



Address by Public Protector Adv. Thuli Madonsela during her acceptance of the Sir Sydney and Lady Kentridge Award at the Bar General Bar Council of South Africa Annual General Meeting Gala Dinner in Cape Town on Saturday, July 18, 2015.

**Chairperson of the General Council of the Bar: Jeremy Muller SC
Representatives of various Bar Council's present;
Members of the esteemed Kentridge family:
Distinguished colleagues:
Ladies and gentlemen**

I am overwhelmed by the Bar Council's decision to award me the Sydney and Felicia Kentridge Award. I have struggled to find words not only to express my gratitude but also to find the message worthy of the occasion and this esteemed audience.

Today's celebration of the life and work of Sir Sydney and Advocate Felicia Kentridge aptly coincides with the birthday of our late icon President Nelson Mandela, a contemporary and compatriot- the two icons whose lives and work are honoured by the Sydney and Felicia Kentridge Award.

The sad part is that Lady Felicia Kentridge left this world in April this year. We express our deepest condolences to the Kentridge family, friends and colleagues. We hope they will find solace in the fact that because of her selfless ground breaking deeds her memory will live forever.

July 18 has been globally earmarked as Mandela Day, a day dedicated to selfless deeds in pursuit of human solidarity and justice. On this day all of us urged to engage in good deeds inspired actions for 67 Minutes in honour of and to keep the memory of Nelson Mandela or Madiba while reminding ourselves that such thoughtful conduct should be incorporated in our daily activities throughout the year.

It is worth noting that the lives of both icons honoured by the Sydney and Felicia Kentridge Award are shining examples of lives lived with of the spirit of *ubuntu* and the crusading for the freedom of others that drove Mandela's actions.

As a child growing up, there are few people you absolutely admirer. Like shining stars, they are up there in the sky out of you reach but always lighting the way for you to make sense of where you're headed with your own life. Sydney Kentridge was one of those stars in my life as I made my way through law school and as a young law graduate involved in various justice crusades.

The lawyers pursuing human rights cases under the Legal Resources Centre', co-founded by Lady Felicia Kentridge,, were also among those shining stars giving us young professionals a glimpse into what it takes to act in defence of human rights. In my years at the CALS at Wits, I also had the pleasure of collaborating with the centre, though this was in the 1980s, some years after the Kentridges had left the country.

Born to a Jewish immigrant family in 1922, Sir Sydney Kentridge practiced for over three decades at the South African bar. He also practiced at the English Bar between 1977 and 2013. Along with Bram Fischer and Issie Maisels, Sir Sydney Kentridge became leading lawyers for the defense in some of South Africa's political trials. He was the defense counsel for three of South Africa's Nobel Peace Prize laureates: one time ANC President Albert Luthuli, former South African President Nelson Mandela (during the Rivonia Treason Trial) and Archbishop Emeritus Desmond Tutu.

Attention to him was drawn to many of us when he represented the Biko family in the case surrounding the Black Consciousness Movement martyr's controversial death in 1977 while in police custody. His conclusion that Biko had been brutally murdered by the police was later vindicated.

A globally acclaimed constitutional lawyer, Sir Sydney Kentridge left South Africa in 1976 and later became a member of the powerful Brick Court chambers, a QC, and was knighted in 1999 by the United Kingdom as Knight Commander of the Order of St. Michael and St. George for his international human rights work over the years.

South African Government honoured him with the Order of the Baobab in Gold to Sir Sydney for his exceptional contribution to the fight against unjust apartheid laws and embracing the vision of a non-racial, non-sexist, free and democratic society, in 2008.

Two years ago, Sydney surprised many in London when he marked his 90th birthday by representing the Law Society in the constitutional case in front of the United Kingdom's Supreme Court.

An article by John Gappin in the London Times says that President Mandela once said the following about him:

“His manner was always understated, controlled and relentlessly rational. His cross examination was devastating....”

Nelson Mandela had known Sydney Kentridge personally for many years. They were contemporaries as lawyers, with Mandela and his colleagues in the firm of attorneys he shared with Oliver Tambo and others, having briefed Kentridge a few times had successfully represented him and his compatriots in the famous Treason Trial of 1961.

Advocate Felicia Kentridge is in my view one of our nation's unsung heroes. Many know her as Sir Sydney Kentridge's dear wife, yet she has contributed enormously in her own right to justice, freedom and other human rights. The daughter of South Africa's first woman Advocate Irene Geffen, she herself was among South Africa's women lawyer trailblazers

on whose shoulders we stand today as women legal professionals. She obtained her LLB degree in 1953 and admitted to the bar in 1956, the early years of women having been grudgingly allowed to practice as lawyers. The Bar Council deserves to be commended by honouring both.

Among her visible footprints is the Wits Law Clinic, which she persuaded Wits University to establish and which during apartheid years offered valuable free services to the thousands of disfranchised and today ensures access to legal services for poor people. Another footprint is the Legal Resources Centre co-founded in 1979, with fellow-advocate and would-be democratic South Africa's first Chief Justice Arthur Chaskalson and Geoff Budlender.

