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## HOW ACCESS TO JUSTICE CAN HELP REDUCE POVERTY

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### **ANDRIES CAR NEL**

Deputy Minister of Justice and Constitutional Development  
of South Africa

***Toward delivering accessible justice for all:  
a State duty***

**ADDRESS BY MR ANDRIES NEL, MP, DEPUTY MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT OF THE REPUBLIC OF SOUTH AFRICA AT THE CONFERENCE - JUSTICE 2015: "HOW ACCESS TO JUSTICE CAN HELP REDUCE POVERTY" HOSTED BY AVOCATS SANS FRONTIÈRES IN BRUSSELS, BELGIUM ON 22 MAY 2013**

Programme Director  
Fellow Panelists  
Distinguished Guests  
Comrades and Friends

Thank you very much for inviting me to represent the Department of Justice and Constitutional Development of South Africa and to share its views and experiences on how access to justice can help reduce poverty and inequality.

I must confess to being a bit intimidated by the fact that this conference is being held in the long shadow of the Galgenberg. The similarities between Flemish and my home language, Afrikaans, allow me to understand this to mean, literally translated: Gallows Mountain.

The hill is now home to the Belgian Palace of Justice, a structure that, I read, is bigger than St. Peter's Basilica in Rome. I am sure that in the course of these proceedings someone will find the opportunity to reflect on whether the relationship between access to justice and the size of the buildings in which justice is dispensed is of direct or of inverse proportionality.

In any event I am told that the construction of the Palace of Justice resulted in some degree of injustice towards the architects profession. Because a large part of the city quarter of the Marollen was demolished and its inhabitants were forced to move by the police, the word "architect" became one of the most serious insults in Brussels.

Maybe someone in this learned audience can also reflect on how the inhabitants of the Palace of Justice prevented the word "lawyer" from joining "architect" in the Bruxellian lexicon of insults.

Before I start like a good lawyer, without frontiers, to argue the brief that I have been given by the organisers of this conference, I would like to engage them on a number of issues raised in the very helpful concept note that accompanied the invitation to this conference.

The first point I would like to make it that in addressing poverty we should never forget inequality. At this risk of overstepping the bounds of my mandate

I would like to suggest that the theme of this conference would read better if it were: "How access to justice can help reduce poverty and inequality."

The second point I would like to make is that there are passages in the concept note that are formulated in a way that could be understood to suggest that it is conflict, political revolution and/or the absence of access to justice that cause poverty. I think this is problematic.

In short, we must ask, is poverty caused by a lack of access to justice, peace and stability or are conflict, instability and lack of access to justice caused by poverty? Or, is there a dynamic and reciprocal relationship between these phenomena - with other factors such as the structures of economies also playing a determining role?

The third point I would like to make is that whilst the central focus of the concept note is on the state, both as an enabler of access to justice as well as an object of the litigation or other remedies that might result from access to justice, the private sector and private power should, in both these aspects, never be absent from our agenda.

I would then like to locate South Africa's domestic experience in an international context.

South Africa is a sovereign democratic state founded on the supremacy of a Constitution premised on values, which include the rule of law, human dignity, equality and freedom.

Our Constitution envisages a society in which we heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights; lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law; improve the quality of life of all citizens and free the potential of each person; and build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

We understand that our goal of creating a better South Africa by realizing this vision is inextricably linked to the objective of building a better Africa and a better world.

We also understand that for these inter-related objectives to be fully realized a global commitment to the promotion of the rule of law and the realization of human rights worldwide is needed.

For this to be achieved requires the supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law and separation of powers but also participation in decision-making, legal certainty and the avoidance of arbitrariness, as well as procedural and legal transparency.

In short, we believe that the rule of law and human development are inextricably linked.

South Africa continues to play an active role in the kind of peace and harmony that is dependent on the rule of law, including mediation efforts in various parts of the world but also by advocating for a reform of institutions of international governance, such as the United Nations.

Speaking during the High-level Meeting of the 67th Session of the General Assembly on the Rule of Law at the National and International Levels in September 2012, President Jacob Zuma made the following point:

“We are also of the view that while exerting efforts to promote the rule of law at the national level, including the promotion of accountability mechanisms, equal attention must also be paid to the rule of law at the international level.

If not, the United Nations runs the risk of being accused of double standards and hypocrisy.

