

**Address by the Deputy Minister of Justice and Constitutional Development,
the Hon JH Jeffery, MP
at the Annual General Meeting of the South African Sheriff Society (SASS),
held in Rustenburg,
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Programme Director
President and Executive Management of SASS
Chairperson of the SABFS, Mrs Charmaine Mabuza
Sheriffs and deputy sheriffs
Ladies and gentlemen

It is always a pleasure to have the opportunity to meet with SASS and its leadership.

In particular, I would like to convey my appreciation to the outgoing leadership for your contribution to the sheriffs' profession during your term of office.

SASS' theme for this AGM is *"Sheriffs and modern day challenges, preserving the legacy of Madiba."*

Justice, of course, was a topic very dear to President Mandela's heart.

We all know his famous quote:

"Let there be justice for all. Let there be peace for all. Let there be work, bread, water and salt for all. Let each know that for each the body, the mind and the soul have been freed to fulfil themselves."

This past Wednesday we had our Department's budget vote debate in Parliament and a large part of the debate also centred round access to justice.

Justice is more than mere court processes – it's about people's lives.

Let me explain by example: It was reported in Ground Up that the City of Cape Town demolished 49 shacks at Msindweni informal settlement in Khayelitsha this past Monday.

The City said that it was not removing residents, but only removing incomplete and vacant structures in terms of a court order which it obtained in order to prevent the illegal occupation of its land.

The residents, however, tell a different story.

One resident said: *“The City says it destroys shacks that are vacant, but here there are pots, a bed and a washing machine. These belongings are sufficient proof that someone stays here.”*

Another resident said she phoned the sheriff, and she says: *“The sheriff says officials knock on doors and check if there is a bed inside the shack. Would they do that in the suburbs? Must people not go to work or school?”*

Another resident said: *“They left my bed lying outside and exposed to rain,”* she said.

In this case, it was City officials who removed the shacks, but often it is the sheriff who has to be at the coalface of such matters – having to have to remove people, or evict them, or remove shacks.

And, there is always this tension: how does one enforce the law, but try to do it as humanely as possible?

On the one hand, there is a court order that must be given effect to, on the other hand, there are people’s homes and people’s belongings.

The sheriff is an officer of the court, functioning within a justice system that should be aware of, and responsive to, the needs of the poor and the vulnerable.

How do we do this? One of the major projects that the Rules Board has recently undertaken relates to the alignment of constitutional court judgments with the rules relating to sales in execution of the debtors residential property.

The main changes are a requirement that the court must consider other options before ordering the attachment and sale of the debtor’s residential proposer as well as setting a reserve price on the property. The Rules and Forms were promulgated in November 2017 and came into effect in December 2017.

Sheriffs are, no doubt, familiar with the amendments to Rule 46 and Rule 43 and I want to thank all the sheriffs who attended the compulsory training on the amended rules in their respective provinces.

Programme Director,

There are a number of issues that are pertinent to the sheriffs' profession.

As you know, the new Board for Sheriffs' has taken office as of 1 March 2018 for a period of **three years**. I want to congratulate the sheriffs who are with us today and have been appointed to the Board.

At the same time, it is important to emphasise that the sheriffs appointed to the Board represent the sheriffs' profession and not the interests of the organisation to which he or she belongs.

Both SASS and SANAPS are aware of my view that it is in the best interest of the profession to have one organisation representing the sheriffs' profession - especially if one considers the number of sheriffs in the country.

In terms of the current provisions of the Sheriffs' Act, the Minister is compelled to appoint all the members of the Board for a period of three years, with no discretion as to the period of appointment. The result is that a new Board must be appointed every three years - which is a short period considering the strategic plans of statutory bodies.

With most of the other Boards falling within the area of responsibility of the Minister, the period of appointment is one **not exceeding five years**, which gives the Minister a discretion as to the period of appointment of each of the members. This provides for better continuity and for appointments to be staggered if and when necessary.

