



**MINISTRY OF JUSTICE AND CORRECTIONAL SERVICES
REPUBLIC OF SOUTH AFRICA**

**SPEECH BY MINISTER RONALD LAMOLA AT THE BLACK LAWYERS
ASSOCIATION, ANNUAL GENERAL MEETING, 20 NOVEMBER 2021
DELIVERED VIRTUALLY**

Distinguished Guests

Ladies and Gentlemen

I wish to thank you for extending an invitation to my office to this annual general meeting.

I am particularly honoured to be a guest at your meeting. Unfortunately, I am not able to join you physically, but rest assured, my heart and spirit is with you all, as you gather to assess the status quo but also redirect yourselves as you carefully consider the lessons of 2021.

Programme Director, I must say the Black Lawyers Association (BLS) is known for its decorated history in our country. That is something we must internalise in all its manifestations. In a country like ours which was besieged with total repression of the black race, a crime against humanity, Black Lawyers Association stands out as an institution, not an organisation.

Not only is it just an institution, but a Black institution. Some may ask why I have chosen the word institution instead of organisation. An organization is a systematic collection of people, who work together for achieving the desired end, under a common identity. Conversely, an institution is an establishment that is dedicated to promoting a specific cause that can be educational, professional and social.

Let us for one second try to imagine whether the lofty goals of the constitution would be institutionalised without the advocacy of organisations like Black Lawyers Association.

When all is said and done, our society cannot afford to develop without this organisation.

Programme Director, we have recently just come from the local government elections. One of the most inciteful perspectives which have emerged post the elections is from the Human Sciences Research Council (HSRC).

The HSRC conducted survey in which they asked South Africans several questions, two of those questions really peaked my curiosity.

The First question was **whether South Africans were satisfied with democracy?**

The survey revealed that there is growing discontent with the functioning of democracy in South Africa, despite an improvement following the transition to the Ramaphosa administration.

In 2004, 63% of South Africans indicated they were satisfied with democracy. By 2017, the level of satisfaction had fallen significantly to a mere 23%, with a slight recovery to 35%.

When asked if South Africans Trust in core political institutions;

The study found that there has been declining confidence in national government and Parliament since the mid-2000s. There was a slight improvement between the 2017 and 2018/19 survey rounds, but trust nonetheless, remains circumscribed. Trust in national government decreased from 67% in 2004 to a low of 28% in 2017, while trust in Parliament dropped from 63% to 25% over the same period.

Now if we consider that the triple challenges of poverty, unemployment and inequality, remain stubbornly with us in spite of our democratic regime, we may be able to analyze the results of the survey.

The triple challenges remain among the dominant challenges facing the government in its quest to create a better life for all.

The latest estimate from Statistics South Africa show that the unemployment rate reached an all-time high of 29.1% in September 2019. It is unlikely that the economy will grow fast enough to create the number of jobs required to reduce unemployment.

This is indeed a disconcerting prospect for the many young South Africans entering the labour market in search of decent employment to improve their lives. Youth

unemployment for those aged 15 to 24, stood at 32% in the last quarter of 2019, which is an increase of 0.9% from 31.1% in the final quarter of 2018.

For lawyers, the question is, do South Africans have faith in justice and the justice system.

I pose this question to this forum because you are all in the business of justice. You are participants in the programme to make justice accessible to all.

During 2018, a survey revealed that crime is on the rise and trust in the criminal justice was declining. Now one would suspect that this sentiment remains despite very high prosecution rates for crimes like GBV in particular.

And so the question I want to leave you with is what can be done to restore and enhance the institution we practice in.

As we celebrate the 25th Anniversary of the Constitution, this is something institutions like Black Lawyers Association can help us interrogate.

Programme Director, this year we gather missing a critical pillar of the profession, Advocate Sigogo.

With his pen, he raised issues that could not be ignored even though the ink had dried.

As he wrote in the De Rebus as President of BLA: “ ***We owe it to coming generations to address the challenges we have today in a manner that they will look back and appreciate the role we would have played.*** “

We will take up this challenge without delay.

Our quest to transform state legal services is something we intend to fulfil with zeal.