In this regard, we need to consider the fairness of the rules of international law.

We need to ask whether the international community can be said to be governed by a system in which all role players are accountable under law which is equally enforced and independently adjudicated.

Secondly Mr President, we need to look at the composition of the UN Security Council, and how this may impact on the promotion of international law, and the rule of law in particular.

We are concerned that given the undemocratic and unrepresentative nature of the UN Security Council, its decisions will constantly be attacked for lack of legitimacy – regardless of the content of the decision.

It is common cause that the current configuration of the Council is unfair. It does not reflect the contemporary geo-political realities especially with respect to Africa.

The African continent is both generally under-represented and specifically un-represented in the permanent category.

Adherence to the international rule of law will continue to elude us as long as the organ with the primary responsibility for the maintenance of international peace and security is unrepresentative and undemocratic.

Let me emphasise that South Africa remains committed to the global promotion of the rule of law, and will continue cooperating with the UN system to ensure success of the international human rights architecture.”

South Africa is a State Party to the Rome Statute and a firm supporter of the fight against impunity. We played an active role in negotiating the Rome Statute and were one of the first countries to incorporate the Rome Statute in our domestic law.

As part of the Review process of the Rome Statute, South Africa and Denmark introduced the topic of “Positive Complementarity” to the Review Conference.

“Positive complementarity” refers to all activities and actions whereby national jurisdictions are strengthened and capacitated to conduct genuine national investigations and prosecutions of the most serious crimes of international concern.

It is exactly these kinds of initiatives that are consistent with the decisions of the Assembly of States Parties of the Rome Statute, which encouraged international cooperation in building capacity domestically for investigating and prosecuting serious crimes.

As Co-Focal Point for Complementarity, we are mindful of the fundamental role that the domestic jurisdictions play in ensuring justice and accountability.

In order to close impunity gaps, the continued collaboration by States, international organisations and non-governmental organisation in building capacity is crucial.

We must therefore continue to work together to build the capacity of domestic jurisdictions, including in the area of gender-based crimes.

The reality of the matter is that the mandate of international tribunals is such that they focus mainly, if not exclusively, on high-level officials responsible for international criminal law violations. However, often the many direct perpetrators of these crimes escape with impunity. It is only when we cooperate in strengthening local capacities that we can say we are serious

about fighting impunity where it occurs.

We commend and take interest in the work being done by organisations such as Avocats Sans Frontières in this regard.

Turning then to our domestic experience of how access to justice can help reduce poverty and inequality.

South Africa has made remarkable progress in the transition from apartheid to democracy, a transition that is often, albeit mistakenly, referred to as a "miracle" - especially because it has been comparatively peaceful despite our bitter history of violent conflict and dispossession.

Slowly but surely the vision of our Constitution is being realized. Our Constitution enshrines a rights-based approach and envisions a prosperous, non-racial, non-sexist democracy that belongs to all its people.

Healing the wounds of the past and redressing the inequities caused by centuries of racial exclusion are constitutional imperatives.

We have been able to build the institutions necessary for a democratic and transformative state.

We are building an inclusive society, we are pushing back the frontiers of poverty and broadening opportunities for all.

Access to services has been broadened, the economy has been stabilised and a non-racial society has begun to emerge. Millions who were previously excluded have access to education, water, electricity, health care, housing and social security. About 3 million more people are working today than in 1994, the poverty rate has declined and average incomes have grown steadily in real terms.

However, eighteen years into democracy, South Africa remains a highly unequal society where too many people live in poverty and too few work. The quality of school education for many black learners is poor. The apartheid spatial divide continues to dominate the landscape. A large proportion of young people feel that the odds are stacked against them. And the legacy of apartheid continues to determine the life opportunities for the vast majority. These immense challenges can only be addressed through a step change in the country's performance.

For this reason South Africa has adopted a National Development Plan: 2030.

This plan aims to accelerate progress, deepen democracy and build a more inclusive society by translate political emancipation into economic wellbeing

for all.

This plan envisions a South Africa where everyone feels free yet bounded to others; where everyone embraces their full potential, a country where opportunity is determined not by birth, but by ability, education and hard work.

Realising such a society will require transformation of the economy and focused efforts to build the country's capabilities. To eliminate poverty and reduce inequality, the economy must grow faster and in ways that benefit all South Africans.