The SABFS has also been reluctant to appoint the Executive Manager for a period longer than that of the Board, with the result that the contract of the Executive Manager expires every three years.

This has an impact on the stability of the Board, as there is no continuity. I have already raised it at the inaugural meeting of the current Board.

We are therefore considering amending the appointment period of Board members to a period not exceeding five years and, at the same time, capping the period of appointment to a maximum of two terms.

In a further positive development, Mr Sebokahas been appointed as a member of the Rules Board for Courts of Law, from February 2018 for a period of 5 years after having been nominated by the SABFS in terms of the new amendment to the Rules Board for Courts of Law Act.

We believe that having a sheriff on the Rules Board will ensure proper representation of this sector, which is a vital and valuable stakeholder in the justice chain.

Mr Sebokarepresents the interests of the sheriff's profession and will be responsible for keeping the profession informed of developments - as many of the Rules drafted may impact on the work of the profession.

As you are aware, in July last year, we appointed 33 new sheriffs to fill vacant offices countrywide. These appointments brought the **total** number of permanent sheriffs countrywide to 289. Of these 289 sheriffs, 122 are African (43%), 108 are White (37%), 34 are Coloured (12%) and 25 are Indian (8%). There are 90 female sheriffs (thus 31% of the total sheriffs) and 199 male sheriffs (69%).

This appointment process brought to a close the majority of large and economically viable sheriffs' areas that have been vacant for a long period of time, especially those in Gauteng.

Although there appears to be one or two sheriffs who are not satisfied with the outcome of the re-description of some of the areas in Gauteng, the feedback we received was overwhelmingly positive.

I would, once again, like to emphasize, as I have done when I addressed you in Stellenbosch last year that the DOJCD is reliant on the statistics that it receives from the sheriffs and the SABFS. I then also expressed my concern that the sheriff's profession does not have a **uniform** and accurate system in place that

can track the number of processes served and the income derived therefrom in the different suburbs, in their area of appointment.

It is imperative that this be done as soon as possible and I will also discuss it with the Board.

As you are aware, some of the vacant offices could unfortunately not be filled as either no applications were received or the Advisory Committees were not able to recommend fit and proper applicants.

This often occurs in small offices which are not economically viable and the Advisory Committees would therefore either recommend that the vacant offices be re-advertised, be allocated to an adjacent sheriff or that the sheriff's office for the high and lower court be merged.

The Judicial Matters Amendment Act of 2017 now enables us to appoint sheriffs to these offices after the recommendations of the Advisory Committee and the Board have been considered.

One of the other important provisions in the JMA Act now makes it possible for the Minister to **describe** one or more areas within the area of jurisdiction of a lower or superior court and to **allocate** any such area **to a sheriff of another court**.

The rationalisation of magisterial districts does have an impact on sheriffs' areas and because this process is not yet concluded, this does play a role in advertising and filling some of the vacancies.

We are committed to having the outstanding sheriffs' areas, affected by the demarcation process, finalised and advertised **during the term of this administration**. I have already met with the DOJCD in this regard and have emphasized the urgency to have this concluded as soon as possible.

Furthermore, it is important to inform you of the following:

- We currently have 88 **vacant sheriffs' offices countrywide**. This includes those offices where the sheriffs will retire during the course of 2018 -

Eastern Cape 18
Free State 17
Gauteng 5
KwaZulu Natal 18
Limpopo 4
Mpumalanga 8
North West 8
Northern Cape 6
Western Cape 4

- The majority of these offices are small and not economically viable on their own.
- The DOJCD has already received information from the SABFS regarding the turnover of each vacant office and is currently evaluating each office to see how, and if, it will be affected by the demarcation process and will then make recommendations regarding vacant offices that should be advertised, and those that could be re-described and allocated to a sheriff of another court. Whatever route we decide to take, I can assure you that we will follow an open and transparent process.
- I trust that this process will be completed by the end of July 2018, and will also consult with the SABFS as well as with the sheriffs' profession, where after the vacant offices will be advertised to enable the Advisory Committees to initiate the shortlisting and interviews of applicants with a view to make suitable recommendations to me.
- It is **envisaged** that the successful candidates will assume office on 1 March 2019.

