

**Speech by the Hon. Andries Nel, MP, Deputy Minister of Justice and Constitutional Development at the Africa Regional Conference of the International Bar Association held at the Cape Town International Convention Centre on 25 March 2010**

Programme Director

Mr. Jacob Saah, Chairperson of the African Regional Forum of the IBA

Mr. Ashwin Trikamjee, Vice-Chairperson, African Regional Forum of the IBA

Mr Willem Haag and Mr Michael Greene, representing the International Bar Association

Her Ladyship Chief Justice Georgine Woode, the Chief Justice of Ghana

Mr. Justice Albie Sachs, former Judge of the Constitutional Court of South Africa

Judges present

Attorneys-General present

Adv. Penuel Maduna, Former Minister of Justice

Ms Thoba Poyo-Dlwati, Co-Chairperson of the Law Society of South Africa

Mr Patric Mtshaulana SC, Chairman of the General Council of the Bar of South Africa

Mr Akere Muna, President of the Pan African Lawyers Union

Mr Mabvuto Hara, President of the SADC Lawyers Association

Presidents of Bar Associations and Law Societies

Alderman David Wooton, Sheriff of the City of London

Esteemed guests, ladies and gentlemen

Moleweni!

Goeie More!

Sawubona!

Thobela!

Avuxeni!

Ndi macheloni!

Good morning. Welcome to South Africa!

Bom dia. Sejam bem-vindos a Africa do Sul!

Bonjour. Soyez les bienvenus a l'Afrique du Sud!

On behalf of the President of the Republic of South Africa, the Honourable Jacob Zuma, it is my pleasant task this morning to welcome you to the City of Cape Town and the Republic of South Africa at this conference of the African Regional Forum of the International Bar Association.

I would also like to convey the greetings and best wishes of the Hon. Jeff Radebe, the Minister of Justice and Constitutional Development.

The International Bar Association -- the IBA -- is the largest organisation of lawyers in the world, representing over 180 countries and 35 000 lawyers.

We were honoured to host the IBA's biennial conference in Durban in 2002. We are pleased to hear that it is reputedly still talked about as one of

the best ever.

We are hosting this important gathering where, over the next two days, lawyers of our continent will have the opportunity to engage one another on vitally important matters including:

The Rule of Law, independence of the Judiciary and of the Legal Profession; International arbitration in Africa; Climate Change: Africa's challenge and response; Mining Law: Dealing with the impact of the global financial crisis; Managing for change: African law firms in changing times; Bridging Africa's infrastructural deficit; The emerging rule of law, human rights, peace and security architecture of the African Union; Prospects for rule of law, human rights, peace and security at the level of regional economic communities; Corporate Governance: Friend or Foe to the Successful Business.

These themes, which appear widely divergent at first sight, are on closer inspection, in fact very much relevant and inter-related to the collective challenge that we have of working together, also as lawyers, to ensure a better life for our people, for creating better countries in a better continent, a better Africa in a better world.

There is, however, one theme that I find glaringly absent from your programme. I will return to this matter shortly.

The time, place and thematic content of this conference intersect in ways

that are highly symbolic and significant.

We gather here today approximately six weeks after South Africa commemorated the 20th anniversary of the release of President Nelson Mandela on 11 February 1990. Nelson Mandela was released from Victor Verster Prison not too far from where we are gathered here today. He spent many long years of his life in prison on Robben Island within sight of, yet so far from, this venue.

On this occasion we continued to celebrate the life of Nelson Mandela the person, the lawyer, the revolutionary, the soldier, the statesman, the icon of the triumph of the human spirit.

It is no coincidence that Nelson Mandela is the Honorary President of the Human Rights Institute of the International Bar Association.

May the spirit in which Nelson Mandela and Oliver Tambo practiced law and struggled for justice continue to inspire lawyers the world over and guide us in our proceedings during this conference.

This conference also takes place two weeks after we celebrated South African Human Rights Day and, in doing so, we also commemorated the 50th anniversary of the Sharpeville Massacre on 21 March 1960.

