



**Address by the Public Protector Adv Thuli Madonsela during the
Commemoration of Human Rights Day in Bethlehem, Free State**

Wednesday, 21 March 2012

**Programme Director;
Member of Provincial Legislature;
Deputy Public Protector Adv Mamiki Shai and CEO of Public Protector South Africa,
Themba Mthethwa;
CEO of the Human Rights Commission
Executive Mayor Councilors present;
Traditional leaders present;
Bethlehem Station Commander;
The communities of Bohlokong and neighbouring areas;
Distinguished guests;
Members of the Media
Fellow people of South Africa;**

It is a great honour for me to be back here and to engage the people of this province in dialogue.

Last year we visited Bloemfontein and Bradfort respectively, during our annual Public Protector Stakeholder Consultative Forum. We meaningfully interfaced with members of the public about our work and people's concerns regarding governance and service delivery, particularly at local government level. We will be going back to Bradfort shortly to give the people feedback on the progress we have made in the pursuit of their service delivery concerns.

Through such dialogues with communities we primarily seek to introduce my office to the people to create a basis for joining hands in ensuring that our democracy works in line with the vision that inspired the architects of our democracy. How to act collectively as builders to ensure that our country is indeed the democracy we want it to be.

The focus of my address today is about taking action as builders of democracy and human rights. How do we do that? And where does the Public Protector fit in.

We are gathered here today to commemorate our national human rights Day-in a month dedicated to remembering the abuse of Human Rights this country has ever endured in the past. During this month we bow our heads and remember all those who died in while engaged

in the struggle against the injustices of the apartheid regime.

We commemorate this month under the theme: “**Public Protector working for Human Rights based society.**”

The national event will be celebrated tomorrow with the main event held at the Kliptown Memorial Museum in Johannesburg where His Excellency President Jacob Zuma will give the keynote address.

What is the origin of our National Human Rights Day?

You will recall that 52 years ago on 69 people of our people were killed in Sharpeville for protesting and fighting for their rights against the pass laws and related human indignities that went with legalized injustice under apartheid.

While it is sad that those people who died while fighting for their rights will never get the chance to enjoy the fruits of the democracy they fought for, it is heartening to note that they did not die in vain. Today we count those simple people among the architects of our democracy, the central feature of which is our globally celebrated Constitution.

Programme Director

Our commemoration of National Human Rights day is characteristic of one of our strengths as a nation, the ability to build hope out of pain. As a nation we are known to build admirable things out of adversity. Think about our icon the inimitable Former President Nelson Mandela and his contemporary. If they and others before and after them, had not had the wisdom to turn pain and adversity into an opportunity to build who knows where we would be as a country.

But what was the point of the sacrifices? Put differently, what did the people of Sharpeville and others who sacrificed for democracy want from the country of their birth and if they were alive, what would they probably want to see?

It was all about inclusive democracy and human rights anchored in human dignity. The people wanted to be affirmed as human beings worthy of being treated with equal consideration by the state and fellow human beings regardless racial, gender, age, nationality and other human qualities.

Specifically, the people wanted an equal say in the governance of their country. They wanted equal justice, freedom of expression, freedom of movement, social justice, including economic justice, access to education, health, decent homes and all the fundamental rights enshrined in the 1948 UN Declaration of Human Rights. Indeed these rights and freedoms were echoed in the Freedom Charter, which boldly starts with the pronouncement “*The people shall govern*”.

Do these things still matter as we approach 18 years of democracy? If they do how far are we in making these a reality to all the people of South Africa? If there are gaps, what are the reasons for such gaps? Above all what is our role in ensuring that these human rights and freedom become a reality for all people of this country without undue delay?

This is what I want to engage you about in the context of the contribution of my office to the realization of human rights by strengthening constitutional democracy focusing on good governance and responsive service delivery.

Programme Director

There is no doubt in my mind that the issues of human dignity, human rights and freedoms that inspired the people of Sharpsville and others that sacrificed for democracy remain central today.

But is there a difference between the context in which the people of Sharpsville and South Africa demanded human rights and the situation in our time? There is a big difference indeed.

The main difference is that we now have a Constitution that not only accepts but specifically entrenches the principle that "The People Shall Govern" When adopting our interim Constitution in 1993 and final Constitution in 1996, we became a constitutional democracy.

The Constitution became the supreme law of our land. Two of the key sections of the Constitution that all of us should know are the preamble and the Bill of Rights.

Before then we had legalized injustice characterized by entrenched social exclusion. The people of Sharpsville and others had to protest to be heard. There were no channels for meaningful engagement between the people and those in government. People had to kick, scream and often destroy things to be heard. Do we still need to do that?

Referring to the Constitution as a bridge from the past, the preamble promises to create a foundation for a better life for all.

The Bill of Rights reinforces the promise by promising a set of fundamental human rights and freedoms that all the people of South Africa are entitled to. These include civil and political rights that include rights against police brutality and unjust detention or imprisonment.

These rights and freedoms include the right to equality, whose essence is the right to be treated with equal consideration no matter who you are whether rich or poor, young or old or someone with a disability.

An important innovation in our Bill of Rights is what we refer to as social and economic rights. These include the right to access to health care, access to education and access to adequate housing. The Constitution also entrenches a right to economic activity and a right to property. Although not specified, at the core of social economic rights is freedom against poverty, hunger and related suffering that strips away human dignity.

The question that interests all of us gathered here is how far are we to becoming that society and that where these basic rights cannot be taken for granted by the people.

The unfortunate answer is that 18 years into democracy, we are not there yet. Why are we not there yet? There are several reasons. The reason we are familiar with is that the legacy of thousands of years of colonialism and about half a century of apartheid could not have been undone in 18 years?

