



THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

KEYNOTE ADDRESS BY PRESIDENT JG ZUMA, ON THE OCASSION OF THE 3RD
ACCESS TO JUSTICE CONFERENCE, PRETORIA

8 July 2011

Programme Director Judge Ngoepe,
Honourable Justice Sandile Ngcobo, Chief Justice of the Republic of South Africa;
Minister of Justice and Constitutional Development and other Ministers present here;
Honourable Speaker of the National Assembly;
Honourable Chairperson of the National Council of Provinces;
Members of the judiciary;
Heads of Chapter 9 institutions,
Former Chief Justices,
Members of the legal profession;
Distinguished delegates;

We are gathered to discuss a compelling and very important subject of access to justice.

But first and foremost, allow me, on behalf of our government and the people of South Africa, to convey our gratitude to our Chief Justice and the Heads of various Courts for hosting this important conference.

We also extend a warm welcome to our international guests who have come in numbers to share their views and experiences.

I am also heartened by the presence of the members of the Legislature and Executive branches of our Government in this conference.

This is an affirmation of our constitutional value of cooperative governance, on which our model of separation of powers is premised.

The separation of the three branches of the state form a critical basis of our open and democratic society founded on equality and human dignity.

Esteemed guests;

Access to justice is a fundamental human and democratic right, a central pillar of a free and equal society.

Therefore this conference demands a candid reflection regarding the progress we have made in transforming our society as South Africans.

South Africa stands out as a shining example for many countries which are still grappling with issues of transformation and the consolidation of national unity.

We have made significant strides in striving for access to justice for all our people since 1994. We have abolished many laws which were inconsistent with our constitution.

Our greatest achievement as a new nation in the 1990s was the adoption of a constitution which enshrines human dignity, equality and the advancement of human rights and freedoms.

In addition, the equality clause in the Bill of Rights stresses not only equality before the law, but the right to equal protection and benefit from the law.

In addition we have the Chapter 9 institutions, with the key responsibility of promoting democracy and protecting the rights of citizens even further.

Even before we adopted the final constitution in 1996, the values that we espoused in society proved impeccable.

One of these values is access to justice and human rights by the poor.

There are matters which may sound simple but which seriously hinder access to justice by scores of disadvantaged people.

This conference will look at some of these obstacles and look for solutions.

These hindrances are two-fold. One aspect affects judicial officers as dispensers of justice. Their working conditions may impact on access to justice.

As early as 2003, Chief Justice Ngcobo, then a Judge of the Constitutional Court, outlined some of these obstacles in a paper entitled "*Delivery of Justice: Agenda for Change*". He said;

"Justice suffers when judges are working under unfavourable conditions; it suffers when the price is too high and the delay too long for the average citizen;

"And it suffers when some courts have to contend with poor and inadequate support service. Indeed justice suffers when in some courts judges have no chambers to work from and insufficient court rooms for cases to be heard". (unquote).

The other side of the coin is the difficulties for the recipients of justice, especially the poor. Their situation is more desperate because unlike judicial officers, they are powerless and usually cannot solve the conditions they find themselves in.

One main impediment to access for scores of our people is poverty.

Due to poverty-related lack of education and ignorance, many people do not know the law and cannot exercise their rights. This makes the saying '*ignorance of the law is no excuse*' an anomaly in a developing country.

This tenet excuses the blocking of access to justice for the poor and disadvantaged. Access to justice should therefore also involve, to a great extent, citizen education about the justice system.

People need to know their basic rights, the different courts and other structures they can have recourse to when they have problems.

Poverty also makes it difficult for the poor to enjoy equal benefits of the provisions of the law, when they do not have resources such as paying legal fees. Fortunately, Legal Aid South Africa continues to offer legal representation to the indigent free of charge.

This year more than four hundred and thirty seven million rand has been allocated for the increased capacity of Legal Aid South Africa, in order to enable increased access to justice for the poor.

