

**Address by the Deputy Minister of Justice and Constitutional Development,  
The Hon JH Jeffery, MP  
For the Budget Vote Debate – Vote 25: Justice and Constitutional  
Development,  
National Assembly,  
25 May 2021**

House Chairperson,  
Honourable Minister Ronald Lamola,  
Members of the Executive,  
Deputy Minister for Correctional Services, Nkosi Phathekile Holomisa,  
Chairperson of the Portfolio Committee on Justice and Correctional Services,  
Honourable Members,  
The Director-General, Adv Mashabane,  
Distinguished Guests, friends,

As we celebrate Africa Day, we are once again reminded of the words of Kwame Nkrumah when he said that –

*“Freedom is not something that one people can bestow on another as a gift. They claim it as their own and none can keep it from them.”*

Freedom and access to justice go to the very heart of what our Department does, as we work towards building and deepening constitutionalism and respect for human rights and the rule of law.

We are celebrating Africa Month under the theme: “The year of Arts, Culture and Heritage in the year of Charlotte Maxeke”.

Charlotte Maxeke was a pioneer and an activist when, at the turn of the twentieth century, she became the first African woman in our country to attend university, when she enrolled at Wilberforce University in the USA.

Upon her return to South Africa, she committed herself to improving the lives of African women and children. She was also actively involved in helping women and children in prisons. She was unwavering in her commitment to women's rights.

As a country, we say that we value women's rights and gender equality, yet many of the women of our country face gender-based violence on a daily basis. Addressing the scourge of gender-based violence and femicide (GBVF) and violence against women and children is a fundamental part of what our Department does.

During the past financial year, the Department introduced what is known as the three GBV Bills.

We note the progress made by the Portfolio Committee on these Bills and hope that the President will be able to enact the Criminal Law (Sexual Offences and Related Matters) Amendment Act Amendment Bill, the Criminal and Related Matters Amendment Bill, 2 and the Domestic Violence Amendment Bill, during this financial year.

These Bills provide for more protection for complainants of gender-based violence, more victim-centred mechanisms to be made available to them and a stricter approach towards the measures to be taken against perpetrators before, during and after the trial.

Our Sexual Offences Courts and our Thuthuzela Care Centres also play a critical role in the fight against gender-based violence and femicide.

As the Minister has indicated, a total of 100 Sexual Offences courts will be designated in terms of Section 55A of the Criminal Law (Sexual Offences) Amendment Act, 2007, to improve the adjudication of sexual offences cases.

The designation will mean that members of the public will know what they can expect from a Sexual Offences Court as a designated court will need to conform to the minimum requirements as set out in the Regulations.

When it comes to domestic violence applications for protection orders, it is extremely concerning that in excess of 194 000 such applications were made in 2020/21. Of these, a staggering 21% come from KwaZulu-Natal, followed by Gauteng at 14% and Limpopo at 13%.

When it comes to the types of abuse, one complainant can register more than one type of abuse and there were 137 800 instances of emotional, verbal or psychological abuse, followed by 64 400 instances of physical abuse.

Because these are domestic violence applications, we know that these atrocities are being committed by people who know each other, people who are or were in a relationship – these are not strangers attacking unknown victims. This is happening in our homes.

Economic abuse is also a sad reality of the world we live in, particularly where parents and spouses default on their legal obligation to maintain their dependants.

Plans are in place to introduce Maintenance On-line Applications (the MOLA System) as the initial phase of establishing a comprehensive electronic management of maintenance matters.

Currently Magistrates Courts receive thousands of manual applications for maintenance claims and at times the complainant is not aware of what documentation is required - which then leads to them having to make multiple trips to the maintenance court.

The new system seeks to ease the current cumbersome process by creating a Web Portal for the submission of maintenance application forms online. It will also enable the user to track how far the application is in the system.

The Portal will further inform the user of their next court appearance. This innovation will take us a step closer to our goal of using technology to simplify lengthy processes and continue to improve access to justice services for all.

This is the first phase of the comprehensive electronic management of maintenance. This solution will be piloted in our model court in Point Road, Durban, this year, before it is rolled-out to the other 450 maintenance courts.

Honourable Members,

In July last year, when we delivered our previous Budget Vote, we had had to come to grips with Covid-19 and new ways of delivering justice in a South Africa in such circumstances.

Our main focus remains the optimal functioning of our courts and the justice system as well as the protection of human rights and vulnerable groups in times of Covid-19.

We are working closely with the key stakeholders in our Magistrates Courts – the Chief Magistrates, the NPA, Legal Aid SA, the Department of Correctional Services, the SAPS and the Department of Social Development to ensure that we finalise the maximum number of cases that we are able to during this period.

The Magistrates' Courts continue to grapple with huge case backlogs which were already high even before the pronouncement of the state of national disaster in March 2020. These backlogs increased during the hard lockdown.

From the records kept by the Department, case backlogs stood at 53% and 48% in the Regional Courts and District Courts respectively immediately before the announcement of the lockdown in March 2020.

