



**JUSTICE AND CONSTITUTIONAL DEVELOPMENT  
REPUBLIC OF SOUTH AFRICA**

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**Speech by Mr Jeff Radebe, MP**

**Minister of Justice and Constitutional Development,**

**At the 12<sup>th</sup> Anniversary of the Law Reform Essay Competition, delivered on  
16 April 2010, at the Constitutional Court, Braamfontein, Johannesburg**

Chairperson of the South African Law Reform Commission, Honourable Justice Mokgoro,

The Vice-Chairperson of South African Law Reform Commission and Chairperson of the Independent Commission on the Remuneration of Public Office Bearers, Judge Seriti

The Public Protector, Adv Thuli Madonsela

Distinguished Guests,

It is a pleasure to be with you tonight on the occasion of the 12<sup>th</sup> Law Reform Essay Competition named after of one of the profound legal mind of all times, the late Justice Ismail Mahomed. I am sure we are all happy to be associated with this legal legend, who has contributed so much in the development of jurisprudence both in this country and in our neighbouring the SADC countries. This occasion provides the opportunity to unwind our minds to reflect on the legacy of the courageous and impeccable jurist who, after addressing some 300 Americans about the political tension at the Zellerbach Theatre back in 1992 Law Professor Douglas Frenkel described him as "eloquent and powerful" and that "he was mesmerized by his craft with words". In his illustrious career that extends over 3 decades he, together with other lawyers of his generation that included Advocate George Bizos, his successor as Chief Justice of this very court Justice Arthur Chaskalson, the late Abram Fisher, and

Joe Slovo fought for human rights and represented many who fought against the unjust system. Later as a judge he not only defended the human rights he previously fought for, but through his meticulous written judgments in the Constitutional Court and the Supreme Court of Appeal he helped shape the South African jurisprudence to become exemplary and persuasive to other jurisdictions of the world. Justice Ismail Mahomed acquired "first status" in almost every arena that was the preserve of the White minority: He became the first Black person to be appointed as a judge in 1991, the first Black judge of the Appellate Division, in 1993 he went on to become the first Black Chief Justice of the Republic of South Africa in 1997. He was one of the first Constitutional Court judges, who, together with Justice Mokgoro, were the first architects of our Constitutional jurisprudent. The first judgment of the Constitutional Court in the case of *State v Makwanyane* in 1995 which outlawed the death penalty is classicus. He was the first chairperson of the Judicial Service Commission of which I have been a member since recent. He, together with the first commissioners, helped to establish the JSC and built it into a formidable Institution that ensures that many more practitioners of colour become appointed to the bench. He held senior judicial positions in Namibia, where he led the process of drafting the country's Constitution and became the country's Chief Justice, as well as in Botswana, Swaziland, and Lesotho. He has delivered many landmark decisions in all the courts he has been attached to. After 12 years of its existence the Law Reform Commission may wish to consider, if it has not done so already, to extend the competition to young jurists in the SADC countries to mark his contribution in the human right discourse across our shores. He had made had notable contribution outside the legal arena.

I am confident that the jurists of our time and those of future generations when they look on the path ahead of them they are inspired by the great jurists such as Ismail Mahomed who walked before us. I am heartened by this noble programme which aims to encourage critical legal writing by law students and afford them the opportunity to create innovative ideas for the reform of the law. It is through their participation in programmes such as these that they would be able to hone their legal skills which will enable them to overcome the barriers to the legal profession. We are also indebted to Juta for sponsoring this initiative, which without their support, it would not have been a success.

Research, particularly legal research and writing, are the foundations of the law reform process and, although in practice, the terms "legal research" and "legal

writing” are interchangeably used, they are distinct. Legal research involves finding, reading, analysing, and integrating contextualised judicial decisions, legislation and literature relevant to the legal subject at hand, and often involves a comparative study of the relevant laws in other jurisdictions. Legal writing also plays a significant role in the process of law reform. Though legal research and legal writing are complex and difficult skills, they are skills which lawyers acquire through training and with which they eventually become familiar. The aim of this competition is to foster that familiarity to promote excellence.

