**Speech by Minister Ronald Lamola, delivered at the Western Cape Provincial Symposium on Constitutional Rights Conference in the context of the 25th Anniversary Celebration of the Constitution coming into effect, 8 February 2022**

Theme: “The Supremacy of the Constitution Reflecting on the role of the judiciary after 25 years of Constitutionalism”

Director-General of Justice and Constitutional Development Advocate Mashabane
Commissioner South African Human Rights Commission Advocate Andre Gaum
Justice of The High Court of South Africa, Western Cape Division, Vincent Saldanha
Justice of the High Court of South Africa, Western Cape Division Daniel Thulare
Retired Justice of the Constitutional Court Judge Kriegeler
Deputy Minister of Justice and Constitutional Development
Distinguished Guests
Ladies and Gentlemen

We gather here today under the theme: One nation, One Constitution, to mark the 25th Year since the Constitution came into effect.

It is perhaps fitting that we gather at a time when there have been many conversations and, in some cases, debates on the efficacy of the Constitution.

There is no question that the delivery of the Constitutional promises, has not been consistent. Having said that, it cannot be us, charged with the responsibility to make the Constitution a living reality, who send mixed signals on how South Africans should interact with this instrument which is designed to propel a nation like ours forward.

If we members of the executive stand and wash our hands off this constitution, we make a mockery of our oath of office and our duty to serve this great nation and fulfil its true potential which is countenanced by the Constitution itself.

To this end, the words of President Nelson Mandela at an Investiture as Doctor of Laws, at Soochow University, Taiwan are instructive, he said the following:

“…a written Constitution that serves as the highest law of the land; as a social compact guaranteeing the protection of the legal order. South Africa has never had a proper Constitution. Ordinary laws, disguised as a constitution, drafted by a racial minority which amended them at its whim, have been imposed on our country. It must not be so in the future.”

Explaining why we need a Bill of Rights, President Mandela says:

“Firstly, a Bill of Rights provides an important statement about the nature of power relations in any country. Unlimited executive and legislative power - which continues to pervade our society under racism and apartheid - cannot co-exist comfortably with a commitment to individual political and civil rights.”

He went on to say:

“It is a historical irony that the movement of the oppressed and rightless has made a categorical statement of our future intentions: that a future government of a free South Africa must operate, for the first time in our history, under a constitution which will not only limit its powers in relation to the individual citizen but which will be enforced by a Constitutional Court which enjoys the confidence of the people”.

The circumstances in which our Constitution came about are well documented.

Allow me to take you down memory lane and remind you of what Dr. A.B Xuma, the President of the African National Congress said in 1943, I quote,

“In South Africa, Africans have no freedom of movement, no freedom of choice of employment, no right of choice of residence and no right of freedom to purchase land or fixed property from anyone and anywhere. Under the guise of segregation, they are subjected to serious educational, political and economic disabilities and discriminations which are the chief causes of their apparent slow progress. “

All of these issues raised by Xuma then, now form part of the basic tenants of our constitution.

In an almost predictive manner of what the Constitution ought to be, President Mandela said:

“We must address the issues of poverty, want, deprivation and inequality in accordance with international standards which recognise the indivisibility of human rights. The right to vote, without food, shelter and health care will create the appearance of equality and justice, while actual inequality is entrenched.

We do not want freedom without bread, nor do we want bread without freedom. We must provide for all the fundamental rights and freedoms associated with a democratic society.

We shall leave it to the judiciary to determine which rights are directly enforceable at the instance of individuals. We shall be surprised if such rights as the right to clean water, to minimum nutrition and to adult education cannot be enforced by the courts. “

Regrettably, this is exactly what has come to occupy our courts. The enforcement of the right to basic human rights has on more than one occasion, been left to the courts. That is in itself is quite revealing, the mirror should be pointing at us, and its reflection should concern us.

According to the Department of Planning, Monitoring and Evaluation 25 Year Review document, Unemployment rates were high and concentrated among Africans. In 1994, the official unemployment rate stood at 20%, affecting as many as 24.7% of Africans compared to 3% of whites. The technical and higher education institutions (HEIs) reflected the prevailing context, is based on unequal and inequitable provision, and reproducing race, class, and gender differences. There was therefore a general scarcity of skills, particularly high-level skills, across almost all economic sectors and occupations.