By 31 March 2021, the backlogs had decreased to 48.87% and 14.14% in respect of the Regional Courts and the District Courts respectively. This is because of the continued focus which the Department and our stakeholders have been putting on reducing the backlog cases and the prioritisation of matters involving GBVF, matters involving children as well as corruption -

related matters. Matters where there are persons awaiting trial are also prioritised.

We continue with the implementation of measures to bring down the backlogs. As part of the measures underway, the Department has procured over 1 500 new laptops and the requisite data and IT equipment for use by magistrates.

This yielded results as many cases, particularly civil matters, were dispensed with on virtual platforms during the hard lockdown. There were 37 572 matters where audio-visual remand (AVR) was utilised as a virtual appearance method with the detainee in DCS custody in 2020/21.

Regular meetings of all the stakeholders, except unfortunately the Regional Court Presidents, as part of our Court Optimisation Committee are held to discuss ways of unblocking operational challenges for the lower courts to function optimally.

Our magistrates have to perform their duties at the very coalface of justice.

The Department is presently refining a draft Magistrates Bill which is aimed at replacing the Magistrates Act of 1993, in order to engage with, and obtain the inputs of, the interested role-players, including those of the superior courts' judiciary.

We are also developing legislation, provisionally called the "Lower Courts Bill" that is aimed at replacing the Magistrates' Courts Act of 1944.

It is common cause that all legislative provisions pertaining to the Superior Courts and the judiciary of those courts were framed after our transition to democracy in 1994.

The post-1994 constitutional order elevated the constitutional status of the magistracy.

In terms of section 68(1) of the Constitution of the Republic of South Africa, 1983, the judicial authority of the Republic was vested in the Supreme Court of

South Africa. However, both the interim (1993) Constitution (in section 96) and the final Constitution (in section 165) vested the judicial authority in all courts. Magistrates' Courts are also specifically mentioned in section 166 of the Constitution as forming part of the Republic's judicial system.

Magistrates are therefore just as much part of the judicial authority as the judges of the superior courts.

The Magistrates Act, 1993, emanates from an era before the advent of the new constitutional dispensation in South Africa.

The Magistrates' Courts Act, 1944, has been amended on various occasions, but because it is still archaic, it is necessary to review the whole Act.

Progress has been made in this area of work which is intended to transform the statutory framework regulating the structure and functioning of the lower courts and enhancing the independence, impartiality, dignity, accessibility and effectiveness of the lower courts.

The Minister of Justice appointed 24 Senior Magistrates to vacant offices with effect from 1 January 2021 after having considered the recommendations of the Magistrates Commission.

The Commission also finalised their recommendations for the filling of 165 vacant posts of District Magistrates. A total of 476 candidates were shortlisted and interviewed by the Commission. It is anticipated that the Minister will soon make appointments arising from the recommendations of the Commission.

We would like to convey our appreciation to the members of the Magistrates Commission and the supporting officials in completing this mammoth task that had to be staggered over a 4-month period of due to the large number of shortlisted candidates and the other commitments of the members of the Appointments Committee.

The numbers of senior judicial heads that are currently suspended pending the finalisation of their misconduct proceeding, as well as the period of time that it takes to bring these matters to finality, remain a matter of considerable concern.

Honourable members,

I would like to pay tribute to the various officials and magistrates who continue to serve the public and ensure access to justice for all during this pandemic.

Sadly, many of them have passed away during the pandemic and we wish to convey our sincerest condolences to the families of these officials and magistrates. We also want to pay special tribute to the Hon Jacqui Mofokeng, MP, who was the whip of the Portfolio Committee, who also sadly passed away recently.

With regards to the sheriffs' profession, I want to convey my appreciation to the outgoing chairperson and members of the South African Board for Sheriffs for further enhancing the work of the sheriffs' profession and for the clean audits received during their term.

With regards to the South African Human Rights Commission, in October last year we had to bid a very sad farewell to the Commission's Deputy Chairperson and renowned human rights' lawyer and activist, Priscilla Jana. She was responsible for the Commission's work on equality and dedicated her life to the struggle for liberation and democracy.

This is an important year for the Information Regulator. In June last year the President issued a proclamation to bring into effect a number of the remaining sections of Protection of Personal Information Act 4 of 2013 (POPIA) on 1 July 2020. The last two sections, sections 110 and 114(4), will commence on 30

June this year. In short, private and public bodies will have to ensure compliance with the Act by 1 July this year.

Honourable Chairperson,

As we celebrate the 25<sup>th</sup> Anniversary of our Constitution – a Constitution which has been lauded around the world as being one of the most progressive – it is an opportune time to reflect on how far we have come as a nation.

To, once again, quote Dr Kwane Nkrumah, he said –

*“Those who would judge us merely by the heights we have achieved would do well to remember the depths from which we started.”*

As much as leaders from a certain opposition party would argue to the contrary, nothing good came from colonialism. We had to, as the late President Mandela said, suffer the indignity of being the skunk of the world.

Those were the depths from which we started.

But over the past 24 years our 1996 Constitution has enjoined us to the attainment of human rights for all and respect for the rule of law.

But there is still much more to be done. Poverty, inequality and discrimination stand in the way of the full attainment of the society we are trying to create – a society where every single person can claim freedom and human dignity as their own and none can keep it from them.

I thank you.