Key to the success of our National Development Plan is an active and vocal citizenry. We recognize the need for state to actively support and incentivise citizen engagement and for citizens to:

- Actively seek opportunities for advancement, learning, experience and opportunity.
- Work together with others in the community to advance development, resolve problems and raise the concerns of the voiceless and marginalised.
- Hold government, business and all leaders in society accountable for their actions,

An active citizenry and social activism is necessary for democracy and development to flourish.

The state cannot merely act on behalf of the people – it has to act with the people, working together with other institutions to provide opportunities for the advancement of all communities,

All sectors of society, including the legislatures and judiciary, have to ensure that the fruits of development accrue to the poorest and most marginalised, offsetting possible attempts by elites to protect their own interests at the expense of less-powerful communities.

In this regard we agree with the perspective outlined in the United Nations Development Programme's *Practice Note on Access to Justice* released in 2004 that, "Justice is closely related to [...] poverty eradication and human development. There are strong links between establishing democratic governance, reducing poverty and securing access to justice. Democratic governance is undermined where access to justice for all citizens (irrespective of gender, race, religion, age, class or creed) is absent. Access to justice is

also closely linked to poverty reduction since being poor and marginalized means being deprived of choices, opportunities, access to basic resources and a voice in decision-making. Lack of access to justice limits the effectiveness of poverty reduction and democratic governance programmes by limiting participation, transparency and accountability."

The Constitution is the supreme law of our land. It is also a supremely transformational constitution. It requires of us to follow a transformative course action in respect of access to justice and the transformation of the judiciary and legal system.

This is of special relevance to the fight against poverty because our Constitution contains a range of justiciable socio-economic rights and also provides for not only the vertical but also the horizontal application of many of the rights in the Bill of Rights.

Firstly, the Constitution enjoins us to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights and to lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law.

Secondly, the Constitution guarantees everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

- We continue to build new courts, especially in rural areas and areas that were previously classified as black group areas.
- We also continue converting the 90 so-called branch courts that deal only with criminal matters, mainly in previous black group areas, into full-services courts offering a full range of justice services.
- All courts throughout the country have been declared Equality Courts able to hear matters involving unfair discrimination in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act.
- The Traditional Courts Bill currently before Parliament aims at providing a statutory framework within which traditional courts can provide access to justice to millions of people in a manner that is consistent with the Constitution.



- We are in the process of establishing a Small Claims Court dealing with small civil claims in each and every one of South Africa's 387 magisterial districts. To date we have 268 established Small Claims Courts, 87 of which have been established during the last four (4) years, with the great majority in the rural areas.
- The Minister of Justice and the Chief Justice and jointly chair a Review of the Civil Justice System which is conducting a comprehensive review of our civil justice system with a view to making it more accessible, effective, efficient and modern.
- As part of the Civil Justice Reform Programme rules have been developed to facilitate court annexed mediation to promote more accessible and cost effective dispute resolution.
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- The Chief Justice has constituted a National Court Efficiency Enhancement Committee bringing together the judiciary, government departments and other stakeholders to improve court efficiency and reduce case back-logs through, amongst others, the implementation of judicial case flow management system.
- The Department of Justice is conducting a pilot project in a number of courts to explore greater use of indigenous languages in our courts.
- The Department of Justice also conducts ongoing public education and awareness raising campaigns around legislation and the functioning of our justice system.

Thirdly, the Constitution provides that the need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.

- It seems truly bizarre but in 1994, less than a generation ago, 160 of the 165 judges on the bench were white men. There were three black men and two white women. There were no black women.
- Today of 100 black men and 49 black women, 71 white men and 21 white women serve our nation as judges.
- Similar progress has been made in addressing race and gender imbalances in Magistrates Courts. Of the 1661 magistrates, 974 are black and 687 are white, 647 are women and 1014 are men.