The pursuit of excellence in legal research and writing was indeed the hallmark of the late Chief Justice Mahomed. In an address to the Johannesburg Bar on 25 June 1997 on the occasion of his appointment as Chief Justice he spoke of:

“The...tradition of thorough scholarship, the pursuit of forensic excellence, the capacity of rational thought, intense intellectual energy, and unremitting discipline which barristers have always been expected to display in the discharge of their briefs”.

The essays submitted by law students since the inception of this Competition in 1999 have abundantly displayed what the late Chief Justice called “thorough scholarship”. I am grateful that the South African Law Reform Commission, in partnership with Juta, and with the necessary support of law faculties, seeks to nurture this tradition among young lawyers.

The achievements of previous recipients of this prize are instructive of the benefit of excellence in research and writing skills. It is in this context that I would urge the Deans of Law faculties at all our universities to utilise available resources, promote excellence in legal research and writing, identify talent and encourage participation in the competition. Not only would it be of benefit to the SALRC as South Africa’s eminent law reform agency, it would benefit the country as a whole, elevating our research and writing skills profile.

Law reform is not the exclusive domain of law reform agencies. Indeed, the courts through their interpretation of the law, the legislature and the executive through enactment of subordinate legislation, engage in law reform. The law students who have participated in this year’s Competition have also engaged in this exercise by identifying areas of the law requiring reform and by persuasively making proposals for the reform of those areas of the law. Indeed, the primary function of the SALRC is to

provide Government with written advice on law reform. This is usually achieved by the publication of reports containing extensively researched background on the subject, and exhaustive findings and recommendations for law reform. Legal writing and ability are therefore skills which are sought after at the SALRC.

As you may be aware, the Legal Profession is undergoing its own transformation which would ensure that the legal profession is equally accessible to aspirant lawyers. The legislative initiatives underway through the Legal Practice Bill provide among others, for Legal Education to provide orientation legal training for new entrants into the profession and continuing legal education practitioners. There is therefore a need to enhance to contribution of the profession through programmes that are geared to prepare young layers for the legal profession.

Last night I browsed through all the Essays submitted by participants for this year's competition. Unlike the panellists who had a difficult task of choosing the best amongst the received Essays, mine was to garner the views expressed in relation to some of the topical subjects which form part of the current programmes of the Government on judicial and legal reform. I have found some of the essays to be a very interesting and engaging. I will also share some of the Essays with my colleagues in the Justice Crime Prevention and Security cluster. These are Essays that relate to our work in Criminal Justice Review project and were submitted under the themes: *Umshini Wam, Umshini... and then shoot me: A critical analysis of the shoot to kill debacle and its constitutional impact on section 49 of the Criminal Procedure Act*"; *Science fiction meets science fact: Improving the South Africa's criminal justice system: the possibility of DNA fingerprinting database, as options*". It was also interesting to read the Essay on "Constitutionalism Supremacy and the Superior Courts Bill" which touches on the real contentious issues which have confronted the judicial system for the past 15 years. I will be submitting to Cabinet in the coming week a revised text of the Superior Courts Bill and its introduction into Parliament soon will kick-start the public discourse which will give everyone the space to comments as part of our participative democracy. I view of the time I would not go into every Essay. I have forwarded all the essays to the Director-General for use as resource material in the different programmes of the Department where necessary. I am humbled by the depth and thought process that accompanied the research. To me all participants are winners and would encourage more law students to participate in

this project and thereby contribute to the development of our Constitutional jurisprudence.

A brief look at the previous winners of the Competition shows that the University of Cape Town has taken the lead. The Law Reform Commission and the Law Deans need to do more to attract students from the traditional Black universities to participate in the project. Inevitably the research in those areas will bring to the fore aspects relating to social justice and the stark realities facing the poor and the rural communities in the underdeveloped areas. I would soon engage with both the Rules Board and the Law Reform Commission on the role they would be expected to play in the Review of the Civil Justice System programme due to commence soon. I am sure that there would be an opportunity, as part of the Review, to explore the Essay Competition and other Programmes under the Law Commission, a mechanism through which the life experiences of ordinary citizens who are excluded and marginalised by the legal system may be reflected. I am sure we can build on the maze of work of the Commission which have influenced many legislative enactments to enhance access to justice.

I wish the participants and winners of the 2009 Ismail Mahomed Law Reform Essay Competition success for the future.

I thank you.