

**SPEECH BY THE CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA**

**HONOURABLE CHIEF JUSTICE MOGOENG MOGOENG**

**CELEBRATING 15 YEARS OF THE SIGNING OF THE SOUTH AFRICAN  
CONSTITUTION**

**11 DECEMBER 2011**

**Programme Director**

**Honourable Deputy President of the Republic of South Africa, Mr Kgalema  
Motlanthe**

**Honourable Deputy Chief Justice of the Republic, Justice Dikgang Moseneke**

**Honourable President of the Supreme Court of Appeal, Mr Justice Lex Mpati**

**Honourable Former Chief Justices**

**Honourable Premier of the Gauteng Province, Mme Nomvula Mokonyane**

**Honourable Judges President**

**Honourable Members of the Judicial, Executive and Legislative arms of the  
State present**

**Trustees of the Constitution Hill Trust**

**Distinguished Guests**

**Fellow South Africans,**

**Good Evening.**

I count it a great privilege and honour to welcome you to Constitution Hill this evening; to celebrate this most momentous of anniversaries. It is hard to believe that it is 15 years since the day the Constitution; the document which forms the bedrock of our democracy, the document which is admired with envy by democrats around the world; was passed into law.

The impact of the Constitution on our democracy cannot be overstated. Where once South Africa was a pariah of the world, it became renowned as a country based on the values of “dignity, equality and freedom.” The courageous and innovative protection that our Constitution extends to the rights of, particularly the most vulnerable; sets an example to be emulated by the rest of the world.

The human rights jurisprudence developed by the Judiciary, generally, and in particular, by the Constitutional Court, over the past 15 years, and in the years of the interim Constitution; demonstrates the value-based power of the Constitution.

Through cases such as:

*Government of the Republic of South Africa and Others v Grootboom and Others;*

*Minister of Health and Others v Treatment Action Campaign and Others;*

and

*Minister of Home Affairs and Another v Fourie and Another;*

the transformative tone set by the Constitution is clear. In *S v Makwanyane*, it was noted:

“We have moved from a past characterised by much which was arbitrary and unequal in the operation of the law, to a present and a future in a constitutional state where state action must be such that it is capable of being analysed and justified rationally. The idea of a constitutional state presupposes a system whose operation can be rationally tested against or in terms of the law.”<sup>1</sup>

In recent cases too, the transformative impact of the Constitution on our law has been clear. *Mankayi v AngloGold Ashanti Ltd* and *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties*, cases in which the rights of those most vulnerable in our society were protected, are most recent examples.

The judiciary has, since the advent of our Constitutional Democracy, indeed served their Constitutional mandate with commitment, dignity, and honour. Let there be no doubt about the extent of the commitment that my colleagues and I have, to uphold the values of our Constitution and to fulfil its transformative mandate. It is a solemn undertaking we regard with utmost reverence.

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<sup>1</sup> Ibid at para 156.

However, noting the importance that the Constitution places on the independence of the judiciary; the judiciary cannot function alone. Our Constitution, which we are here to celebrate, speaks of the three arms of government which must co-exist. All actions of the state, the judiciary included, must be consistent with the Bill of Rights. We, as the judges of South Africa, undertook to uphold the Constitution in our oath of office.

It is untenable, and unimaginable in terms of the Constitution, for the judiciary not to ensure that the Bill of Rights is upheld. As the Bill of Rights itself says, it is:

“[A] cornerstone of democracy in South Africa, it enshrines the rights of all people in our country, and affirms the democratic values of human dignity, equality and freedom.”

The judges of South Africa do not serve a constituency. They serve the Constitution of the people, and in this way, serve the country and its people. As Chief Justice, I will do all in my power to ensure that we realise this objective.

The establishment of the Office of the Chief Justice and the ongoing progress made in that regard; is one way in which the realisation of our constitutional mandate to serve our people can be ensured. I must pause to note the foundational work done by my predecessors former Chief Justices Chaskalson, Langa and Ngcobo who have been, and will continue to be integral to the formation and formulation of structures and processes within the Office.

Fifteen years have passed since the Constitution was passed into law. Although we have come a long way, in the creation of our constitutional democracy, there is much ground to cover to make this Constitution a truly living document in the everyday lives of our people. Should we adhere to the rigorous demands placed upon us by the Constitution, South Africa will become the nation that it envisions, a nation in which we continue to:

“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.”

May the message that this Flame of Democracy is intended to encapsulate, be indelibly imprinted in the hearts and minds of all who see it, so that it can serve as an ever-abiding reminder that the aspirations which drove our compatriots to suffer and die for democracy, are never sacrificed in the pursuit of personal or sectoral interests.

May this Flame of Democracy symbolise our renewed commitment to national unity and reconciliation; may it also be symbolic of our stronger resolve, individually and collectively, to contribute to the national project of building a South Africa where all voices are heard; a peaceful and prosperous South Africa, a South Africa which is committed to *Ubuntu* and a Moral Code through which our children, who are the future leaders of this country, can all be guided.

I thank you.