The establishment and the mandate of the Office of the Solicitor-General

The State Attorney Amendment Act 13 of 2014 was proclaimed with effect from the 7th of February 2021. This brought about the following fundamental changes:

The creation of 13 Offices of the State Attorney across the country all intended to each have the Head of Office at Chief Director level.

The establishment of the Office of the Solicitor General.

As we are already aware, the Acting Solicitor General, Mr Ronald Fhedzisani Pandelani was appointed on the 16th of March 2020. He is the Executive Officer for all State Attorney Offices and he is expected to exercise control, direction and supervision over all Offices of the State Attorney.

The Solicitor General (SG) is not only leading and coordinating state litigation, but he also oversees the performance of the entire State legal services with specific focus to reducing the State contingent liabilities and protecting the interest of the State.

Milestones achieved to date

Litigation Strategy & Policies to Implement the State Attorney Amendment Act

In order to achieve the desired change within the State legal services environment, the SG has developed a Litigation Strategy 2021-2026 to position the Office of the Solicitor General (OSG) as the nerve centre for the provision of State legal services.

The strategy also deals with the policies as envisaged in the State Attorney Amendment Act.

Five policies to implement State Attorney Amendments Act have been developed and three of those policies, namely:

State Litigation Management policy:

Mediation Policy and State Legal Representation policy, were presented to Cabinet for endorsement while the two remaining ones, namely Initiating and Defending of Matters policy and the Briefing and Outsourcing of Legal Work, have been submitted to the Presidency for Socio-Economic Impact Analysis System.

They will immediately thereafter also be referred to Cabinet for endorsement.

The aforesaid policies seek to redress the imbalances of the past, transform the legal services and establish uniform procedures in the Offices of the State Attorney.

These policies also seek to transform the legal profession by promoting consistency in respect of the appointment of the Previously Disadvantaged Legal Practitioners and they will operate as transitional mechanism while the State Attorney Act is further reviewed or decided to be amended or repealed in its entirety.

Filling of vacant positions for Heads of State Attorney Offices

The Solicitor General has succeeded in filling 6 positions of the 11 vacant positions of Head of State Attorneys positions, and some of these positions have been vacant since 2012.

The remaining 5 positions are in the process of being filled, however it is worth mentioning that the interviews for the Office of the State Attorney East London were conducted and there was no suitable candidate identified.

The Human Resource Unit within the Department of Justice and Constitutional Development is currently conducting benchmarking process for the Kimberly and Thohoyandou Offices, for the creation of the Chief Director positions in these Offices which were before the implementation of the State Attorney Amendment Act headed by the Deputy State Attorneys. The filling of 6 positions of Heads of Offices brought the number of permanently appointed Heads to 8.

Stakeholder Engagements

To ensure adequate implementation of the OSG's mandate, the SG has since his appointment fostered closer relation with different organs of the State including the National School of Governance, Legal Practice Council, Legal Aid South Africa, Legal Sector Code Steering Committee, the Judiciary and Private Legal Practitioners.

Nine stakeholder management meetings have been conducted with the legal profession in seven Provinces. The OSG has already convened webinars under the '*State litigation and consumption of State legal services*' with National, Provincial and Local Government as well as State Owned Enterprises (SOEs).

Briefing patterns in the State Attorney.

The OSG remains committed to the transformation of State legal services and empowerment of Previously Disadvantaged Legal Practitioners.

The Constitution places a critical social and moral responsibility on government to create equal opportunities to private practitioners as well.

In order to respond to this Constitutional imperative, the OSG has already finalised the *Briefing and Outsourcing of Legal Work policy* in line with s3(4) of the State Attorney Amendment Act. The overarching aim of this policy is to develop legal skills through equitable outsourcing of legal work to PDIs.

In a nutshell, the policy is primarily intended to empowering PDIs and to also increase the number of black lawyers briefed. The details of the briefing patterns are available on the Department of Justice and Constitutional Development's website. Records clearly indicates that for the past years, the Offices of the State Attorney were measured in terms of the transformation of the (PDIs) Advocates, more especially Female Legal Practitioners.