- Whilst this represents significant progress, there is still much to be done - especially regarding the gender imbalances in the upper echelons of the judiciary, the Constitutional Court, the Supreme Court of Appeal and the ranks of the Judges President.
- However, the untransformed state of the legal profession remains a stumbling block to the further transformation of the judiciary as well as to greater access to justice.
- One important intervention in this regard is the restructuring of state legal services into a single state attorney's office to be headed by a Solicitor-General announced by the Minister of Justice and Constitutional Development.
- Another measure is the Legal Practice Bill currently before Parliament. The Bill proposes an institutional and statutory framework within which these challenges can be addressed in a systematic and inclusive manner.
- The proposed South African Legal Practice Council will bring together advocates, attorneys and representatives of broader society to find solutions to the challenges of: entry to the legal profession, availability of quality legal training and education, quality workplace learnership opportunities, provision of pro bono services and community-based paralegal services, as well as the regulation of legal fees in order to promote access to affordable legal services for all, especially the poor.

Fourthly, the Constitution provides that all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalized with a view to establishing a judicial system suited to the requirements of the new constitution.

- Government is committed to strengthening of the independence, the dignity, accessibility and effectiveness of the courts as part of this transformation process.
- The Seventeenth Constitutional Amendment Act, the Superior Courts Bill, and the South African Judicial Education Institute Act, provide a strong legislative framework to realize this objective. Measures such as the establishment of the Office of the Chief Justice as a department advance the objective of greater administrative independence of the judiciary.

- Government is engaged in a major programme of redemarcating the boundaries of magisterial districts to ensure greater access and efficiency and to deal with the racially segregated spatial legacy of apartheid.

Fifth, the Constitution provides for access to legal representation at state expense if substantial injustice would otherwise result and to be informed of the right promptly.

- For the current financial year Government has made R1 360.7 billion available to Legal Aid South Africa to provide legal representation at the state's expense to eligible people in terms of the Constitution.
- 64 Justice Centres and 64 Satellite Offices have been established, providing 100% coverage of criminal courts. The centres dealt with 428 653 matters requiring legal representation in both criminal and civil courts.
- The Legal Aid Advice Line provided telephonic advice in 46 025 matters.
- Increased focus on civil legal aid – civil units/sections established. Increase in civil legal aid by 48% due to increased civil practitioner capacity, with assistance in 46 528 new civil matters.
- Providing access to legal aid to indigent clients increased to 682,962 legal representation and legal advice matters handled.
- The Impact Litigation Unit funded and litigated 23 new matters. These matters have made a significant impact on giving content to the rights enshrined in our Constitution for indigent and poor communities.

Sixth, the Constitution establishes a wide range of State Institutions Supporting Constitutional Democracy such as the Public Protector, the Human Rights Commission, the Commission on Gender Equality and the Commission on Cultural, Linguistic and Religious Communities to assist citizens in enforcing the rights that they have under the Constitution.

- These institutions continue to discharge their constitutional mandates and are receiving the necessary financial support from government.

Seventh, the Constitution contains provisions that facilitate the exercise of rights such as access to information and provisions relating to just administrative action.

- The Promotion of Access to Information Act and the Promotion of Just Administrative Action Act have been passed and are operational.

- Ongoing training of the judiciary and official in the public service is taking place regarding the adjudication and administration of these laws.

Lastly, seeing that we are in Brussels, the capital not only of Belgium, but also of the European Union, I would like to give a special mention to the very important "Access to Justice and Promotion of Constitutional Rights Programme" that we have conducted with the financial support from European Union.

This programme is aimed primarily at strengthening civil society through a wide range of initiatives providing for enhanced access to justice, such as:

- establishment of new community advice offices in rural and township areas so that vulnerable groups can access assistance at grassroots level
- strengthening the capacity of community advice offices to improve their performance
- human rights education on the Constitution and key human rights legislation,
- alternative dispute resolution (in the context of restorative justice) education
- support provided to marginalised communities, to strengthen their ability to access their rights
- activities that supported civil society organizations'(CSOs) projects that counter the violation of systemic socio economic rights
- assistance provided to vulnerable communities to access human rights services, especially to legal assistance
- monitor and review litigation and constitutional judgments so as to achieve equality and eradication of poverty; transformation of the Legal Sector
- projects developed aimed at countering violence against women, children, the elderly and disabled.

This valuable and important programme is nearing its end in March 2014. We are engaged in discussions with the EU Mission to South Africa with the aim of extending it for a further period.

We conclude by again thanking Avocats Sans Frontières for inviting us to participate in this important and stimulating conference and wishing them well in their important work.

Thank you  
Merci Beaucoup  
Baie Dankie

Re a leboga  
Siyabonga