During the last round of appointments I was inundated by disgruntled applicants regarding the interpretation of **an appropriate post-grade 12 qualification** as one of the **minimum requirements** in the Regulations. It became apparent that the 9 Advisory Committees did not all follow a uniform approach.

Regarding what constitutes an appropriate post-grade 12 qualification the said Regulation is couched in broad terms.

Also, practically, it causes problems, as for example, some of the deputy sheriffs attend various training courses offered by the SABFS but not necessarily those from a recognized tertiary or higher learning institution.

Those sheriffs who have been appointed many years ago – let's call you, on a lighter note, the older or more experienced generation – you are, no doubt, aware that the requirement of an appropriate qualification has been the subject of discussion with the sheriffs' profession for many years.

At the time when the Sheriffs Act, 1986 and the Regulations came into operation, a grade 12 (matric) qualification was not even a requirement.

In 2008 the Regulations were amended and an appropriate post-grade 12 **tertiary** qualification was included as a requirement for appointment as a sheriff. During that time many of the sheriffs and most of the deputy sheriffs could not be considered for appointment as they did not have a post-grade 12 **tertiary** qualification.

It was, furthermore almost impossible to appoint sheriffs in small rural areas where the income is minimal as no person with a post-grade 12 tertiary qualification was interested in applying. Following discussions with the SABFS and organisations representing sheriffs, this requirement in the Regulations was again amended in 2014 with an **appropriate post-grade 12 qualification** as a requirement.

It is essential that we have clarity in this regard before the next round of advertisements.

One of the objects of the SABFS is the enhancement of the status of, and the improvement in, the standard of training. The Board also determines the prescribed training courses for aspirant sheriffs and sheriffs.

Given the Board's statutory responsibility, **I am of the view that the Board is best placed to determine what constitutes an appropriate post-12 qualification.**

I will consult with the Board to include an empowering provision in the Regulations before the next round of advertisements and for it to be included in the advert. For example, we could consider a regulation along the following lines:

*'No person shall be appointed as a sheriff unless he or she is competent to conduct the business of a sheriff and has at least an appropriate post grade 12 qualification **as determined by the Board in consultation with the Minister.***

It may also be necessary to provide the Advisory Committees with guidelines regarding some of the documents that must be submitted as stipulated in the advertisement as to eliminate any discrepancies in future.

I have been informed by SASS that a large number of sheriffs are experiencing difficulties in receiving payment from the CCMA, notwithstanding processes agreed upon to reimburse the sheriffs for their services.

In this regard, I have taken the matter up with my counterpart in the Department of Labour with a request that a meeting be convened with the SABFS, the governing body of the CCMA as well as its Director.

As you are aware, sheriffs are, from time to time, confronted with possible fraudulent court orders. When it comes to court orders, you really are the experts, as you work with them every day – please help us, and the judiciary, and the public at large, by exercising due diligence.

If you suspect that a court order may be fraudulent, or if you suspect anything untoward, rather err on the side of caution.

I am concerned about the management of trust accounts by some of our sheriffs, and the auditing thereof. There is no difference between the trust account of an attorney and that of a sheriff. Yet the criteria for training candidate attorneys and training sheriffs are vastly different when it comes to keeping and managing trust accounts.

The training courses for attorneys, relating to trust accounts, are more rigorous than those that are to be undertaken by the sheriffs. Candidate attorneys are also required to write exams on this, whilst sheriffs are not.

I will discuss this with the Board at our next meeting as we have to explore all options to ensure that we act in the best interests of the public and the profession.

I want to wish SASS all the very best for a successful AGM.

And I want to assure you that we, in the Department of Justice and Constitutional Development, share SASS' vision of assisting in developing sheriffs and deputy sheriffs; promoting a society of sheriffs founded on integrity, openness, diversity and gender equality, and promoting quality service from the profession to the justice system.

I thank you.