Following her death at the age of 84, the Sunday Times reminded us that it was the LRC that hastened the abolishment of the discriminatory influx control and pass laws in the early 1980s. In both cases, reported the Sunday Times, Lady Felicia worked as Chaskalson's junior.

Never in my dreams did I ever contemplate being personally associated with these stars or their equivalent that have been bestowed with this award in previous years.

When South African Women's Lawyers Association (SAWLA) honoured me as A Women Lawyers Icon in 2012, I remember feeling and verbalizing in my acceptance speech that the award was premature at the time. I've not been able to shake the same feeling or opinion since I received a letter advising me that the Bar Council had decided to award me the Sydney and Felicia Kentridge Award.

To me and my family the award is the Oscar equivalent of the legal profession. The difference is that the award recognizes the work we have performed as the Public Protector Team simply in pursuit of our office's constitutional mandate to the best of our ability and without anticipating any award.

This takes me to the mandate and role of the Public Protector, the constitutional office I currently head.

We all know that my office is turning 20 this year having opened its doors on 15 October 1995 under the leadership of the first Public Protector Advocate Selby Baqwa. We are aware that Section 181 of the Constitution, under Chapter 9, established the Public Protector, along with five other independent institutions to support and strengthen constitutional democracy and that Section 182 provides thus:

"1. The Public Protector has the power, as regulated by national legislation

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 the national legislation, require that a report be kept confidential."

What many are not aware is that the office has a longer history that dates back to 1979 and has evolved over the years. When we say the Swedish Ombudsman, the ancestor of all Public Protector like institutions, has existed for over 2005 years, it's because we are also counting the early years when it existed under different names and with evolving powers and

functions. If we do the same for the Public Protector, we arrive at a conclusion that the office has existed as an administrative accountability, or oversight institution since 18 July 1979.

Unlike its Swedish counterpart and most Ombudsman-like institutions, the first incarnation of this office was first established to monitor and ensure administrative accountability for corruption and malfeasance following the info scandal in the mid-1970s. The Office of the Advocate-General was established on 18 July 1979. The office came into being in terms of the Advocate-General Act 118 of 1979 with the mandate to investigate *“misappropriations of public funds.”* It was also established for purposes of *“maintaining honest public administration and orderly government.”* It was an Executive Office then similar to the Special Independent Unit (SIU), reporting to the state President.

The difference is that it did not depend on presidential proclamations regarding what to investigate and the terms of reference in respect of each investigation. During this time the office had no Ombudsman mandate if we accept that the classical Ombudsman investigates administrative injustice or service failure while the mandate of corruption and malfeasance is essentially about conduct failure.

Shortly after the release of Madiba and unbanning of the ANC the Advocate General’s office was renamed The Office of the Ombudsman was established on 22 November 1991

- **It was established in terms of the Ombudsman Act 118 of 1979**
- **This followed the amendment of the old Advocate-General Act 118 of 1979**
- **Unlike its forbearer, the Office of the Ombudsman had the authority to *“investigate any act of maladministration”***
- **In 1992 the African National Congress produced a document titled *“Ready to Govern”***

- The document read, in part:
- *"The ANC proposes that a full-time independent office of the Ombud should be created, with wide powers to investigate complaints against members of the public service and other holders of public office and to investigate allegations of corruption, abuse of their powers, rudeness and maladministration. The Ombud shall have power to provide adequate remedies. He shall be appointed by and answerable to parliament."*
- One of the 34 constitutional principles that the interim and subsequent Constitutions had to comply with, coming out the multi-party negotiations in 1993 was:
- Provision for *"for the independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector which shall be safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service"*.
- That year, the African National Congress proposed, in a document titled *Building a United Nation: ANC Policy Proposals for the Final Constitution*, that, *"The Constitution shall as far as possible empower the poor and the vulnerable to enforce their rights and shall inter alia create a Human Rights Commission and a Public Protector to perform this function."*
- In declining to certify the draft text of the interim Constitution, the Constitutional Court, in its First Certification Judgment, stated the following:
- ***"The independence and impartiality of the Public Protector will be vital to ensuring effective, accountable and responsible government. The Office inherently entails investigation of sensitive and potentially embarrassing affairs of government. It is our view that the provisions governing removal of the Public***

Protector from office do not meet the standard demanded by Constitutional Principle XXIX.”