Years later the Commission on Truth and Reconciliation, established by the democratic state after 1994, stated in its final report that: "The

Commission finds that the police deliberately opened fire on an unarmed crowd that had gathered peacefully at Sharpeville on 21 March 1960 to protest against the pass laws. The Commission finds further that the SAP (South African Police) failed to give the crowd an order to disperse before they began firing and that they continued to fire upon the fleeing crowd, resulting in hundreds of people being shot in the back. As a result of the excessive force used, 69 people were killed and more than 300 injured. The Commission finds further that the police failed to facilitate access to medical and/or other assistance to those who were wounded immediately after the march."

The world commemorates this day, the 21<sup>st</sup> of March, by decision of the United Nations General Assembly, as the International Day for the Elimination of Racial Discrimination.

Significantly, it was at Sharpeville that former President Nelson Mandela signed the Constitution of the Republic of South Africa fourteen years ago in 1996 on 10 December, International Human Rights Day.

This Constitution stands for more than the antithesis of everything the Sharpeville Massacre and the Apartheid State it symbolised, represented.

It bears testimony to the fact that, "the liberation struggle by oppressed communities, even in the midst of bitter confrontation, developed moral values of human compassion and solidarity far beyond the narrow confines of its opposition to the apartheid social system. It represented something

good, not just something better than apartheid. It asserted the humanness of the human spirit - the search for societies at peace within and among themselves."

It is also significant then that the first theme on your programme is, "The Rule of Law; the Independence of the Judiciary and of the Legal Profession."

I find the description provided for this theme on the programme interesting. It reads as follows:

"A decisive factor for a successful democracy is the judicial institution as a guardian of the Rule of Law and protector of basic human rights. Such a judiciary not only serves the immediate interests of citizens, but also promotes a stable society which is governed by an efficient system of civil and criminal law. A lack of trust in the judiciary as a direct consequence of its being perceived as a ruling government-controlled institution is often a concerning factor in Africa. This session will examine the issues and debate the impact of the Rule of Law and its applications in Africa."

Our Constitution, the Constitution signed by President Nelson Mandela at Sharpeville, provides that, "The judicial authority of the Republic is vested in the courts. The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. No person or organ of state may interfere with the functioning of the courts. Organs of state, through legislative and other

measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts."

The Liberation Movement, lead by the African National Congress, has a long history of commitment to human rights and the rule of law expressed in seminal documents such as the Bill of Rights adopted by the ANC in 1923, the Africans' Claims adopted in 1943, the Freedom Charter adopted at the Congress of the People in Kliptown in 1955.

More recently, when addressing the Second Judicial Conference for South African Judges, in July 2009, President Jacob Zuma stated that, "An independent judiciary is one of the cornerstones of any democracy. As the Executive we respect without reservation, the principle of judicial independence and the rule of law."

The late Chief Justice Ishmael Mahomed argued that, "The ultimate power of the courts must therefore rest on the esteem in which the judiciary is held within the psyche and soul of a nation and in the confidence it enjoys within the hearts and the minds of potential litigants in search of justice. No public figure anywhere, however otherwise popular, could afford to be seen to defy the order of a court which enjoys, within the nation, a perception of independence and integrity."

I would argue that the esteem in which the judiciary and the legal system is held within the psyche and soul of a nation and the confidence it enjoys within the hearts and minds of potential litigants is also directly linked to

the accessibility of justice.

This brings me to the vitally important question of access to justice and the need for all institutions in our country, including the judiciary and legal system to undergo transformation.

I would like to suggest the question of access to justice and transformation should feature as a theme on the agenda of any gathering of lawyers on our Continent and the world.

Access to justice is both a means as well as an end.

The United Nations Development Programme issued a Practice Note on Access to Justice released in 2004 states 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."

President Jacob Zuma, speaking in September 2008 at a public lecture, in his capacity as President of the African National Congress, stated: "Let me underline that access to justice is the cornerstone of orderly co-existence of citizens of any country. Access to justice is not necessarily the ability to walk to and reach the building where justice is administered. It only becomes complete when one's dispute is settled speedily, in an unbiased manner and when one feels he or she has had access to qualitative justice."

The UNDP makes the same point in the following way: "Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable."

