1. Purpose

These terms of reference seek to invite tenders from competent institutions to undertake an assessment of the impact of the decisions of the Constitutional Court and the Supreme Court of Appeal on the transformation of society.

2. Background and objective of the envisaged assessment of the South African constitutional jurisprudence

On 28 February 2011 the Minister of Justice and Constitutional Development Mr Jeff Radebe, MP, released a Discussion Document on the Transformation of the Judicial System and the Role of the Judiciary in the Developmental South African State for comments. The Document gives a summary of the approaches which were approved by Cabinet in November 2011 with regard to the transformation of the Judicial System.

The Constitution enjoins Organs of state, through legislative and other measures to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness (s165(4)). The assessment is therefore aimed at enhancing the measures the legislative measures and programmes designed and developed by Government to realise the objectives of this section.

In terms of the Constitution, the Constitutional Court is the highest court on all constitutional matters, while the Supreme Court of Appeal is the highest court of appeal except in constitutional matters. Since the Constitution places the Constitutional Court and the Supreme Court at the pinnacle of South African jurisprudence, it is appropriate that any assessment of the impact of such jurisprudence must be in respect of both the Constitutional Court and the Supreme Court of Appeal.

These terms of reference therefore seek to invite proposals from competent institutions to undertake the assessment as set out below.
3. **The scope of the assessment and duration**

The Department of Justice and Constitutional Development invites tenders from competent research institution(s) to –

3.1 **Undertake a comprehensive analysis of the decisions of the Constitutional Court and the Supreme Court of Appeal, since the advent of democracy, in order to** –

   (a) establish the extent to which such decisions have contributed to the reform of South African jurisprudence and the law to advance the values embodied in the Constitution;

   (b) assess the evolving jurisprudence on socio-economic rights with a view to establishing its impact on eradicating inequality and poverty and enhancing human dignity;

   (c) assess the impact on the development of a South African jurisprudence that upholds and entrenches the founding principles and values as espoused in the Constitution and how such jurisprudence contributes to and is enriched by the development of jurisprudence in the SADC region, the continent and globally; and

   (d) assess the extent to which South Africa’s evolving jurisprudence has transformed and developed the common law and customary law in South Africa as envisaged by the Constitution.

3.2 **Conduct a study on the implementation of the decisions of the Constitutional Court and the Supreme Court of Appeal by the State with a view to highlighting long term benefits to the broader population, with regard to** –

   (a) progress made and challenges encountered in the implementation of the decisions of these courts;

   (b) legislation, policies and government programmes that have been put in place to give effect to these decisions; and

   (c) capacity of the state within the available resources to realise the outcome envisaged by such court decisions.
3.3 Conduct a study on direct access to the Constitutional Court through a comparative study of other jurisdictions, to identify factors that inhibit access to justice in relation to –

(a) the costs of litigation;
(b) legislative frameworks, structures and processes that inhibit access;
(c) the right of access to the Constitutional Court by indigent and unrepresented persons; and
(d) whether the rules and the practices with regard to direct access to the Constitutional Court promote access to justice in particular to the indigent and unrepresented persons.

3.4 Assess the costs of litigation at the Constitutional Court and the Supreme Court of Appeal and the extent to which such costs impact on access to justice. A comparative study of other jurisdictions relating to costs of litigation must also be undertaken.

3.5 Assess the speed within which cases are finalised in the Constitutional Court and Supreme Court of Appeal in order to identify areas and reasons for delays with regard to legislative frameworks, structures or processes involved in adjudicating civil disputes.

3.6 The Assessment should also consider and have regard to the submissions by interested parties on the Discussion Document referred to in paragraph 2 above.

3.7 The assessment should be completed within 18 months from the date of commencement thereof.

4. Anticipated outcome of the assessment

The following deliverables are envisaged:

4.1 Monthly reports with specific milestones for purposes of progress payments

4.2 Report on the findings of each element of the assessment

4.3 Recommendations on each element of the assessment
4.4 Debates and simulative views on constitutional rights that advance our democracy which will be gathered in a form of a conference;

4.5 The outcome of the conference would be structured towards the development of a comprehensive programme of action to enable each branch of the state to overcome the identified challenges confronting the transformation of society.

5. **The general conditions and environment under which the assessment must be undertaken**

The following principles, amongst other the principles enshrined in the Constitution, must be observed in the course of conducting the assessment:

(a) Supremacy of the Constitution and the rule of law

(b) Human dignity and equality

(c) Judicial independence

(d) Separation of powers as embodied in the Constitution and defined by our courts

(e) Access to justice for all

(f) Transparency and openness

6. **Requirements**

6.1 The research institution(s) must:

(a) have understanding and thorough knowledge of the South African constitutional and judicial framework and such to be substantiated by publications, research papers and advocacy;

(b) present demonstrable evidence of ability to undertake large-scale research projects;

(c) have a successful record of having done objective, evidence-based research on social and community development projects or ability to conduct such research;
(d) demonstrate the ability to undertake an assessment of this magnitude and nature, including that it has the resources and expertise to execute such a project; and

(e) generally demonstrate the ability or potential to conduct assessments pertaining to the work of the courts and its impact by being able to define areas of empirical assessment, namely the courts’ work load, case cycle times, costs of litigation, impact of South African jurisprudence on the SADC and global jurisprudence and vice versa, public trust and confidence in the judicial system.