Access to justice is also hindered by language. Some people lose cases due to incorrect interpretations by interpreters.

For yet others, access to justice is hindered by lack of transport, to reach the courts, which may be far from their places of residence. Government has set aside R2,5 billion to construct more courts to attend to this challenge.

Access to justice also refers to the efficiency of the court system.

Some of the challenges include failure to deliver judgments on time, unreasonable delays in the finalisation of cases, unwarranted and unsubstantiated court orders and poorly considered judgments. All these have devastating effects on the lives of our people and put strain on state resources too.

Another cause of frustration for many is the lack of communication around cases. They travel long distances only to find that they have travelled just for a postponement. Almost 80% of awaiting trial detainees transported to courts are for the mere purpose of postponements.

As a result, government is exploring the Audio Visual Remand system. Victims of crime will attend sittings where cases will actually be fruitfully dealt with in court.

Linked to efficiently dealing with postponements, we are pleased that courts are also emphatic about resolving case backlogs.

I know that in the North West, certain judicial officers have embarked on working on Saturdays to reverse case backlogs in our system.

Esteemed participants,

Access to justice must also refer to improving efficiency in our maintenance courts.

As government, we have identified Maintenance and Masters' services as areas that must receive our utmost attention as these are issues affecting the welfare of our people.

We know too well that implementing an effective maintenance recovery and payment system would reduce dependence on the child support grant as more and more working parents will be compelled to support their children.

We are also putting more efforts to turn around the Master's offices to improve services relating to the winding up of estates of the deceased, the administration of insolvent estates and payments from the Guardian's Fund.

Government has also catered for access to justice for children, through the Child Justice Act. The law caters for children to ensure that their participation in litigation and eventually in serving sentences does not compromise their stages of development.

This includes the protection of children who are victims of crime from the harshness of the normal courts, where otherwise they would have to face their abusers.

To promote access to justice for women, we have continued over the past year to launch Thuthuzela Care Centres for victims of sexual and domestic abuse to find temporary shelter while lasting solutions are being sought. Their number has risen from 17 to 27.

One of the principles of access to justice relates to what others may call petty civil claims.

In this regard, we have established 224 Small Claims Courts. Twenty six of these were established last year to enable litigation over claims not exceeding R12 000.

As Small Claims are not dealt by Judges but by Commissioners, we have appointed 229 Commissioners in the past year and we are on course towards ensuring that all of the 384 Magisterial Districts are covered in this regard.

On record, over 400 000 cases have been dealt with by the Small Claims Courts over the past year and this is evidence of access to justice by poor litigants.

As you would know, all Magistrates Courts have been designated Equality Courts, and in this regard, over 320 cases have been dealt with by these courts between 1 April and 30 September 2010.

Esteemed participants,

We are pleased that among the pertinent themes which will be discussed in this conference is judicial independence, which together with the rule of law are interconnected with the notion of Separation of Powers.

The concept of Separation of Powers as we know it today has ancient origin, and enjoyed pride of place even in the unity of the 13 states of America in 1788.

After the Civil War of the Americas, the triumph of the people was marked mostly in adopting a constitution based on the separation of the Legislature, Executive and the Judiciary. The constitution was regarded as supreme law.

The principle of precedence in the adjudication of the cases before the Judiciary was also adopted, to ensure consistency as one of primary requirements for a just dispensation.

This ensures that justice is dispensed without any fear or favour and that all enjoy equal status before the law.

Also important is the appointment

of judicial officers, whose duty is to inspire the confidence of the people on the system.

It is an established principle that access to equal justice and the protection of human rights and civil liberties is dependent on the guarantee that judges are not only independent but are also seen to be independent in decision making.

Judicial independence and the Rule of Law are the pillars of democratic systems world-wide.

Article 10 of the Universal Declaration of Human Rights of 1948, affirms that all persons are entitled in full equality to a fair and public hearing by an independent and impartial tribunal.