They have been measured on the following empowerment tools:

- a. The total number of briefs issued, and number of briefs issued to PDIs,
- b. Percentage of value of briefs allocated to PDIs,
- c. Percentage of briefs allocated to Female legal practitioners, and
- d. Percentage of value of briefs allocate to Female legal practitioners

Procurement of State Legal Services

Due to the various challenges raised regarding the procurement of State legal services and non-compliance with section 217 of the Constitution, the Offices of the State Attorney are in the process of developing a new unique process for the procurement of state legal services.

In addition to that which I have just mentioned, I am proud to say we are on the cusp of a new era in the legal profession.

Programme Director:

Although the democratic dispensation has championed Broad-Based Black Economic Empowerment, to address the imbalances created by the apartheid laws, policies, and practices, and to promote socio-political equality and equal participation in the economy of the country, more work still needs to be done.

Members of the legal profession do not have a sector code to guide them to address imbalances and inequality within the legal profession.

The legal profession has to be reliant on Generic Codes, by their nature, the codes are overly broad and as such, have not been able to address the unique nature of the legal profession as a sector in the economy.

As I have said on many occasions, government alone cannot transform the legal profession. This requires the collective buying of government and the private sector to ensure that legal profession thrives in a manner which does not entrench existing privileges, which are patriarchal and white supremacist in nature.

To this end, together with Legal Practice Council, we can say that the legal sector code which is imminent will help us transform the legal sector to give effect to the objectives of the Constitution of promoting effective and sustainable economic

participation by black people and women in the economy of the Republic of South Africa in general and in the legal profession in particular.

Along with these changes, we will also be in a position to introduce a transparent acting judges appointment regime once we have concluded a case which was brought against us in Limpopo.

We also will be calling on your wisdom as we move to fuse the profession into a single profession particularly on the question of silk status. Internal processes are still underway, we will in due course share with you policy outline on how we ought to recognize and extend seniority status to legal professionals in the country.

As we continue to navigate disruptions spurred by the COVID-19 pandemic, we are also recognizing the need for fundamental lasting change. The only test now is whether we will seize new opportunities or safeguard against threats. It is apparent that shifts in operations and mindsets are crucial to a successful transformation.

Transformation of the profession cannot be viewed outside of the context of societal transformation. Our definition of transformation cannot be narrow and generic, in essence, it is not only about black and white, it is a lot more nuance than that.

Our debates and approaches to transformation must also extend to protecting the profession. Otherwise sooner or later, we run the risk of waking up to work in a profession that has been obliterated by a digital revolution.

The Fourth Industrial Revolution (4IR) is here! It is a digital revolution, disrupting daily business and life in virtually every industry, on a global scale. Judges, black and white, are affected by this disruption.

Big data is affecting everything, from research to devising strategies or assessing the merits of a legal case. There are already solutions to many data-related challenges ranging from collecting large amounts of data as well as technology capable of scanning, interpreting and synthesizing written documents.

This technology is capable of providing better, cleaner and richer data, which in turn makes it more searchable and allows for the mining for specific insights directly related to a current legal question. Better legal analytics in general means that lawyers are more able to mine for results in increasingly large sets of data.

In specific areas of law, analytics can also be used to track broad industry trends related to strategic planning, business development and mining.

It is clear that in the near future, algorithms may be able to sift through heads of arguments and produce a judgment.

Legal technology is being used with increasing frequency to improve speed and efficiency in the legal process. Artificial Intelligence (AI) is now able to significantly reduce both time and cost of legal work.

For example, the use of AI in contract analysis supporting mergers and acquisition processes or contract remediation to comply with regulatory changes like the Data Protection legal framework is growing. As the AI market grows, the use of legal services will expand along with it leading to better legal outcomes and improved results to the bottom line.

Legal professionals may also increasingly rely on AI-powered digital assistants which would grow smarter as they process more information. This would free legal professionals to focus on higher value-added legal services to clients.

We cannot succeed to restore trust and transform in our institutions, criminal justice system and justice system without adapting to the changes required by the times we live in.

I wish you well in annual general meeting I thank you.