

Address by Minister TM Masutha, MP (Adv) at the occasion of the budget debate of the Office of the Chief Justice, May 2018, National Assembly, Cape Town

Honourable Speaker of the National Assembly;

Ministers and Deputy Ministers;

Honourable Members;

Distinguished members of the Judiciary;

Heads of Professional Law bodies;

Distinguished Guests;

Ladies and Gentlemen

Yesterday, one of our country's finest legal minds, the Honourable Mr Justice Lebotsang Orphan Bosielo, passed away at a hospital in Johannesburg. When I visited him on the 29th of March this year, I left with what has now turned out to be false confidence that Judge Bosielo would recover from the illness that sadly took his life. He has been a Judge since 2001 and was elevated to the Supreme Court of Appeal in 2009. On behalf of the justice family and on my own behalf, I would like to take this opportunity to convey my deepest condolences to his family, in particular his beloved wife, Mrs Shirley Bosielo, the children, his friends, the judiciary and legal fraternity to which he belonged.

I am honoured to present the budget vote of the Office of the Chief Justice for the financial year 2018/2019. I am particularly mindful and immensely grateful of the once-in-a-life-time privilege of delivering this Budget vote on the centenary year of Tata Nelson Mandela and Mama Albertina Sisulu – two luminaries in our rich galaxy of liberation fighters.

The Constitution which they helped to produce places the judiciary in a prominent place of our constitutional democracy. When he inaugurated the Constitutional Court on February 14, 1995, President Mandela said, among other things that:

“Constitutionalism means that no office and no institution can be higher than the law. The highest and the most humble in the land all, without exception, owe allegiance to the same document, the same principles. It does not matter whether you are black or white, male or female, young or old whether you speak [Se]Tswana or Afrikaans; whether you

are rich or poor or ride in a smart new car or walk barefoot; whether you wear a uniform or are locked up in a cell. We all have certain basic rights, and those fundamental rights are set out in the Constitution.”

Section 165 (4) of the Constitution enjoins us as organs of State, including the National Executive of which I am a member, to assist and protect the courts by ensuring their independence, impartiality, dignity, accessibility and effectiveness. The National Executive exercises this obligation, among others through the provision and maintenance of the courts and the human and material resources necessary for the effective functioning thereof.

Accordingly, the capacitation of the Office of the Chief Justice (OCJ) remains a strategic priority. As a result, there has been a steady increase in the personnel of the OCJ. As at 31 March 2018, this Department had 1898 funded posts. These include staff for the Mpumalanga High Court due to come into operation during this financial year. The difficult economic situation and budget ceilings on the compensation of employees budget continues to be a challenge.

The OCJ continues to invest in the development of its employees. This will strengthen service delivery and excellence capacity. During the year under review, 108 employees were offered bursaries to enhance their skills and competencies. The Department provided training and development programmes to a further 687 employees in the following priority development areas:

- Service delivery excellence;
- Project management;
- Diversity management; and
- Corporate Governance.

The more we expand our court infrastructure, the greater the need to increase our human capital which places a further strain on our over-stretched budget. As an interim measure, I have requested the Heads of Court to propose a mechanism that will ensure an equitable distribution of judicial capacity across the divisions of the High Courts. The

completion of the construction of the Mpumalanga High Court in this financial year will satisfy our constitutional injunction of establishing a Division of the High Court in each province of the Republic of South Africa.

Cabinet has appointed an Inter-Ministerial Committee (IMC) to undertake research to advise it on, on an appropriate court administration model consistent with our constitutional framework. The Committee has already undertaken extensive work including a comparative study of various jurisdictions in order to inform Cabinet on the proposed response to the views of the judiciary in this regard. I am optimistic that this work will be finalised during this financial year. The IMC's report will assist in the finalisation of a model that will hopefully provide the basis for engagement between the executive and the judiciary to find consensus on this matter.

We are continuing with the transformation of the civil justice system. To this end I am pleased that the Rules Board for Courts of Law is considering rules that will extend court-annexed mediation to the High Courts. The judicial leadership will therefore be consulted in this regard. I would like to congratulate Madam Justice Nambitha Dambuza on her appointment as the Chairperson of the Rules Board. I have confidence that under her leadership the Board will reach greater heights. I would also like thank the outgoing Chairperson, Mr Justice Steven Majiedt for the contribution he has made in ensuring that access to justice becomes a reality to greater numbers of South Africans through rule-making.