This principle has evolved over time and subsequently formed part of the Basic Principles on the Independence of the Judiciary, which were adopted by the UN General Assembly in 1985.

These Basic Principles of Independence require States to guarantee the independence of the judiciary in their Constitutions.

Indeed, our Constitution has adequate checks and balances to protect and safeguard the independence of the judiciary.

The appointment of judges in the different judicial offices has also been found to be in line with our model of separation of powers.

The functioning and role of the Judicial Service Commission in the appointment of judges and handling of complaints against judges is paramount.

Its diverse composition of representatives of the three arms of Government and the legal profession provide the necessary balance and an ideal mixture between competing interests.

All these enhance not only our legal system, but our constitutional democracy as well. We have done truly well in transforming our legal system over the past 17 years.

Esteemed members of the judiciary,

While acknowledging the strides we have made, it is our well-considered view that there is a need to distinguish the areas of responsibility between the judiciary and the elected branches of government, especially with regards to government policy formulation.

The Executive, as elected officials, has the sole discretion to decide policies for Government.

This challenge is perhaps articulated clearly by Justice VR Krishna Lyer of India who observed that: *“Legality is within the courts’ province to pronounce upon, but canons of political propriety and democratic dharma are polemic issues on which judicial silence is the golden rule.”*

This means that once government has decided on the appropriate policies, the judiciary cannot, when striking down legislation or parts thereof on the basis of illegality, raise that as an opportunity to change the policies as determined by the Executive area of government.

There is no doubt that the principle of separation of powers must reign supreme to enable the efficiency and integrity of the various arms of the State in executing their mandates.

Encroachment of one arm on the terrain of another should be frowned upon by others, and there must be no bias in this regard.

In as much as we seek to respect the powers and role conferred by our constitution on the legislature and the judiciary, we expect the same from these very important institutions of our democratic dispensation.

The Executive must be allowed to conduct its administration and policy making work as freely as it possibly can.

The powers conferred on the courts cannot be superior to the powers resulting from the political and consequently administrative mandate resulting from popular democratic elections.

Political disputes resulting from the exercise of powers that have been constitutionally conferred on the ruling party through a popular vote must not be subverted, simply because those who disagree with the ruling party politically, and who cannot win the popular vote

during elections, feel other arms of the State are avenues to help them co-govern the country.

This interferes with the independence of the judiciary. Political battles must be fought on political platforms.

Honourable Guests,

With regards to transformation, the Minister of Justice and Constitutional Development will elaborate on some of the programmes and legislation that Government and the judiciary is spearheading.

These include the Constitution Seventeenth Amendment Bill and the Superior Courts Bill which have been in the making for more than a decade.

The Honourable Chief Justice and the Minister have made firm commitments to facilitate the finalisation and introduction of these Bills into Parliament.

Together with Cabinet I have had an opportunity to consider a comprehensive report from the Minister on some of these Bills and other on-going judicial reforms championed by the Chief Justice.

Ladies and gentlemen;

As the Executive, we remain committed to the independence of the judiciary as entailed in our constitution.

We maintain that the integrity of our Constitution is beyond doubt and the Constitutional Court remains the primary custodian of the Supreme Law in the land.

Access to justice, as I indicated, is not only limited to the personnel, but to the institutions which deal with this aspect.

We bank on this kind of forum to proffer suggestions on how best to utilise these institutions, which include the Chapter 9 institutions which promote the rights of our citizens.

I trust also that you will be able to deal with issues beyond the dominant aspects of civil claims and criminal cases, and discuss other aspects of justice such as environmental justice, social justice, restorative justice, gender justice, and so on.

As I conclude, I wish to assure you on behalf of the Executive, that we share the same aspirations with regards to the quest for access to justice in our country by all our people.

I am confident that this conference will generate an outcome that will take us forward in the quest for equal justice for all our people - young and old, rich and poor, urban and rural, men and women.

Once again, thank you for this privileged interaction.

I thank you!