



PUBLIC PROTECTOR  
SOUTH AFRICA

**Address by Public Protector Adv. Thuli Madonsela during the  
commemoration of Heritage Month in Beaufort West, Western Cape on  
Friday, September 27, 2013**

**Programme Director and Public Protector Provincial Representative: Western Cape, Adv. Ruthven Janse van Rensburg;  
The Community of Beaufort West  
Deputy Public Protector, Adv. Kevin Malunga;  
Executive Mayor of Beaufort West, Cllr Alderman T. Prince;  
All councillors and Government representatives present;  
Representatives of chapter nine and other oversight institutions;  
South African Police Service and the Emergency Management Council  
Executive Manager for Outreach Education and Communication at the Public Protector South Africa, Mr Momelezi Kula;  
Members of media; and  
The Public Protector team;**

My team and I cannot imagine a more fitting place than Beaufort West for celebrating our national heritage day as a people. I cannot imagine a more fitting place for engaging in the dialogue fashioned under the theme “***Reclaiming, Restoring and Celebrating our Living Heritage by Promoting Good Governance and Reducing Maladministration.***”

Tiny as it is, in terms of territory and population figures, Beaufort West earned its place in history books when it became South Africa’s first ever municipality in February 1837.

One hundred and seventy six years later, South Africa has more than 280 municipalities divided into Metropolitans, Districts and Local Councils.

Your natural heritage as the people includes the fact that you are part of the few towns that are part of the Karoo, which in geographical terms is understood to be a tract of a semi-desert land.

You probably already know that one of the achievement of the Karoo district, is what is referred to as the SKA project or Square Kilometre Array project, which represents one of our key achievement in the area of Science and Technology in this region. The SKA project is here in the Karoo, not far away from this particular town.

The word Karoo itself comes from the Khoisan language, and as we know, the Khoisan belongs to the first inhabitants of South Africa. We've just seen a display of part of the cultural heritage of the Khoisan people when the young dancers entertained us at the commencement of this event.

But, perhaps, what this town is more renowned for is the fact that it produced Professor Christian Barnard. You will remember that Professor Christian Bernard was the first cardiac surgeon who successfully performed the world's first human heart transplant in December 1967.

As you will recall, Professor Barnard's achievement eclipsed that of one American doctor, who in 1953, performed the first human kidney transplant.

Beaufort West's legacy includes a diverse heritage as we can see in this room. Also worth noting is how the people of this town turned the tragedy involving a freedom fighter Mandlenkosi 'Tsaka' Kratchi into a unifying heritage.

Mandlenkosi, who is reported to have been a capable young boxer, was tragically shot and killed in a police raid on January 22, 1985. The community of Sidesaviwa, where Mandlenkosi came from, was so shocked by this incident that they decided to change the township's name to KwaMandlenkosi, in his honour. Subsequently the main road and high school in the area were also named in memory of Mandlenkosi Kratchi.

As the Public Protector South Africa team, we would like to align today's Heritage Day celebration with an initiative of Department of Arts and Culture and Lead SA that was launched last week Friday. That initiative is in line with our theme for Heritage month as a nation, which is: "Reclaiming, Restoring and Celebrating our Living Heritage".

This initiative has two dimensions. It has been initiated as part of preparing for celebrating 20 years of democracy next year April. The two dimensions of the initiative are the following:

1. The celebration of freedom Fridays, where we are encouraged to wear whatever it is that makes us proudly South African every Friday; it could be your rugby shirt, scuff or Bafana Bafana shirt and
2. We should dedicate 20 hours of community service in celebration of 20 years of democracy

I believe that both the heritage month theme on "Reclaiming, Restoring and Celebrating our Living Heritage and the Freedom Friday initiatives are in line with celebrating our 20 years of democracy. All of this is appropriate as we approach April 27.

I must just indicate that, Lead SA believes that we can recreate the magic that we had as a nation in 2010, where despite all our challenges, we remembered that we are a successful nation. We have beaten many odds to come to where we are. We are a nation of achievers; there is a lot to celebrate. There is also a lot that needs to be fixed.

The common theme from this initiative is patriotism. We are invited to be proud of who we are. Why wouldn't we be? Let us take this community. I have already mentioned that this community produced a person who has performed the world's first humna heart surgery. How awesome is that? As a nation, collectively, we have taught the world that human diversity is strength to be celebrated rather than derided. Above all, as a nation that has taught the world that forgiveness is possible and that forgiveness anchored in restorative justice is a healthy formula.

As a nation, our proud heritage is not confined to the selfless dedication to the struggle against injustice. We have achieved in many areas as well. For example, we are part of the world's top 50 innovative nations. We are also Africa's largest economy and number 5 in the Mo Ibrahim Good Governance Index.

There is more that we have achieved. As a country, we boasts four Nobel Peace Prize laureates in Albert Luthuli (1960), Archbishop Desmond Tutu (1984), former president Nelson Mandela (1993) and former president Frederick Willem de Klerk (1993). We have more recipients of other Nobel Prizes in areas such as literature, medicine and chemistry. We have also collected many other accolades in science, technology and many other fields.

