



PUBLIC PROTECTOR
SOUTH AFRICA

Address by the Chief Executive Officer of the Public Protector South Africa, Mr. Themba Dlamini during the commemoration of Freedom Day at the University of Limpopo in Polokwane on Thursday, April 27, 2017

**Programme Director;
Chairperson of the National Council of Provinces,
Hon. Thandi Modise in absentia
Speaker of the Provincial Legislature;
Representatives of the Judiciary;
Premier Chupu Stanley Mathabatha;
MEC Onicca Moloji;
Other members of the provincial executive present;
Representatives of Chapter 9 institutions;
Members of the Provincial Legislatures present;
Council Speakers;
Executive Mayors and Mayors present;
Traditional Leaders
Members of Mayoral Councils;
Senior civil servants;
Representatives of civil society;
Members of the media;
Distinguished guests;
Director General of the Province, and HoDs of respective**

provincial departments
Ladies and gentlemen;

Good afternoon;

I bring you warm greetings from the Public Protector, Adv. Busisiwe Mkhwebane, on whose behalf I stand here today. The Public Protector family at large also sends its regards.

Adv. Mkhwebane would have loved to be here at her **alma mater** not only to participate in this engagement but to commemorate this historic day with you.

She has expressed a word of gratitude to the Limpopo Provincial Government, in particular the Department of Sports, Arts and Culture, for having extended an invite to her office in this regard. We are truly humbled by the gesture.

Without preaching to the choir, let me point out at the very beginning that the Public Protector South Africa joins the rest of the country in commemorating the 23rd anniversary of Freedom Day.

We remember the wailing and gnashing of teeth; the tears; and ultimately the blood that spilled, nourishing the seedlings of liberty so that you and I could enjoy the freedom that we tend to take for granted today.

But we also remember the day itself - Wednesday, April 27, 1994. We recall the snaking queues that were seen in every rural village, township, town, city, small dorpiés and metropolis as our people, the young and old, patiently waited their turn in the booth to put an "X" next to a political party they felt best represented their wishes and aspirations.

On that day, for the first time, the natives of this country could decide through the ballot and not the barrel of the gun, the kind of government they wanted. In other words, for the first time we were going to have a government based on an inclusive will of the people.

In that moment, Ladies and Gentlemen, we were like the children of Israel when the gates of Egypt swung open; when the sea parted in order for them to cross towards their promised land; when they were freed from a life of servitude under the ruthless rule of Pharaoh.

Since then, we were in a different South Africa. We had broken free from the shackles of oppression and suppression. We had been freed from the tight grip of decades upon decades of bondage.

This historic moment had been preceded by multi-party negotiations, which, in 1993, gave birth to the first version of the Constitution that is today the supreme law of the land.

It was on the basis of that Constitution that we had a roadmap of where we were going - that is who was eligible to vote, what was going to happen after the votes were counted, including how government was going to be constituted and so forth.

Two years later, the late President Nelson Mandela promulgated the final version of the Constitution following the good work of the first Parliament's Constitutional Assembly. That version subsequently came into force in February 1997.

This brief history of the genesis of Freedom Day and how it links to our Constitution brings me to the theme of today's discussion: **My Constitution - My Heritage.**

Programme Director, Premier and Distinguished Guests,

Last November, Adv. Mkhwebane followed in the footsteps of luminaries such as former President Thabo Mbeki, former Zambian President Kenneth Kaunda, former Mozambican President Samora Machel, former Chief Justice Sandile Ngcobo and former Speaker of the National Assembly Dr Frene Ginwala, among others, to deliver the Chief Albert Luthuli Memorial Lecture in KwaZulu-Natal at the invitation of the Luthuli Museum Council.

The topic of the address she delivered on the day resonates with the theme of today's lecture. The sentiments I will echo this moment will therefore reflect the views she expressed that day, which are the views she still holds.

We often hear that South Africa has one of the most progressive Constitutions the world over. This is so true; even the most mature democracies in the globe grow green with envy when they see our supreme law.

This was evident in the aftermath of the so-called Arab Spring, a revolution that had wreaked havoc in the Northern African countries. One of the countries affected, Egypt, was preparing to draft a new Constitution to usher in a democratic dispensation.

Round about then, Associate Justice of the Supreme Court of the United States of America, Justice Ruth Bader Ginsburg, happened to be in Cairo on an apparent holiday.

It appears Egyptian revolutionaries were studying the American Constitution to model their own around. Justice Ruth Bader Ginsburg had some wise words for them. She reportedly said the following:

“I would not look to the U.S. Constitution if I were drafting a

Constitution in the year 2012. I might look at the Constitution of South Africa. That was a deliberate attempt to have a fundamental instrument of government that embraced basic human rights [and] have an independent judiciary. It really is, I think, a great piece of work that was done.”

This Constitution represents the fruits of decades of an anti-colonialism and apartheid offensive that saw a lot of bloodshed, displacements and imprisonments as the government of the day increasingly grew intolerant of dissent.

In this Constitution, the mid-wives of our democracy, most of whom are no longer with us today, could not have bequeathed to us and future generations a better heritage.