President Zuma went on to say that, "Our concern is the failure to have cases or disputes processed and resolved speedily. Justice delayed is justice denied: so goes the proverb. Part of the transformation of the system is to ensure speedy access to justice. Poverty is still one of the major barriers for our people in enjoying or exercising their right of access to justice."

"The courts therefore remain a very hostile and traumatic experience for many of our people and this discourages many from using these forums to advance their rights or settle disputes. This is not healthy in a democratic society."

He challenged the legal fraternity to help to protect the poor and

vulnerable and to promote access to justice for them.

For many countries on our Continent, including South Africa, questions of the rule of law, independence of the judiciary and access to justice are also closely tied to the critical task of creating a legitimate state which derives its authority from the people, through regular elections and continuing popular participation in the processes of governance. Mobilised around a clear vision of the kind of society that we wish to become, the nation should act in partnership - each sector contributing to the realisation of the common good. The means should be put in place for citizens to exercise their human rights, and for the checks and balances necessary in a law-governed society. The democratic state should also have the organisational and technical capacity to realise its objectives.

This applies especially to countries emerging from crises or conflict situations.

The UNDP Practice Note on Access to Justice argues that, "Particular attention should be given to crisis and post-conflict countries, where challenges to access to justice may be aggravated because the public administration lacks sufficient capacity to provide public service. In some cases, police and other judicial institutions might be a source of public insecurity, intimidation or violence, or they are mistrusted because of abuses by previous regimes. In these cases, a country is often faced with a significant need to undertake a large number of reforms related to past violations of human rights and atrocities, and factors contributing to

recurrent instability. Furthermore, the justice and security sector may have collapsed due to damage to infrastructure, insufficient capacity and leadership, and a continued threat of conflict and violence."

The challenge for the legal profession on our Continent, and for this conference in particular, is to help define a clear vision of the kind of society we wish to become, to define how it will act in partnership with other sectors to contribute to the realisation of the common good, how it will contribute to putting in place the means for citizens to exercise their human rights, and how it will contribute to strengthening the checks and balances necessary in a law-governed society and last, but not least, how it will contribute to ensuring that the democratic state has the organisational and technical capacity to realise its objectives.

The United Nations Basic Principles on the Role of Lawyers, adopted in 1990, provides that: Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers."

The challenge for this conference will be to define how to give effect to this imperative in the particular conditions that apply in on our Continent at this juncture.

In his State of the Nation Address last year President Jacob Zuma identified five national priorities. These are the creation of decent work and sustainable livelihood, education, health, rural development and food security as well as the fight against crime and corruption.

I believe that these would constitute priorities for many countries on our continent.

These priorities are mutually dependent and reinforcing. They require united action by all of us to achieve. They require an active and organised civil society working together with a strong, efficient and clean public service in a developmental state. The question of access to justice is central to the realisation of these goals.

As we come close to the end of this input it might be appropriate to go back to its beginning. We started by saying that we were honoured to host the IBA's biennial conference in Durban in 2002 and that we are pleased to hear that it is reputedly still talked about as one of the best ever.

We hope that Cape Town and the Cape Town International Convention Centre do not disappoint and that this gathering will also be talked about for some time to come.

In exactly 77 days and approximately 14 hours, South Africa will also be hosting a conference of a different kind. A conference where the participants will be engaged in robust interaction of a more physical nature.

This year we have the honour to host the 2010 Fifa World Cup, taking place for the first time on African soil. We are confident that this event will also be talked about as the best ever for many years to come.

We express the desire that this audience will not have to rely on hearsay evidence when they are called, through due process, under the Rule of Law, before an independent Judiciary, represented by one of the many excellent lawyers in this room, on a pro bono basis, of course, in an accessible justice system, to testify to this fact.

In other words we hope to see you here in large numbers as eye-witnesses to the greatest show on earth.

We wish you a successful conference and express our confidence in your individual and collective ability to help define a clear vision of the kind of society we wish to become and to play an active role in the realisation of that vision: A better Africa in a better World.

I thank you.

Nkosi kakhulu.

Baie dankie.

Ngiyabonga.

Ke a leboga.

Inkomu.

Ndi a livhuwa.

Muito obrigado.

Merci beaucoup.