But it is also true that, we are a nation that knows that the walk to freedom is a long one as our icon and one of the parents of our nation, Madiba once advised. We are also frank with ourselves. If we are frank with ourselves we should be asking questions such as: Have we done everything we could do to make sure that the fruits of democracy are enjoyed by everyone? Have we done everything possible to make sure that no child goes to bed on an empty stomach? Have we done everything possible to ensure that the promise of an improved quality of live and freed potential of every person was not an empty promise to some of our people?

More specifically, is it possible that maladministration in the last 20 years may have hampered the state's contribution towards making real the improved quality of life and freed potential of every person?

You must be asking practically, what does all of this have to do with you?

I must locate my answer in the role of my office, the Public Protector SA. As you know, the Public Protector is a constitutional office created 18 years ago to strengthen and support constitutional democracy through investigating and redressing improper conduct in state affairs. Section 182 of the constitution gives my office the power to investigate, report on and take appropriate remedial action in respect of any improper conduct in all state affairs or the public administration at all levels of government. What does that mean to you? It means that whenever you have grievances regarding unfair treatment by government or conduct failure by state actors, including abuse of power, abuse of state resources, unethical conduct and corruption, you may approach us.

It is often said that my office has no power other than to make recommendations. Where does that come from? It is not true. Our Constitution, which is the supreme law of the land clearly states in section 182(1)(c) that :

**".... The Public Protector has the power as regulated by legislation to take appropriate remedial action"**

I have never come across the word recommendation in the constitution, I see journalists write it all the time, I hear parliamentarians speaks about it all the time, but the constitution does not use that word, it says take appropriate remedial action.

I don't know what your understanding is but my simple understanding of the English language takes me to the conclusion that a remedy is something that fixes the problem. If someone broke your leg and they were required to take appropriate remedial action to fix it, would a suggestion or recommendation on how to fix your leg qualify as remedial action? As Judge Davis usually

says, “you be the judge”.

The suggestion that my office has no power is not supported by the Public Protector, which states in section 8 that I may communicate my **finding**. A finding is not a suggestion, it is a firm **determination**. I have dealt with this issue extensively in a report I issued 2 days ago (26 September 2013), titled “**Meet me in Court**”.

I am referring to that report because the organ of state concern argued that as far as it is concerned, I have no power to give a remedy if the state have wronged you, I respectfully disagreed and if you read the constitution using the plain English language, it specifically says take appropriate remedial action.

What does all this mean for you though? It means that you can safely partner with us not only to remedy any injustices you may have experienced in your dealings with officialdom but also that we can work together to teach our government regarding how to treat its people. Madiba had this in mind when he told the International Ombudsman Institute workshop in 1996 that:

***“We are mindful from the very start of the importance of accountability to democracy; our experience has made us acutely aware of the possible dangers of a government that is neither transparent nor accountable. To this end our Constitution contains several mechanisms to ensure that government will not be part of the problem; but part of the solution.”***

Remember though that my call to you, in line with the spirit of patriotism we are called to exhibit as we approach our 20 years of democracy milestone, is that we do more than complain. We must play our part in solving the problems our nation faces. Why don't we light a candle instead of simply moaning the darkness? Think about this as you contemplate your 20 hours of community service project.

You may be asking though: How do I light a candle while I'm also poor? There are many ways each one of us can light a candle, for example, all of us can do something to preserve the legacy we have inherited. The Deputy Public Protector just spoke about the few things you can do to make a difference, just not buying stolen goods as one thing you can do, and I agree with him.

But we must also act when others are treated unfairly even if we or our loved ones are not directly affected. When we say nothing, wrongdoers think it is ok and continue with their wrongdoing. The consequence is that others start seeing this as the way to go and start doing the same. Before we know, wrongdoing becomes a culture.

Deputy Public Protector and I did not discuss our speeches but I picked up from what he said that what you consistently do eventually becomes our culture, and he was warning us against allowing wrong doing to continue without being stopped, because eventually it becomes a culture and later becomes your heritage.

In the Public Protector South Africa we call wrongdoing in government, maladministration or bad administration. We don't want to encourage the bad legacy of bad administration, do we? The Constitution calls it improper conduct while the Executive Ethics Act refers to certain forms of improper conduct as unethical conduct or conduct in violation of the Executive Ethics Code. The Prevention and Combating of Corrupt Activities act calls some forms of maladministration, corruption.

Sometimes wrongdoing in state affairs is not intended but the consequence thereof is still unfair. For example, few weeks back during our recent National Stakeholder Dialogue; I was approached by Xhosa-speaking residents of Mbekweni Township in Paarl, who complained that they risked being misdiagnosed because medical personnel at the local healthcare clinic only spoke English and Afrikaans. They complain sometimes that the diagnoses is wrong, because there was a communication breakdown, clearly the medical staff did not want to treat the people unfairly but because of the language differences that had not been addressed, the outcome was unfair. We have advised the province to remedy the situation.

