of our magistrates being in the media for wrong reasons.

There has been a steady increase in the number of complaints raised against magistrates at all levels - from Magistrates, to Senior Magistrates; to Chief Magistrats; to Regional Magistrates and Regional Court Presidents.

This drastically dilutes the people's trust and confidence in the justice system and specifically on the credibility of the magistracy.

As the Ministry; we are extremely concerned about the amount of time it is taking to complete some of the investigations.

The public expect the highest standards of conduct from judicial officers in our courts and it is in the Magistrates' Courts that the vast majority of South Africans access justice.

In his address to you recently; Deputy Minister Jeffrey cited the findings of a recent survey by Afrobarometer - which indicates that the number of people in South Africa who are of the view that "most or all" judges and magistrates are involved in corruption has doubled from 2002 (15%) to 2018 (32%) – we should not add to this perception in anyway.

Given the prevalence of corruption in our society; it's is conceivable that some in society may be tempted to use all the means available to them to evade justice.

As officers of the court, you are the last line of defence and you should be beyond reproach. It is does not matter in which part of South Africa you find yourself in, whether its Poffadder where you could possibly have one attorney, one prosecutor, where you will probably attend the same church.

Just remember that cases cannot be decided outside the courtroom. It is precisely in towns like those where justice manifests itself simply through a trial that you will preside over a matter without any bias or prejudice to anyone.

Ladies and gentlemen,

Your tenure in the magistracy comes at a time when we are required to reinforce the foundations of constitution which was built over the past 25 years.

We live in a society that is systemically violent, with significant levels of inequality. This translates into our criminal justice system.

As I understand it; you will be visiting our correctional facilities today. I must say this is pleasing because you will see first-hand that inequality is most manifest in our correctional facility.

Inequality affects everyone, but especially vulnerable groups such as women and youth. During my first visit to a correctional facility; I visited a women centre in Matashe in Limpopo Venda.

I spoke to a lot of women at the centre, I asked why are you here, a lot of them said to me, “Minister If I could afford bail, I would not be here.” Another one said to me, “Minister I know I did wrong, shoplifting is wrong but I had no choice otherwise my children would starve.”

I agreed with both of them, should such people who can not afford bail for such crimes end up in correctional facilities, and it is high time our judicial system redefines the type offences which require incarceration.

Improving the Calibre of Magistrates’

Part of our broader strategic plans is to re-position the Justice College, to enable it to provide the necessary support to judicial officers.

As you may know you are the first group of entry-level magistrates that will no longer be subjected to serving the “probation period”.

This does effectively mean that training and peer review systems will have to be reinforced significantly.

Ladies and gentlemen,

Our justice system is not perfect. It has its systemic problems which impact on efficiency in so far as the conclusion of matters are concerned.

Some of the process we still enforce in our courtrooms could be automated, digitised and modernised.

For instance, video remand hearings (VRH) conducted via video technology for defendants who have been arrested and detained by the police are being done in other jurisdictions around the world.

There is no reason why a defendant cannot attend a hearing via video link whilst in custody, rather than travelling to court.

Technology should assist on the question of information management. Reform to our services means catering better to the needs of the people who rely on it. This boils down to designing our processes around them wherever we can, instead of asking the public to conform to what we think the process ought to be. In practice, it means more cases started, handled and prepared online or by video; better information flows and communication.

Ensuring that our criminal justice system is integrated is a priority. We will be relying on you for inputs. This starts with how we can improve our ICT infrastructure, ultimately everyone who uses our courts should be impressed by the systems in place.

We should always bear in mind that the heart of constitutional vision of access to justice is an individual, a person with a family, with a job or caring responsibilities, perhaps with a health condition or disability, who might be vulnerable, a person of any age or background, who may never have expected to be drawn into the justice system.

These are the people we all serve.

Speaking on the effectiveness of our constitution the late and first Black Chief Justice Ismail Mohamed described the Constitution “*as a bridge from the past to the future*”.

Indeed the Constitution, as a bridge to the future, enables all spheres of government to reconstruct our society from one riddled with structural injustices to one of imbued with ubuntu and equality.

I thank you.