As honourable members are aware, the debate on land reform in particular land expropriation without compensation has become a matter of profound national interest. Followed by a resolution of this House that referred the matter for consideration by the Constitutional Review Committee, we will actively participate at various levels of consultations on the matter to provide appropriate input in this process. It is especially in light of this development that the Land Claims Court needs to be fully capacitated to guide the development of the required jurisprudence. My colleague, the Minister of Rural Development and Land Reform and I will engage one another on the acceleration of a revised Restitution of Land Rights Amendment as directed by the Constitutional Court. The envisaged Amendment Act seeks to create a separate Land Claims Court with its own Judges. Our engagements also seek to find solutions to the requisite financial

support to Legal Aid South Africa with regard to its representation of eligible litigants in land restitution matters.

Part of the support we give to the courts is providing the tools that judicial officers and other court users need to dispense justice. On behalf of the Department of Justice and Constitutional Development, I would like to apologise for the disruptions caused by the discontinuation of the online and electronic access to publications and law reports provided by the service provider, Juta. I am happy to announce that following the intervention of my office, the online publication service has been restored as of today.

In the last two financial years, the OCJ has maintained a 98% expenditure of its allocated budget and received an unqualified audit on both financial years. I would like to express my appreciation to the Secretary General, Ms Meme Sejosengwe and her capable management team for the good work done over this period.

The OCJ budget for the 2018/19 financial year amounts to R2.142 billion. Of this amount, R1.022 billion is allocated to Judges' remuneration and benefits. This means that OCJ will have an operating budget of R1.120 billion. This represents 52% of the vote against 48% of the direct charge.

The bulk of the Voted funds supports Superior Court Services, judicial services and continuous judicial education, as the core of the department. The Superior Court Services programme of the OCJ represents 75% (R838.868 million) as it forms part of the key mandate of the Office. These funds seek to improve the court system through an effective and efficient administrative support as well as supporting judicial functions such as the case flow management system. Funding allocated for continuous judicial education and judicial administration support amounts to R79 million (7%). A total amount of R165.66 million over the MTEF period has been allocated to conduct about 240 judicial education courses. The budget for Administration of the entire OCJ amounts to R201.872 million which constitutes 18% of the voted budget.

The Judicial Service Commission has moved steadily to ensure the implementation of Section 174(2) of the Constitution which enjoins the "judiciary to reflect broadly the racial and gender composition of South Africa."

As at April 2018, we have 250 permanently appointed judges in the country and I am proud to mention that Black judges constitute 66% or 164 of the total number of judges in South Africa. Male judges constitute 64% (160) of male judges whilst females represents 36 % (90) of the bench.

As honourable members are aware, in 2014, the government enacted legislation requiring all Judges in active service to disclose their financial interests annually. It is commendable that all 247 Judges in active service, save for two Judges who are on sick leave, have disclosed their financial interests within the prescribed time.

I must commend the Judiciary with regard to the recent sentences which I believe have sent a strong message about the futility of indulging in criminal behaviour. On Tuesday this week, Shadrack Chauke, was sentenced to 25 life terms for 23 counts of rape, two counts of attempted murder, assault to do grievous bodily harm, robbery and kidnapping. These heavy sentences come hot on the heel of a 32 year jail term handed down to Sandile Mantsoe for the gruesome murder of Karabo Mokoena whose trial occupied the minds of many South Africans. These heinous crimes against the most vulnerable members of our society militate against suggestions to reduce or scrap the minimum sentence regime. If anything, they justify for an increase in the prescribed sentences.

I conclude, let me reiterate that we will continue, by deeds and not words, or as expressed in Latin - *Factis non verbis* - on the transformation path to better the lives of all South Africans. We are inspired by the words of President Nelson Mandela when he, in his address to the United Nations stated:

“We have written in our banners that the society we seek to create must be a people centred society. All its institutions and its resources must be dedicated to the pursuit of a better life for all our citizens. The better life must mean an end to poverty, to joblessness, homelessness, and the despair that comes with deprivation”.

The Judiciary, has an equal task to contribute to this goal by means of progressive and developmental jurisprudence which it has so aptly displayed in the past two decades of coming into effect of our transformative and progressive constitution as reflected in a report on socio-economic jurisprudence commissioned by the Department of Justice and

recently published in 2017 which is currently the subject of analysis within the whole of government to determine its implications for future policy and legislative reform.

We have just received a report from the South African Law Reform Commission which seeks to transform the Interpretation Act of 1957. This act was drafted in the era of Parliamentary sovereignty and is not in line with the current constitutional dispensation.

Let me take this opportunity to thank the Chief Justice and the entire Judiciary for their commitment to access to justice. Our gratitude also goes to the Portfolio Committee for its continued guidance and leadership .

Lastly, I must thank my two colleagues, Deputy Ministers John Jeffrey and Thabang Makwetla for their valued contribution and loyal support, my colleagues in the JCPS Cluster and the men and women without whose support all of us, as political principals would achieve very little if at all. These include the Secretary General for the Office of the Chief Justice, the Director-General of the Department of Justice and Constitutional Development, their respective management teams and the entire staff in the Justice portfolio.

I thank you