



**Address by Public Protector Adv. Thuli Madonsela on the occasion of
the 80th Anniversary of Temple Israel in Hillbrow Johannesburg
09 July 2016**

***All Rabbis and all spiritual leaders among us;
HE the Ambassador of Israel, Mr Arthur Lenk
His Worship the Mayor of Johannesburg, Cllr Parks Tau;
The Delegation of 12 from the World Union of Progressive Judaism;
Other honoured guests, among them the iconic Adv George Bizos;
Ladies and Gentlemen***

Good morning.

I am sincerely honoured and exceedingly grateful for the privilege to address this important occasion, where we are gathered to commemorate the 80th Anniversary of Temple Israel, which is a Heritage Site.

I thank Ms Reeva Foreman and the leadership of Temple Israel for the privilege. As someone who was raised as a Seventh Day Adventist, the opportunity to worship on the Sabbath brings fond memories. I am also grateful to the Temple's Spiritual Leader Ms Lael Bethlehem for the kind introduction.

At a time like this, with the world in turmoil, it is proper that we should focus on justice and our responsibility regarding ensuring justice for all. The commemoration of Temple Israel, taking its history of advocacy against injustice and violation of human rights, provides us with an opportunity to remember where we come from and why we shall never return to that place.

The Public Protector Team and I applaud the organisers of today's celebration and the project behind the celebration for continuing the Jewish community's tradition of concern for justice and human rights. That is the tradition that inspired heroic acts of anti-apartheid activists from the Jewish community, who include the late retired Chief

Justice Arthur Chaskalson. Although such activists are too many to list, I would be remiss if I did not mention Helen Suzman who for many years, during apartheid, was a lone voice against apartheid in parliament.

Although some of the anti-apartheid activists from the Jewish community were not Jews in the religious sense, I'm certain that their actions were influenced by the values of justice and compassion that underpin the religion as can be gleaned in scriptures such as Deuteronomy 16:20.

Deuteronomy 16:20 says:

“Justice, justice shalt thou pursue so that thou mayest live and inherit the land the Lord God has given you”

It is indeed our collective responsibility to ensure justice for all. Why? We have a duty to ensure justice for all for our own good because as long as there is injustice somewhere there can't be sustainable peace anywhere.

This reckoning is indeed the essence of the value of *Ubuntu*, which has been recognised by the Constitutional Court as one of our constitutional democracy's foundational values. *Ubuntu* holds that “I am because you are” and that my survival is tied up with yours. At the centre of *Ubuntu* is the appreciation of the interconnectedness of humanity and the importance of human solidarity.

I personally glean from Deuteronomy 16:20 that the responsibility to pursue justice is the price we must pay for the privileges we've been given as persons. I equally glean a sense that a failure to pursue justice poses a threat to our sustained enjoyment of such privileges.

I hope you will agree with me that the burden of freedom is the responsibility to extend the frontiers of freedom for all. Why should the freedom of others be our concern? It is my belief that as long as others are not free our own freedom is at risk.

It is important that we appreciate freedom in its fullness, which fully affirms the humanity of all, including human dignity. In our country that includes the realisation of the constitutional promise to all. Central to that constitutional promise is the promise to *“Improve the quality of life of all citizens and free the potential of every person”*, in an inclusive society founded on social justice and the rule of law. Access to justice is essential for the realisation of the constitutional promise.

My team appreciates the recognition of the Public Protector as an important gateway to justice in contemporary South Africa. In the exercise of its constitutional mandate of protecting the public from improper conduct in the exercise of state power and control over public resources, the Public Protector is an innovative gateway to justice which, together with other administrative oversight bodies, complements the courts.

The case of Mr S to whom we handed a R100 000 cheque yesterday illustrates the role played by the Public Protector in expediting access to justice. The cheque was part of payment in pursuit of remedial action following a Public Protector Report titled “*The Cost of Disempowerment*”.

The report was the outcome of an investigation into the complaint by an emerging contractor who alleged that Ekurhuleni Municipality (formerly Benoni) had short changed his company by a third of a contract amount valued at over R300 000, which was due to him since the year 2000. The complaint, which had been lodged in 2001 and subsequently closed on account of insufficient evidence, was reopened when the complainant approached me to request a review of the decision to close the investigation.

Using the Public Protector’s extensive investigative powers, which enable the institution to play a more proactive role than courts of law, evidence and applicable prescripts were actively sought and found. When conciliation failed, a report was issued which found no lawful basis for withholding the said payment and required immediate payment of the outstanding amount with interest plus an apology. An important take away from the case is an appreciation that the system works through cooperation by the leadership in organs of state.

The Public Protector, which is a constitutional institution established to support constitutional democracy, provides a unique form of access to justice in a manner that levels the playing field between the mighty state and ordinary people. For example, in Public Protector processes, the complainants, the most disadvantaged of which we refer to as *Gogo Dlamini*s, need not know the law, be represented or have all the key evidence as the Public Protector has both the power and responsibility to find such.

