



**Address by Public Protector Adv. Busisiwe Mkhwebane during the Freedom Day commemorations in Masiphumelele, Cape Town in the Western Cape on Friday, April 27, 2018**

**Programme Director, Pastor L. Woko;**

**Honourable Freddie Adams, Member of Parliament;**

**Prof Ben Turok, Former Member of Parliament and DC Chairperson in Parliament;**

**Councillor Patricia Frenkkia;**

**Lieutenant Cornel Buzwayo Station Commissioner;**

**Community Leaders;**

**Somalian Community;**

**Church Leaders;**

**Ladies and gentlemen**

Good morning and thank you for deeming it fit to invite commemorate this day with you. Today we join the rest of our countrymen and women to celebrate Freedom Day. The story of our painful journey to freedom and democracy is well documented. It is a story we are reminded of now and then as a result of events that occur every other day.

Just yesterday in Gauteng, some people who have been described in the media as “right wingers”, tied and tightened a noose around the neck of what appeared to be an effigy of provincial MEC for Education, Panyasa Lesufi. They then hung it on a tree outside the offices of the National Department of Basic Education in Tshwane in the glare of flashing cameras.

It is understood the move was meant to intimidate MEC Lesufi, who has been an outspoken champion of racial integration in schools across the province in the spirit of non-racialism and equality, which are among the cornerstone values of the society envisaged by the brains behind this democratic order.

It was seemingly meant to send a chilling message to MEC Lesufi, forcing him into abandoning his fight against the reincarnation of apartheid through the use of language to segregate white and black children in both public and private facilities of learning.

Recently we saw a Gauteng woman getting jailed for hurling humiliating racial slurs at police officers. In a landmark sentence from which people of her ilk should draw important lessons, the woman was given an effective two years behind bars for her widely publicized outburst in which she repeatedly used the K-word in reference to the officers.

A few months back in Mpumalanga, we saw again the court convicting and sentencing two men for forcing a man they accused of trespassing into a coffin as if to bury him alive.

These are but a few examples of horrendous events, which tend to spark flashbacks to our painful past, reopening old wounds and causing a lot of

anger among the indigenous people of this land, who were at the receiving end of the evil systems of colonialism and apartheid.

On a day like this, we take time off to remember how the spirit of the oppressed people of this land triumphed over that immoral dispensation. We take time off to remind ourselves that this freedom did not come cheap.

We look back and appreciate the fact that, had it not been for undying fighting spirit and sacrifices of the likes of Mama Nomzamo Winnifred Madikizela-Mandela, who we recently laid to rest, and many other heroes and heroines of the struggle for freedom, we would not be where we are today.

We also take time off to remember those who fought hard but never got to taste the fruit of their labour, having paid with their lives so that you and I can be unchained and live freely on our forefathers' land.

I cannot over-emphasise the importance of not forget where we come from. It is often said that for you to know where you are headed, you must first be aware of where you come from. I totally agree. However, today, I want to focus my talk on the now and the future. A simple assessment of what we have accomplished since Freedom Day dictates that we keep our past at the back of our minds but focus on the now and the future.

A lot has been said about 27 April 1994, the day many of us went out to cast our vote for the first time, thereby playing a part in deciding who governs us. For some it was a day of celebration while for others it was a moment of uncertainty. While some were optimistic about the future prospects of the country, for others it felt like a step into the unknown.

But in hindsight, twenty-four years down the line, we can all agree that 27 April 1994 was the best thing that has ever happened to this nation. I liken that moment to the biblical story of the Israelites crossing the Red Sea, leaving behind a life of oppression in Pharaoh's Egypt and making the transition towards Canaan, the Promised Land of milk and honey.

Like the Israelites, we were making a clean break with the past. That moment marked the culmination of decades upon decades of the struggle for equal rights. It was a moment pregnant with hope and possibilities.

But 27 April 1994 did not just happen. It came about as a result of several agreements flowing out of the multi-party talks that followed the collapse of apartheid. An Interim Constitution of 1993 had been agreed upon. On the basis of that Constitution, we were able to form a new democratic government, which was based on the will of the people.

That Constitution, like the final version which came into effect a few years later, had the sole purpose of transforming the South African state from one that was concerned with the well-being of only a fraction of the population while alienating the rest to an inclusive one, with equal opportunities for all.

The Constitution promises us an improved quality of life and to free the potential of each person. The Bill of Rights, in Chapter 2, gives effect these promises, enshrining the rights of all people and affirming the democratic values of human dignity, equality and freedom.

Also in the Bill of Rights are 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 in the Bill of Rights.

The Constitution spells out for us the make-up of the South Africa that our forefathers fought so hard for. That South Africa is 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.

These three arms 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.

In section 96, the Constitution 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.

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

Two and a half decades post 27 April 1994, many of our people have access to housing, electricity and water. Billions of rand in social grants are distributed to the poor while public health care and education continue to account for a large chunk of government expenditure.

Be that as it may, we are not yet there. Many of our people remain left out. We struggle with inequality, unemployment and poverty. We still experience things such as the Life Esidimeni saga, we have communities such as you the people of Masiphumelele, who live in inhumane conditions.

Fortunately, the Constitution anticipates these. It provided for accountability mechanisms that transcend traditional checks and balances to hold the state accountable in the event of service and conduct failure.

This is seen in the establishment of Chapter 9 and 10 institutions, and many other bodies that enforce accountability. These include, among others, the Public Protector; South African Human Rights Commission; Commission of Gender Equality; the Auditor General; and the Public Service Commission.

This brings me to the role of independent constitutional institutions, in particular my role as the Public Protector. Just by way of introduction, the Public Protector is established by Section 181 of the Constitution.

