

**ADDRESS BY HON AC NEL, MP, DEPUTY MINISTER FOR JUSTICE AND
CONSTITUTIONAL DEVELOPMENT DURING THE DEBATE ON THE BUDGET
VOTE OF THE OFFICE OF THE CHIEF JUSTICE ON TUESDAY, 1 JULY 2025**

Chairperson, Minister, Honourable Members.

In February 2012, the Department of Justice and Constitutional Development published a discussion document titled: *The transformation of the judicial system and the role of the judiciary in the developmental South African State*”.

Based on this document, I wrote an article that I believe is still relevant:

“We adopted a Constitution described by President Nelson Mandela as, „our national soul, our compact with one another as citizens, underpinned by our highest aspirations and our deepest apprehensions.”

Despite being forged in the furnace of negotiations between those forces representing a dying and decaying apartheid past and those representing a democratic and progressive future, the Constitution emerged true to its ancestry.

The Bill of Rights adopted by the ANC in 1923, the Africans’ Claims adopted by the ANC in 1943, and the Freedom Charter adopted in 1955 are the tributaries that fed the wellspring that is our Constitution.

Our Constitution is a revolutionary and transformative document.

It is the supreme law of the land, the basis for the transformation of our society into a united, non-racial, non-sexist, democratic state founded on the values of human dignity, the achievement of equality and the advancement of human rights and freedoms.

This vision can only be truly realised through the fundamental transformation of our society, a monumental historic project requiring a democratic developmental state acting in concert with all sectors of society.

Transformation is mandated, driven and guided by the Constitution.

The Constitution is not designed to obstruct transformation but to facilitate it.

We are all duty bound continuously and critically to assess the progress we are making in discharging this mandate.

The Constitution expects nothing less of us.

The Constitution creates a democratic state consisting of three, co-equal branches which have distinct but interdependent roles to play in transforming society.

The legislature exercises its legislative authority by passing laws which must progressively advance transformation of the state and society;

The executive is responsible for the implementation of laws and the development of policies geared towards the transformation of society;

The courts exercise judicial authority by interpreting the laws passed by the legislature and action taken by the executive in accordance with the Constitution.

The judiciary, along with the legislature and the executive has a constitutional mandate to transform society.

However, in order to discharge this mandate it must - itself - be transformed, as must the executive and the legislature.

The Constitution provides that as soon as is practical after the new Constitution took effect, all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution.

The Constitution entrusts this task to the Minister of Justice acting after consultation with the Judicial Service Commission.

The task of “establishing a judicial system suited to the requirements of the new Constitution” is a complex and multifaceted endeavour.

Significant progress has been made in ensuring that the judiciary reflects broadly the racial and gender composition of South Africa as mandated by the Constitution.

In 1994 there were only three black people and nine women serving as judges. By 2011 there were 136 black people and 61 women out of 225 judges.

However, transformation is not only a demographic concept.

The transformation of values and mindset, architecture of the judicial system and its administration, the development of a new jurisprudence and access to justice are all vitally important aspects of transformation.

The document proposes the following six measures to accelerate and deepen transformation:

(1) Intensifying institutional reforms that are geared to enhance the capacity of the Constitutional Court to lead the evolution of our constitutional jurisprudence.

(2) Making optimum use of the Judicial Education Institute to facilitate the development of an appropriate judicial education curriculum that will enhance the skills, competencies and social context attributes of judicial officers.

(3) Enhancing the efficiency and the integrity of the Judicial Service Commission and the Magistrates Commission in the execution of their constitutional mandates of facilitating the transformation of racial, gender and other constitutional attributes in the Judiciary.

(4) Establishing a framework for the monitoring and evaluation of the implementation of court decisions by all state departments to advance respect for the rule of law.

(5) Building a strong research capacity for the state by re-engineering the South African Law Reform Commission and the Rules Board for Courts of Law, to realise the full potential of the research capacity of the State.

(6) Facilitating the establishment of mechanisms for the three branches of state to engage in regular debates to manage their interface within the context of the separation of powers in pursuit of a common transformative goal that is geared to benefit society at large.”

Recently, at the 30th anniversary of the opening of the Constitutional Court, President Cyril Ramaphosa stated that:

“We reaffirm our commitment to providing all the necessary support to our courts as they administer justice.

At our meeting with the Judiciary recently, we committed to taking steps to advance the independence of the judiciary and the future of our courts’ administration.

A joint committee will develop an action plan to be finalised 6 weeks from now.

We will ensure the Judiciary is rightly constituted as an equal branch of government with the Legislature and the Executive.

Let us use this occasion not only to celebrate, but to recommit.”

That, Honourable Members, is what we are here to do today, to recommit to this vision.

Under the leadership of President Cyril Ramaphosa and Minister Mmamoloko Kubayi, we recommit ourselves from the Executive to working with the Judiciary under the leadership of Chief Justice Mandisa Maya to realise the vision of a fully independent Judiciary in line with the Constitution.

Honourable Members, today we also ask of you to recommit to this vision by supporting the budget of the Office of the Chief Justice.

Strengthening the independence of the Judiciary must proceed hand in hand with the establishment of a single judiciary.

For many South Africans the face of justice is the face of the Small Claims Court, the District Court and the Regional Court.

It is vital that the independence, capacity and resources for these Courts are enhanced to ensure access to justice for all in our society.

We are committed to expedite the development and introduction of the Lower Courts Bill and the Magistrates Bill in consultation with the Judiciary.

However, as we continue to defend and consolidate judicial independence and the rule of law in our own country, we recall that the Preamble to our Constitution commits us to: *„Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.“*

Being a member of the family of nations, it must concern us when these values, which we hold so dear, are violated by certain members of the global family.

We support UN Secretary General Antonio Guterres when he says that:

„The rule of law is all that stands between peace and a brutal struggle for power and resources. But countries continue to flout it with impunity.

I urge all nations to uphold the vision and values of the UN Charter and the Universal Declaration of Human Rights and to abide by international law.“

We also agree with him when he says that:

“Human rights are the oxygen of humanity. But one by one, they are being suffocated.

Human rights are on the ropes and being pummelled hard.

This represents a direct threat to all of the hard-won mechanisms and systems established over the last 80 years to protect and advance human rights.“

South Africa is a signatory to the Rome Statute of the International Criminal Court. We have also domesticated the Rome Statute.

It must concern us when judges, prosecutors and staff of the ICC are threatened with sanctions.

We must be concerned when the provisional measures issued by the International Court of Justice in South Africa’s case of genocide against Israel are flagrantly ignored and violated.

Honourable members, we call upon this house to support the budget vote of the Office of the Chief Justice.

We thank you.