



Address by Public Protector Adv. Thuli Madonsela on the occasion of Recognition of Achiever Award Function at the University of Pretoria on Wednesday, 13 April 2016

Programme Director

Esteemed leaders of the University of Pretoria, especially the law faculty;

Family members of tonight's awards recipients

Student community in general

People of South Africa

Ladies and Gentlemen

It is a singular honour to attend this important event where excellence among law students is rewarded and celebrated as part of the Annual Recognition of Achievement Awards. I am grateful to Professors Viljoen and Boraine for the privilege.

The first and last time I was part of such an award event was a few years ago at Wits. We did most of the awarding by candle light due to load shedding. We are grateful that such possibility has become a remote scenario.

Congratulations to all the winners, the academics that supported them and the families and friends that have been of the support system. We know it took a lot of hard work and sacrifice particularly of your social activities to achieve as you have done. I'm certain some of you even less than ideal study conditions, including having to travel long distance distances to and from classes and to the library, to achieve what you did.

I also wish to congratulate the runner ups for their efforts. Winning is not everything. Giving everything you do your best shot is its own reward. We must also applaud the law firms, the Law Society's Fidelity Fund and other role players who provide study incentives to young people as many of the students would never be able to get their law degrees without these.

It is always rewarding to witness the talent we have among our young people which gives us the assurance that the future of our beautiful country, the continent and the world are in good hands.

Ghananian writer **Ayi Kwei Armah** said "**The beautiful ones are not yet born.**" My view is that you are the ones we have been waiting for.

I say so with confidence based on the conversations I have with young people every day at my house, at work with the Public Protector Team, in society during stakeholder events and on social platforms such as Twitter and Facebook.

Many of these conversations have been specifically with young lawyers. One such conversation that I recall vividly and with fondness was sometime last year with the Executive Committee members of the BMF student chapter at UKZN, who were virtually all law students.

I also say so with the backing of an empirical study done under the World Economic Forum on the generation popularly referred to as millennials. The study found among others that millennials are socially conscious, concerned about social justice, about change for the better and are inclined to use their knowledge, skills, technology and positions in society to effect progress for common good.

If we reflect for the moment on the social justice movement expressed through #RhodesMustFall, #FeesMustFall and #OutsourcingMustFall among others you can discern a concern for the wellbeing of others.

I must hasten to say though that the burning of things and all forms of violence cannot be reconciled with common good but that's for another conversation.

The WEF study though has also pointed out that the millennials want things done instantly, which can be a great thing for progress as it forces us to make possible what we thought was impossible. Sadly it can also be a curse to the extent that change management is not factored in but that again is a conversation for another day.

Today I maintain that you are the ones we've been waiting for. It is because of the confidence I have in you as young lawyers and young people in this country that I confidently call upon you to protect the legacy the founders of our democracy left us.

Don't allow our beautiful country to become something similar to George O'well's *Animal Farm*. The Animal farm narrative was the centre of my address as Public Protector to students, which took place at TUT in 2011.

I warned then that the public should not allow those of us entrusted with state power and public resources to avoid accountability for abuse of public power and resources by saying “*We are eating for you*” as did the pigs in *Animal Farm*.

How do you safeguard the legacy? How do you prevent or stop an Animal Farm scenario?

Firstly what is the legacy that needs to be protected? Who must play what role in protecting that legacy?

My view is that our greatest common heritage and accordingly, legacy, is our Constitution and the vision of society it seeks to build. The legacy also includes our beautiful land which is rich in diverse natural and human resources.

If you are concerned about the legacy of continuing social injustice due to accumulated disadvantages and advantages, as you should, regardless of whether you are part of a group that was advantaged or disadvantaged during institutionalised racism, sexism and other forms of discrimination before the dawn of democracy, it should be comforting to know that our Constitution presents not only a vision of the new society but also a bridge to take us there. That bridge includes eradicating race, gender and other systemic and structural inequalities.

Protecting the legacy accordingly means protecting the constitution, our people and our shared resources. It also includes playing our part in ensuring that the state operates as envisaged in our Constitution and that it creates the necessary conditions for speedy progress towards the constitutional dream.

Perhaps we should quickly examine some of the key constitutional provisions that need to guide our actions. I know here though that I’m preaching to the choir.