6.2 The submission should include the following:

(a) Proposed methodology and approach.

(b) A detailed work plan reflecting project phases, time-frames, costing and outputs.

(c) Prospective bidders must submit contact names and telephone numbers of referees for whom similar services have been conducted.

(d) Profile of institution including a description of similar work undertaken.

(e) Overall price including VAT.

7. **General Conditions**

The general conditions of contracts as set out by the National Treasury will be applicable in all instances.

8. **Special conditions of Contract**

8.1 Prospective bidders must submit the following:

(a) Proof of experience and skills of the researchers that will participate in the assessment;

(b) Relevant references of similar projects conducted are required. Prospective bidders must also indicate if they had participated in any form of community service or community development project geared to advance the transformation of society;

(c) Proof of experience, skills and knowledge in co-coordinating and implementing of large scale quantitative research projects on a national
scale. The service provider also has to demonstrate the ability to plan, execute and manage survey data effectively. CV’s of potential researchers to accompany the proposal.

(d) Service Providers are invited to clearly describe the methodological approach(es) that they would follow to conduct the desired assessment. Possible obstacles and proposed strategies to overcome these obstacles should be highlighted.

8.2 Prospective bidders may bid for all or part of the work set out under paragraph 3 (the scope of the assessment) and must, for this purpose, submit a detailed costing for each work they tender for.

8.3 Service providers may submit their bids individually or as a consortium/partnership.

9. Evaluation criteria

9.1 Bid proposals will be evaluated in accordance with the 90/10-preference point system, as contemplated in the Preferential Procurement Policy Framework Act (Act 5 of 2000).

9.2 Bid proposals will be evaluated on the following basis:

- Functionality aspect
- 90/10 preference point system

9.3 It must be noted that prospective bidders who score less than 60 points out of 100 in respect of functionality will be regarded as having submitted a non-responsive bid and will therefore not be evaluated further.

9.4 In order to ensure meaningful participation and effective comparison, Bidders are requested to furnish detailed information in substantiation of compliance to the evaluation criteria.
9.5 Points in respect of price will be calculated on the ceiling price (Travel and Subsistence costs plus Value Added Tax, where applicable, must be included in the ceiling price) (see form SBD.3).

9.6 In respect to evaluation matrix, prospective service bidders will be rated from 1 to 5 in that: 1 = very poor, 2 = poor, 3 = average, 4 = good and 5 = very good.

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>WEIGHT</th>
<th>POINTS SCORED</th>
<th>TOTAL</th>
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<tbody>
<tr>
<td>Detailed plan and methodology proposed by the bidder</td>
<td>20%</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>Key outputs and milestones proposed by the bidder</td>
<td>10%</td>
<td>1 2 3 4 5</td>
<td></td>
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<tr>
<td>Demonstrable experience of the team assigned to this project (submit relevant CV’s)</td>
<td>20%</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>Knowledge of South African constitutional and judicial framework</td>
<td>20%</td>
<td>1 2 3 4 5</td>
<td></td>
</tr>
<tr>
<td>Demonstrable experience in conducting similar projects</td>
<td>30%</td>
<td>1 2 3 4 5</td>
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</tbody>
</table>

9.7 Only bids that achieve the minimum qualifying score / percentage for functionality will be evaluated further in accordance with the 90/10 preference point systems as prescribed in the Preferential Procurement Regulations.

9.8 Points awarded for B-BBEE Status Level of Contribution
9.9 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations,

9.10 Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<table>
<thead>
<tr>
<th>B-BBEE Status Level of Contributor</th>
<th>Number of points (90/10 system)</th>
<th>Number of points (80/20 system)</th>
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<td>2</td>
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<tr>
<td>Non-compliant contributor</td>
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</tbody>
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10. Reporting and Monitoring of the Contract

10.1 The successful service provider must submit monthly reports as prescribed in the Service Level Agreement:

10.2 Monitoring will be made in line with the Service Level Agreement and Supply Chain Management Policy.

10.3 Quarterly/monthly meetings shall be held between the service provider and the Department.
11. **Payment**

11.1 Payment will be made in line with the government supply chain processes.

11.2 Payment will be effected within thirty (30) days after receipt of a detailed invoice from the successful bidder.

11.3 Payment will be based on submission of a report indicative of the milestones achieved in accordance with the project plan.

11.4 The successful bidder will enter into a contractual agreement with the department of Justice and Constitutional Development.

12. **Enquiries**

Enquires may be directed in writing to Supply Chain Management for the attention of:

Ms T Ngcobo Tel: 012 315 1905 Email: THNgcobo@justice.gov.za

And / or

Adv JB Skosana Tel 012 315 1649 Email: jskosana@justice.gov.za (if the enquiry relates to the substance of the work)