Apart from being a cornerstone of every human being's cultural heritage, the right to use one's own language, enshrined in Chapter 2 of the Constitution, makes life easier for everyone. Ultimately it makes it possible for one to understand and to be understood in all interactions in society. I am saying this mindful that many of you might not understand me right now, that's why we have interpreters who will do Afrikaans and Isixhosa.

In ending, let us talk briefly about specifics regarding: What is a Public Protector? Who is eligible for the services of the Public Protector? What can the Public Protector help you with? What can the Public Protector not help you with? How do you access the Public Protector?

### **What is a Public Protector?**

As I indicated earlier, the Public Protector is an independent public office bearer appointed in terms of the constitution to receive and redress public grievances relating to alleged or suspected improper conduct in state affairs. It is our duty at the Public Protector SA to ensure that government treats all people fairly and that those we find to have been treated unfairly get prompt redress. The key forms of improper conduct we can help you with, with include the following:

Maladministration (including rudeness and undue delay) , I often been asked by parliamentarians, why do we deal with this small issues, our main job is to deal with the small issues because small issues are big issues to small people. Such issues can include rudeness and undue delays. Maladministration also includes big things such as abuse of power, abuse of state resources and corruption as mandated by the Public Protector Act, read with the Prevention and Combatting of Corrupt Activities Act;

Unethical conduct by members of the Executive (Cabinet and Provincial Executives) as mandated by the Executive ethics Act;

Safe Harbour for whistle-blowers, if you come across wrongdoing and you are afraid of going to the authorities in your organisation, you can come to us, under the protection disclosure act, we will take the information of wrongdoing and investigate it, and make sure you are protected from retaliatory action by your organisation, as mandated by the Protected Disclosures Act

Undue denial of state information as mandated by the Promotion of Access to Information Act;

Unfair decisions of the National Home Builders' Registration Council as mandated by the Housing Measures Protection Act; and

Resolving unfair discrimination disputes relating to maladministration in state affairs, as mandated by the Prevention and Combating of Unfair Discrimination Act.

## Who is eligible for the services of the Public Protector?

Any person in the country is eligible for our services. As the Constitution says, our services must reach all persons and communities. This includes citizens and foreign nationals that are within the borders of this country. Again, unlike the courts, our services are free of charge.

## What can the Public Protector help you with?

The constitution gives us jurisdiction over “**conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice.**”

We deal with a number of cases, including the RDP housing, SASSA grants, IDs and birth certificates, basic service delivery matters and conduct failure issues, including corruption, abuse of power and state resources, among other things.

## What can the Public Protector not help you with?

We do not have jurisdiction over private entities and individuals. So, we cannot get involved when your neighbour is being rude to you or if your private insurance company short-changes you, unless if we look at the regulatory role of the state. We also do not have the powers to review court decisions, nor to dabble in judicial functions.

## How do you access the Public Protector?

We have 20 walk-in offices spread across the country. In the Western Cape we have an office in Cape Town and another in George. We do not have an office in this particular area. However, we make up for that gap with outreach clinics similar to this one. And this is an important point: Why do we hold events like these? Is this for media hogging? No! It is in pursuit of section 182 (4) of the Constitution which states: “**The Public Protector must be accessible to all persons and communities.**”

We also have a mobile office that visits areas such as this one periodically. I urge you to make use of such opportunities.

Otherwise you have the option of using our toll-free line, 0800 11 20 40, or lodge complaints online at [www.publicprotector.org](http://www.publicprotector.org) or email them to [Registration2@pprotect.org](mailto:Registration2@pprotect.org). We are also available on social networks, Twitter and Facebook. Today is also an opportunity for you to register your complaints with the office. Accompanying me is a team of investigators who will take down your complaints for my attention. We will deal with complaints in two ways. Shortly after my I am done with my speech, we will make time for complaints to be raised from the floor.

I must emphasise that these should be only complaints that affect a community or a group. Please also be mindful of what I said about the limits of our jurisdiction and mandate earlier. Individual complaints should be taken to our stall at the back of this venue, where our investigators are ready and waiting to assist you.

I urge you, ladies and gentlemen, to play your part and be active citizens and residents in this country by reporting any form of improper conduct in state affairs. Also help others to understand how government works so as to strengthen public accountability. Knowing who does what in government and what law regulates their conduct and where to go when you have a grievance may be more powerful , sustainable and safer than mass action.

It is through not turning a blind eye bad administration and corruption that we can secure for ourselves the kind of state envisaged in our Constitution. That is the state where the quality of life for all of us will be improved and where the potential of each other of us will be freed.

Let us work hard to ensure good governance to secure the future. Together we can ensure that all are accountable, act with integrity at all times and are responsible to the needs of all the people of South Africa.

Playing our part also means avoiding wrongdoing on our part in the spaces we control. Go out there and make a difference! Each one of us can lift someone.

As Margaret Mead once said:

***“Never doubt that a small group of thoughtful, committed, citizens can change the world. Indeed, it is the only thing that ever has.”***

Happy Heritage Month and Freedom Friday!

Thank you.

**Adv. Thuli Madonsela**

**Public Protector South Africa**