In 1994, more than 12 million people did not have access to basic services such as clean drinking water and 21 million people did not have adequate sanitation. Less than half of the rural population had a safe and accessible water supply, and only one in seven had access to adequate sanitation.

Only 36% of South African households had access to electricity. As the RDP put it, “poverty and degradation exist side by side with modern cities and a developed mining, industrial and commercial infrastructure”.

In 1996, some 71% of the 2.4 million households in the rural areas of former homelands had access to land for farming purposes. However, half of these households reported that the farming used for crops was smaller than one hectare; therefore, the overwhelming majority (93%) of rural black households were engaged in subsistence farming and generating insignificant income.

While government programmes over the past 25-years have cushioned millions of South Africans against the devastating impact of poverty, levels of poverty remain high and inconsistent with the government’s stated vision and developmental goals.

The NDP: Vision 2030 requires that absolute poverty be eradicated from 39% of people living below the poverty line of R419 (in 2009 prices) to zero in 2030.

However, in contrast, the proportion of the South African population living below the Lower Bound Poverty Line (LBPL) increased from 36.4% in 2011 (18.7 million people) to 40.0% in 2015 (21.9 million people).

So, it is clear to us that for this constitution to live in its truest sense, vision 2030 cannot afford to gather dust, the realisation of an ethical and capable state is no longer an aspiration, it is a necessity.

One of the refrains in a democratic South Africa is “We have great policies but poor implementation”, I have always thought that such a statement is contradictory. How do we know that policies are great if we have not seen them in action?

On the contrary, I believe that those who say this Constitution is the best in the world make a well-founded statement in that regard:

From the Fourie case to the TAC case, for instance, these cases addressed the rights of people in same-sex relationships and the right for pregnant women to access anti-retroviral drugs respectively.

Our Constitutional jurisprudence has on many occasions, changed the lives of individuals.

But even here distinguished guests, we must be minded of the following in the final analysis taking into consideration that judgments could be reduced to a piece of paper. It follows then that our respect for the rule of law must not be based on what is pronounced by the judiciary, but a complete and total commitment to justice in its truest sense.

As I say this, I am reminded of the fact that those of us, who characterize judges in a particular manner, seem to forget that judges do not impose themselves on us in our communities.

It is us with our disputes who go to them for their Solomonic wisdom. In many ways, the fact that certain disputes find themselves in court is not a reflection on the judiciary, rather our communities. A classic example is maintenance cases, too often, men in particular family to play an active and supportive role in their children’s lives leading to cases before courts.
It is a bitter and sweet pill to digest when we look at the latest legal dispensation on Gender-Based Violence, one of the three recently passed laws, the domestic violence act makes economic abuse a ground for GBV.

I suppose it is better in the sense that when one thinks of this pointedly, it becomes apparent that we now must create laws to force fathers who can and who should maintain their kids.

On other hand, it is sweet in that we now have a law that will enable online applications for protection and maintenance orders.

If we are to disparage our constitution and the judiciary, these important legislative interventions will amount to nothing and subsequently, the rule of law may ring hallow.

As we mark this day in history, we must not shy away from being critical of ourselves in the way we have implemented this transformative framework called the constitution.

Those amongst us who have identified flaws in it, should use this moment to identify solutions to the flaws, but even then, those flaws cannot be for the sake of it :

These flaws must be impediments to

The achievement of human dignity, the achievement of equality and the advancement of human rights and freedoms.

Obtaining Non-racialism and non-sexism.

Maintaining the supremacy of the constitution and the rule of law.

Ensuring universal adult suffrage, a national common voters roll regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.

Because ultimately, when all is said and done this is the only way in which we the People can heal the divisions of the past and establish a society based on democratic values, social justice, and fundamental human rights.

It is through the constitution that we can 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.

It is also through the constitution that we can improve the quality of life of all citizens, 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.

I thank you.