It is a document that takes into account our country's dark past and puts in place a legal framework that seeks to correct all that was wrong with the South Africa of old, marking a clean break from the oppressive laws of the evil system of apartheid, which itself was declared a crime against humanity by the United Nations.

It sought to unite a very diverse and polarized nation, all in efforts to ensure that we all live in peace and harmony.

It provided a legal basis for the South Africa we have today; the entitlements and responsibilities of the populace; and the character of the state.

It sought to create an inclusive society as opposed to the state of affairs under the apartheid regime where socio-economic, political rights and freedoms were the exclusive preserve of a minority.

The midwives of our democracy could see into the future. As attuned and thoughtful leaders, they anticipated and prepared for

the kind of challenges that any new democracy birthed out of a near civil war situation would most likely run into.

This is evident in the manner in which they built into the Constitution the people's entitlements in the form of the **Bill of Rights**. The **Bill of Rights** enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom.

The rights also include social and economic rights such as the rights to housing, food, water, education and access to health care, social security, language, culture, information and so forth, within available resources. **The state has a duty to respect, protect, promote and fulfil the rights as envisage in the Bill of Rights.**

Added to that was the **structure, character and role of the state** in delivering to the people what they were entitled to. The Constitution further spells out for us the make-up of a democratic state that is made up of **three arms of a government based on the will of the people**. These arms are **the legislature, the executive and the judiciary**.

All these arms of government must work together to ensure that the people's entitlements as spelt out in the Bill of Rights are met. **Parliament must pass laws; the courts must interpret the laws while the executive arm must implement the laws.** They also act as checks and balances that hold each other accountable while observing the separation of powers doctrine to see to it that the people get what they are entitled to.

Although all three of these arms are important, **the executive is by far the most critical when it comes to delivering on the constitutional promise of an improved quality of life and a freed potential of each person.** Government is the active agent

of the state which needs to create a conducive environment for enjoyment of the rights.

This is because it is the **executive that carries out the duty of the day-to-day running of government, overseeing the provision of critical services such as public healthcare, education, welfare and safety and security.**

Furthermore, **the people entrust the executive with their collective resources and public power so that the executive can look after these resources in the best interests of the people.** Our constitutional framework stipulates the kind of conduct that the executive must display in the process of executing its constitutional responsibilities.

The role of the executive is clearly spelt out in the Constitution. Section 96 deals with specifics of how the executive must conduct itself, particularly in so far as steering clear of self-interest in favour of public interest is concerned.

Section 195, under Chapter 10, focuses on the principles of the public administration, placing much emphasis on the need to put people first. Sections 112 to 116 deal with the concept of cooperative governance, which outlines how the three sphere of government, **being national, provincial and local government** as well as other **organs of state ought to work together towards a common goal.**

In addition to these, the drafters of this valuable document annexed the checks and balances that would empower the people to hold to account those they have elected into public office in the event of deviation from their pact with the electorate. These include **the legislature, the judiciary and independent constitutional institutions.**

This is why, 23 years on, our democracy continues to function well. It is clearly a durable democracy. We continue to pride ourselves with the strong and independent judiciary that we have. We have consistently held free and fair national and local government elections since 1994.

Over and above the three arms of government, the Constitution provides other accountability mechanisms that transcend these traditional checks and balances to hold the state accountable in the event of service and conduct failure.

To this end, we boast highly respected and competent constitutional institutions that include the **South African Human Rights Commission, the Public Protector, the Auditor-General and the Electoral Commission** all of which continue to support and strengthen our constitutional and inclusive democracy.

Efforts continue to improve the quality of life of all our people, with millions of families having been provided with housing, electricity and water since 1994. Billions of Rands in social grants are also distributed to the poor while public health care and education continue to account for a lion's share of government expenditure.

This seemingly flawless framework and the related achievements are not meant to suggest that we live in a perfect setting. Many of our people remain left behind.

We are grappling with a widening gap between the rich and the poor as inequalities continue to deepen. Unemployment is spiralling out of control, with our young people the hardest hit, and the economy is not growing at a desired rate.

We battle with the issues of racial tensions, crime, apparent poor service delivery as characterised by the violent protests that we

see week in, week out, across the country.

With all its perfect imperfections, our Constitution remains the only guiding light that can deliver us to the promised land of a South Africa where the quality of life of all our people is improved and the potential of each person is freed.

In the same way this Constitution helped us to make it out of a very dark past, it will surely see us through the challenges we grapple with today. Nobody said it would be easy. It was never going to be plain-sailing. All the hurdles we face were anticipated by the brains behind our Constitution and nothing was left to chance.

This Constitution is the best heritage that our forbearers could have bequeathed to us. To borrow from Justice Ruth Bader Ginsburg, this Constitution really is **"a great piece of work"**.

Last but not least, it is imperative to point out to the lawmakers that there are provisions of the Constitutions which stifle enjoyment of economic freedom like the property clause and provisions of the central Bank the require amendments.

Let us march on and continue to work hard to make our democracy work. That is the only way we can repay those who left us the rich heritage that is our Constitution. We must never fail them. Happy Freedom Day!

Thank you.