- **Section 110 of the Interim Constitution, under Chapter 8, established the Public Protector**
- **Section 112 gave the Public Protector powers to investigate, in the main, maladministration**
- **Section 112(b) provides the Public Protector shall ... be competent to:**
 - ***“to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by-***
 - ***mediation, conciliation or negotiation;***
 - ***advising, where necessary, any complainant regarding appropriate remedies; or***
 - ***any other means that may be expedient in the circumstances;”***
- **Section 112(c) (ii) refers to “appropriate recommendation” for purposes of “redressing” maladministration**
- **Following the Interim Constitution, the Public Protector Act 23 of 1994 was enacted**
- **The act provided for the operational requirements of the Public Protector**
- **The final Constitution of the Republic of South Africa, 108 of 1996 came into effect in February 1997**

The additional powers and function of the Public Protector can be summed up as follows:

- **Maladministration, Investigations and Dispute Resolution - We have the power to investigate and redress maladministration involving service failure and conduct failure in all state affairs. Service failure**

involves service delayed, denied or offered in improper quality or quantity. Conduct failure involves abuse of power, abuse of state resources, unethical conduct and corruption. We do these under the Public Protector Act, 1994.

- **Executive Ethics Enforcement - We are the sole agency with the power to enforce the Executive Members Ethics code as mandated by the Executive Members' Ethics Act 82 of 1998.**
- **Corruption Investigations – We investigate allegations of corruption as mandated by section 64 of the Public Protector Act, read with the Prevention and Combating of Corrupt Activities Act 12 of 2004.**
- **Protected Disclosures – We receive protected disclosures from whistle blowers as mandated by the Protected Disclosures Act 26 of 2000.**
- **We also review decisions of the National Home Builders Registration Council as mandated by the Housing Protection Measures Act 95 of 1998.**
- **Lastly, the Promotion of Equality Act recognises the Public Protector as an Alternative Forum as envisaged in section 34 of the Constitution, to resolve administrative disputes that have an unfair discrimination impact.**

Essentially the Public Protector is one of the pillars of the constitutional democracy Nelson Mandela and other architects of our democracy sought to build as a guarantee of basic human rights, freedoms and justice for all.

As we commemorate the life of Sydney and Felicia Kentridge we are reminded that Nelson Mandela we cherish and celebrate today, was not a lone traveler. He was a product of an era of dreamers who saw beyond the discriminator oppressive world they found themselves inhabiting. They could have looked the other way and focused on their profession but their

compassion for fellow human beings made them say no to oppression which came with negative consequences. For the Kentridge it meant they could never be appointed as judges among other things while for Madiba it meant jail and possible death. That is true selfless dedication to humanity. They all also dedicated themselves to the rule of law.

It is fitting that we remember these remarkable lives on Mandela Day. He himself encouraged the need to know and celebrate all those to whom we owe our freedom. According to Verne Harris Nelson Mandela said:

“The time will come when our nation will honour the memory of all sons, the daughters, the mothers, the fathers the youth and children who, by their thoughts and deeds, gave us the right to assert with pride that we are South Africans, that we are Africans, and that we are citizens of the world.”

A vibrant, diverse, courageous, independent, critical and self-reflective civil society is a crucial ingredient for any mature and well-function, participative democracy in terms of memory, the great danger for young democracies is the imposition of new dominant meta-narratives. Where for example, are the voices of Steve Bantu Biko, Robert Sobukwe and Ruth First.

That time has come. It's not only about repaying our debt of freedom. It's also about reflecting and reminding ourselves about what drove them and what they truly stood for. It was not just human solidarity and social justice their vision included all that is now captured in the Constitution.

State institutions are not the only guarantors of freedom. Civil society, including the media and organisations such as Legal Research Centre will always be important guarantors of freedom.

On the constitutionally compliant conduct in state affairs, Madiba, Sydney and Felicia and fellow companions knew that freedom must be perpetually guarded and that public functionaries regardless of colour or political

ideology have human failings that may derail or stunt the achievement of the constitutional vision or promise. On this Madiba said in his speech:

“Even the most benevolent of governments are made up of people with the all propensities for human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to the scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new Constitutional order. An essential part of that constitutional architecture is those state institutions supporting Constitutional democracy. Amongst those are the Public Protector, The Human Rights Commission, Auditor-General, the IEC, Commission on Gender Equality, The Constitutional Court and others.”

Awards and memorial lectures are important to remember courageous lawyers who changed the world for the better like Felicia, Sydney, Ismail Mahomed, Victoria Mxenge, Shullamith Muller, Duma Nokwe, Oliver Tambo, Cissie Gool, Mahatma Ghandi and others.

The best way we can pay our debt is to expand the frontiers of freedom and human dignity for others in our lifetime and for the next generation. We cannot achieve that by talking alone but by walking the talk especially on good governance, rule of law and constitutionalism.

We cannot end poverty by just talking, we can achieve that through Section 195 among Section 237 among others. The National Development Plan (NDP), African Union Agenda 2063, United Nation’s Millennium Development Goals agrees that access to justice is important for sustainable democracy and peace.

Let us honour Sir Sydney, Lady Felicia, President Mandela and many others by ensuring that there is accountability, integrity and responsiveness in all state affairs.

Thank You

Adv. Thuli Madonsela

Public Protector: Republic of South Africa