In the preamble, the Constitution spells out the South African dream or society we seek to become. It is a South Africa that belongs to all who live in it, united in diversity and a society where every citizen's potential is freed and quality of life improved.

In Chapter 1, the Constitution outlines foundational values. These include human dignity, the achievement of equality and advancement of human rights and freedoms; non racialism and non-sexism; Supremacy of the Constitution and the rule of law and universal adult suffrage.

It is important to note that the Constitution establishes a Constitutional democracy. **This means the Constitution and not Parliament is supreme**, which signifies a break with the apartheid state which was based on Parliamentary sovereignty.

Section 2 of the Constitution makes this clear as it states that:

“The Constitution is the Supreme law of the Republic, law or conduct that is inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.”

In Chapter 2, the Constitution spells out human rights that all are entitled to by virtue of being human. These are so extensive so as to include, in addition to civil and political rights, social and economic rights such as the right to education (s29), Right to access to healthcare, food, water and social security(section 27) and housing (section 26).

A question is often asked as to whether this does not create a dependent society with an entitlement mentality. It is my considered view that the rights do not create

such a dependent society but the problem may arise from the manner in which we market these rights and how the state ensures their equal enjoyment by all.

This brings us to the role the state. The role of the state is to regulate fairly and effectively so that the society envisaged in the Constitution may be realised without delay and sustained. It also has to deliver certain basic services such universal infrastructure such as roads and access to some of the social and economic rights such as education, social security, health and food to those that cannot afford.

The constitution spells out the character of the state necessary for it to deliver as envisaged. This includes a state that is democratic, transparent, ethical, puts people and the Constitution first and is accountable. Sections 96, 136, 195 and 237 are instructive in this regard.

It is worth noting that Che Guevara specifically regarded stealing public resources aimed at delivering fruits of the revolution to the people as a counter-revolutionary.

It is indeed an act of betray. If they call you counter-revolutionary because you seek to play your part in protecting the legacy, wear that as a badge of honour knowing that true and selfless revolutionaries such as Che Guevara and Amicar Cabral and Oliver Tambo would view counter revolutionaries are those that steal or enable the stealing of state resources meant to deliver the constitutional dream.

People who turn against you because you remind their consciences about values underpinning the South Africa we signed up to become, are, in my view, no better than the pigs in the Animal Farm.

After the people had been thrown out of the farm, the pigs progressively protected wrongdoing and wrongdoers in the name of the revolution. They even redefined what

was revolutionary in a perverted way. Remember the new rule that said *four legs good and two legs bad*. In reality an act does not become revolutionary just because you attribute it to the revolution.

Eloquently delivering the Constitutional Court judgement on the so called Nkandla matter, following the Public Protector's report titled "Secure in Comfort" Chief Justice Mogoeng Mogoeng said the following:

"[1] One of the crucial elements of our constitutional vision is to make a decisive break from the unchecked abuse of State power and resources that was virtually institutionalised during the apartheid era. To achieve this goal, we adopted accountability, the rule of law and the supremacy of the Constitution as values of our constitutional democracy.¹ For this reason, public office-bearers ignore their constitutional obligations at their peril. This is so because constitutionalism, accountability and the rule of law constitute the sharp and mighty sword that stands ready to chop the ugly head of impunity off its stiffened neck. It is against this backdrop that the following remarks must be understood: "Certain values in the Constitution have been designated as foundational to our democracy. This in turn means that as pillar-stones of this democracy, they must be observed scrupulously. If these values are not observed and their precepts not carried out conscientiously, we have a recipe for a constitutional crisis of great magnitude. In a State predicated on a desire to maintain the rule of law, it is imperative that one and all should be driven by a moral obligation to ensure the continued survival of our democracy."

We count on you as young people, as lawyers and as members of our society, to play your part as earnestly as possible in preserving the legacy, you are taking us to the society envisaged by the Constitution.

As the Public Protector SA Team we pledge to work with you and other patriots, including those in government, in partnership for good governance to deliver the constitutional dream of a democratic society where every citizen's potential is freed and quality of life is improved.

We can do so by playing our part as private citizens to advance the Constitutional Dream, including social justice and the rule of law while ensuring that state actors exercise control over state power and public resources in a manner that is accountable, has integrity and is responsive the rights and needs of all.

You're indeed the one's we've been waiting for. The future of our country, continent and world is in your hands.

Thank you

Public Protector

Adv. Thuli Madonsela