Like Mr Skosana’s case most of the cases involve socio-economic issues such as unpaid contracts, pensions, remuneration and workers compensation.

Most of the complaints or disputes are resolved through Appropriate Dispute Resolution (ADR) mechanisms such as conciliation, mediation and negotiation in pursuit of additional powers conferred to the Public Protector by the Public Protector Act of 1994

in addition to the investigative powers conferred by the Constitution under section 182 read with section 181. These mostly involve round table discussions.

Again cooperation by state functionaries or actors is essential for the Public Protector as a gateway for access to justice. An example that comes to mind is the case of Ms M, whose conciliation with the Department of Higher Education took place at a point where her business had been sequestered and her house was set to be auctioned the following day.

A spirit of co-operation, saw the Director General arrange for immediate payment of the outstanding amount for construction work she had done at a college whose governance structure had since been changed leaving a gap regarding liability for payment. He also offered assistance regarding rehabilitation of her sequestered business.

The Public Protector's unique contribution to access to justice also applies in respect of preventing and redressing abuse of public resources through corruption, improper enrichment and related improprieties.

Worth noting is that, in cases of massive service failure leading to community unrest, interventions that have been met with cooperation by the state have quelled unrest. Examples in this regard include Nala Municipality following a report titled *Pipes to Nowhere* and a systemic intervention to help redress systemic administrative deficiencies. Similar progress was achieved in Midvaal through a report titled "*It can't Be Right*"

Our approach and state cooperation are informed by the understanding that an institution of this nature helps identify and correct mistakes that are bound to happen in the governance processes. According to former President Nelson Mandela, it was the purpose of innovative bodies such as the public Protector to help identify and correct governance mistakes that fall through the cracks in the traditional checks and balances within a democracy. This is apparent in among others, his remarks to Public Protector like institutions in 1996, where he said:

"Even the most benevolent of governments are made up of people with all the 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 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, the Auditor General, the Independent

Electoral Commission, the Commission on Gender Equality, the Constitutional Court and others...

Going back to the importance of justice, it is important to appreciate that having these gateways without cooperation by state actors loses the element of access to justice. An important part of cooperation is expediting the investigation and the implementation of remedial action.

In the case of *Public Protector versus the Mail and Guardian* (2012) the Supreme Court of Appeal said the following about the Public Protector:

“The office of the Public Protector is an important institution. It provides what will often be a last defence against bureaucratic oppression and against corruption and malfeasance in public office that is capable of insidiously destroying the nation...”

If we accept that as long as there is injustice somewhere there can't be peace anywhere, ensuring that the Public Protector and other gateways to justice deliver concrete justice is our collective responsibility.

I hope you will agree with me that when injustice is not remedied, the seeds of conflict are born. Accordingly, when we do nothing about injustice we place our own fortunes at risk. It is also important that we operate on a sound notion of justice. A sound notion of justice, in my view, is that where justice is premised on compassion, equality and fairness. A notion of justice that views some as more deserving than others cannot guarantee the sustainable peace we yearn for. A notion of justice that ensure that there is equality under the law is the notion of justice that can ensure sustainable peace in our country and the world. However, that does not obviate the need for redistributive justice to redress accumulated socio-economic advantages and disadvantages.

Through our reality of being an ethnically diverse nation and globalisation, we already live together regardless of our diversity. What we need is more peaceful coexistence. Our notion of justice should accordingly, foster peaceful coexistence regardless of diversity. That can only be possible if our notion of justice incorporates social justice. Together we each have some role in ensuring that everyone's potential is freed and life improved. The South Africa we yearn for is only possible if all of us are truly free and enjoy real justice in a country and world premised on the rule of law.

I have noted something amazing about the healing power of Justice. I have also noted that when Justice is served, it has a way of restoring equilibrium. I have observed that this erodes bitterness even if a victim had been hurting for a long time. Mr Skosana's reaction to receiving his cheque is an example in this regard. Though it took a long time

to get recourse, he was delighted to get justice and offered to refer others who feel wronged through state action to the Public Protector. His is an example of how justice can restore or entrench trust and faith in democratic institutions thus fostering peace and stability.

Playing our part in fostering justice is accordingly important for peace. In this regard, I sincerely applaud Temple Israel's leadership for dedicating the centre to continue the tradition of advocacy for justice and human rights causes. I am certain that this will contribute meaningfully to the speedy realisation of the South Africa we want, which is founded on the constitutional promise of the freed potential and improved quality of life for all. I am also certain that we will all continue to play our part in ensuring that all our actions and those of the state are accountable and based on integrity and responsiveness to all.

At the centre of that future of course is the pursuit of justice.

Thank you

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