But is that the full answer? What about the open toilets we have just heard about? What about the stories of public funds that are siphoned in pursuit of interest in the state procurement system.

What about those that overcharge for building state infrastructure such as RDP homes and end up delivering shoddy service or nothing at all. And what about the service failure that is due to

the employment of friends and allies that lack the knowledge, skills and experience to deliver requisite services?

Is it perhaps true that many of the breaks we are experiencing in service delivery are our own making? Specifically, isn't time we admitted that maladministration, self-interest, corruption and other maladies of our own making are slowing down or derailing service delivery?

But what do we do as communities when there is service and conduct failure in government? Do we take to the street in protest? Do we destroy the very infrastructure we need for service delivery? Do we harm fellow people of South Africa, including Councillors and foreign nationals?

If we do such things are we strengthening or consolidating our constitutional democracy? When we destroy public infrastructure aren't we sabotaging the very service delivery we need in pursuit of the constitutional promise of a better life? When we harm fellow human beings be they in government or civil society aren't we violating the very human rights we seek for ourselves. Above all, is violent protest consistent with the pronouncement that the people shall govern?

This takes me back to the idea I started with, the idea of working together as builders of democracy as opposed to derailing or destroying democracy.

For me herein lies the distinction between builders of our democracy and those derailing democracy.

I have already indicated that we do not face the same barriers the Sharpeville people faced. The notion of democracy as a dialogue did not apply to them because the system did not give them a voice. When they tried to engage they were imprisoned.

The people of South Africa today have a constitution that defines their entitlements. There are laws, policies, regulations and government planning frameworks that elaborate on public power and resources are to be used to deliver the services necessary for the realization of human rights.

Is there a need to take to the street to demand accountability? I don't think so! Firstly, our constitution, which is the envy of many nations, spells out what we are entitled to by virtue of being human beings. That lays the basis for holding those that exercise public power accountable.

As indicated earlier, the Constitution is backed by laws such as the Municipal Finances Management Act (MFMA), various policies and other regulatory frameworks that makes it clear what is to be delivered by whom and how. On the basis of the Constitution and the supporting regulatory framework empowers you to engage with persons in government and to assess the merit of answers that are provided to you when service or conduct fails within the state.

The Constitution is the supreme law of the land. When we adopted it we parted ways with Parliamentary supremacy. This means that no one, in the state is allowed to do anything that is contrary to the provisions of the Constitution.

We also need to remember that democracy presents us with an opportunity to elect people we want to represent our interests every five years. If we do not like what they do we can always recall them when a new election takes place.

What do we do we do between elections? This takes us to the role of my office, the Public Protector. In their wisdom the architects of our democracy saw it fit to add institutions whose role is to support and strengthen democracy in the architecture of our democracy. They thought that the traditional checks and balances, including courts, that keep those entrusted with public power in check, were not enough. The Public Protector is one of several institutions that seek to give people a voice to exact accountability from those they've entrusted with public power when direct accountability fails.

At the Public Protector, we see ourselves as a buffer between the people and government. When direct communication fails we enhance democracy by acting as a buffer between government and the people. Inspired by the institution of the Makhadzi in Vhenda culture, we often say we give people a voice while enlarging the ears of government.

This is why when I started I said that my interest is to engage you in a conversation about working together as builders of democracy.

You can work with us by reporting any allegation or suspicion of improper conduct or maladministration in state affairs or the public administration. The Constitution gives the Public Protector power to investigate report and take appropriate remedial action if his or her investigation confirms that there was improper or prejudicial conduct in state affairs or the public administration.

The Constitution goes on to state that the Public Protector has additional powers as conferred by nation legislation. Indeed there are 16 statutes that give the Public Protector additional powers.

The main statute is the Public Protector Act which elaborates on the Public Protector's jurisdiction of maladministration. The Executive Members' Ethics Act positions the Public Protector as the agency responsible for supporting the President in the enforcement of Executive Ethics.

The Public Protector has a whistle-blower protection role under the Protected Disclosures Act and is has an anti-corruption mandate under the Prevention and Combatting of corrupt Activities Act read with the Public Protector Act.

She or he also serves as one of the Information regulators under the Promotion of Access to Information Act and reviews the decisions of the Home Builders Registration Council under the Housing Protection Measures Act.

The Public Protector has vast powers to help you get answers. These include the powers to subpoena any person or information in the Republic of South Africa whether they are in or outside government.

His/her powers include powers and the power to hold people in contempt of the Public Protector, a power similar to contempt of court.

That is why I have boldly stated that you never need to embark on protest or to destroy anything to be heard. The other institutions supporting democracy are also there to give you voice.

As I conclude I want to thank the people of Bethlehem for being democracy builders. Your being

here in numbers, suggest that you buy into the idea of democracy as a dialogue. This is confirmed by the fact that some of you wrote to me as soon as you knew I was coming to lodge complaints on maladministration. You have not taken to the streets.

I trust that you will continue to build democracy by constructively engaging with those you've entrusted with public power through the channels provided by the architects of our democracy. You need to arm yourself with information and knowledge about your rights and how government work.

That would place you in a position to ask the right questions to the right people through the right channel. Possessing information and knowledge will also ensure that should you be in government in the future, you will be equipped to do the right thing. This is what the Freedom Charter meant when it said the "people shall govern."

Violent protest cannot be reconciled with people governing, or building democracy- it is anarchy in action. What bothers me most is that some of the people that incite communities towards violent protest are people without clean hands. Many are involved in the corrupt tenders with inflated pricing and shoddy service delivery. They are using you and diverting you to focus on personalities instead of from focusing on systems and asking the hard questions.

My office is here for you. Together we can strengthen and consolidate democracy by ensuring that the state is accountable, operates with integrity and government is responsive to the needs of all people.

Thank you.

Adv Thuli Madonsela
Public Protector