Section 182 then zooms-in on the institution, giving it original powers. It provides that:

“(1) The Public Protector has the power, as regulated by national legislation

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(a) To investigate any 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;

(b) To report on that conduct; and

(c) To take appropriate remedial action

(2) The Public Protector has the additional powers and functions prescribed by national legislation.

(3) The Public Protector may not investigate court decisions.

(4) The Public Protector must be accessible to all persons and communities.

(5) Any report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.”

In line with the provision for additional powers and functions “prescribed by national legislation” as envisaged in 182(2), the Public Protector also has:

a) The power, in terms of the Public Protector Act, to investigate, conciliate, mediate, negotiate, advise or do anything necessary to resolve disputes and rectify maladministration in state affairs and related matters, including abuse of power, abuse of state resources, unethical conduct and corruption on own initiative or complaints;

b) The power to investigate and report on violations of the Executive Ethics Code under the Executive Members' Ethics Act;

- c) The power to investigate allegations of corrupt activities as envisaged under the Prevention and Combating of Corrupt Activities Act;
- d) The power to receive protected disclosures and serve as a safe haven for whistleblowers under the Protected Disclosures Act; and
- e) The power to review the decisions of the National Home Builders Registration Council under the National Protection of Housing Measures Act.

What we learn from the above is that the powers and functions of my office are quite broad. Fortunately, we have the benefit of the wisdom of the Constitutional Court, which crystalized the office's role in a few paragraphs found in a judgment handed down in March 2016, the Economic Freedom Fighters and others versus the Speaker of the National Assembly and others.

Reading out the unanimous verdict, Chief Justice Mogoeng Mogoeng unambiguously put it as follows:

*“The Public Protector is ... one of the most invaluable constitutional gifts to our nation in the fight against corruption, unlawful enrichment, prejudice and impropriety in State affairs and for the betterment of good governance.*

*“The tentacles of poverty run far, wide and deep in our nation. Litigation is prohibitively expensive and therefore not an easily exercisable constitutional option for an average citizen. For this reason, the fathers and mothers of our Constitution conceived of a way to give even to the poor and marginalised a voice, and teeth that would bite corruption and abuse excruciatingly.*

*“And that is the Public Protector. She is the embodiment of a biblical David, that the public is, who fights the most powerful and very well-resourced Goliath that impropriety and corruption by government officials are.”*

The Chief Justice went to great lengths to explain, in layman’s terms, the thinking behind the role of this institution. As you would have seen elsewhere in the judgment, he clarified that complaints entrusted to us as the Public Protector are meant remedy impropriety, prejudice, unlawful enrichment or corruption in government circles.

He emphasized that one cannot talk of remedial action “unless a remedy in the true sense is provided to address a complaint in a meaningful way”. He found as irreconcilable the power to take appropriate remedial action that is inconsequential and free to be ignored with the need for an independent, impartial and dignified Public Protector and the possibility to effectively strengthen constitutional democracy.

My team and I have sought to give effect to our mandate and the spirit of that judgment by crafting what we call *Vision 2023: Taking the services of the Public Protector to Grassroots*. It is a blueprint through which I endeavour to ensure that, for the duration of my seven-year, non-renewable term of office, the services my office renders reach communities that live in far-away places, in the margins of society. The vision is underpinned by the following eight pillars:

1. **Access** - Bringing services closer to the doorsteps of communities located at the grassroots, in the margins of society.
2. **Vernacular** - Communicating to communities in their own languages and making use of media platforms particularly radio stations- that use vernacular languages.
3. **Footprint** - Exploring the use of courts, municipal premises and traditional offices to supplement the 19 offices that we already have across the land, with view to increasing our reach.

4. **Agreements** - Signing Memoranda of Understanding with stakeholders such as the South African Local Government Association (SALGA) for mutually beneficial partnerships.
5. **Safe haven** - Being a stronghold for the poor and the marginalised.
6. **Rights** - Empowering the public to enforce their rights by peacefully holding their leaders to account so that we may focus on addressing systemic challenges.
7. **Complaints resolution** - Encouraging organs of state to establish own effective complaints resolution units or sector-specific Ombudsman institutions such as the Health and Military Ombudsman.
8. **Self-protection** - Empowering people to become their own liberators, who see themselves as Public Protector in their own right.

One of the contributions we are making can be seen in the work we are doing in this community. In 2017, you approached me and complained about the toxic storm water canal which passes through your dwelling, containing stagnant sewage. You said it was a health hazard because some members of the community dumped human excrement in it.

You complained that his settlement was overcrowded, making you vulnerable to fires. You complained about poor and undignified sanitation facilities. You complained about in adequate provision of water. You said this was not consistent with the better quality of life that the Constitution promises. You said this was a far cry from the type of life you anticipated on 27 April 1994.

I am happy that my office has been able to step in and help restore your dignity. This is what we do away from the cameras that tend to get interested only when we deal with the so-called “high profile” matters.

During this journey, I have been mostly impressed with your conduct. While a few years ago this community would have easily become known as the protest capital of Cape Town, you have since learned to use resources

such as my office, which have been created to serve you and help facilitate rapport between the people and their leaders.

It was heart-breaking to see people damaging public property in Mahikeng, North West last week just to be heard. I wish they could learn from your example and rather use institutions such as my office instead of destroying the very infrastructure that they will need.

In conclusion, Programme Director, let us enjoy this freedom but do so with responsibility. We must value this freedom and understand that it did not come easily. We must not take it for granted, for some paid the ultimate price for it. Happy Freedom Day!

Thank you.

**Adv. Busisiwe Mkhwebane**

**Public Protector of South Africa**