



Address by Public Protector Adv. Thuli Madonsela on the occasion of the Archbishop Thabo Makgoba Annual Lecture at Rhodes University, Grahamstown on Friday, 25 September, 2015.

Programme Director

Archbishop Thabo Makgoba and Mrs Lungelwa Makgoba

Vice Chancellor Dr Sizwe Mabizela

Leadership of the School of Business

Esteemed guests

Members of the Media

Ladies and Gentlemen

Greetings from the Public Protector SA Team!

It is a gratifying feeling to be here once again. The last time I was here, this university bestowed on me my third of four honorary Doctor of Laws Degree in recognition, I believe, of the hard and selfless work of the team of committed men and women I am fortunate to lead.

I am sincerely honoured to be here again and grateful to the Arch Bishop Thabo Makgoba family and Rhodes University for the opportunity to present the 2015 Arch Bishop Thabo Makgoba Trust Annual Lecture on Value Based Leadership.

I'd like to take this opportunity to thank and applaud you Bishop Makgoba and the trust for the transformational work being pursued by the trust including hosting this Annual Lecture on Values Based Leadership.

The opportunity to present the lecture offers me a cherished opportunity to be associated with one of our country's leaders whose life is a book on walking the talk on values based leadership. Apart from the known acts that include speaking rich to

power on matters such as corruption and respect for the rule of law and accountability institutions, Bishop Makgoba has walked the talk when called upon to enforce values of integrity and broader good governance in his institution.

I came across the following interesting comment he said in a newspaper interview in 2013: He said:

I recently had to fire two bishops. I still have turmoil within myself because we are supposed to be loving and kind with one another.

However one has to deal with hard management issues. After a series of interventions I had to ask one of the bishops to retire because of poor governance and management stewardship around money and resources

In an era where speaking out is increasingly about stepping out to ensure you are noticed by the right persons for a possible position or opportunity, it requires courage and integrity to be a consistent voice on condemning wrongdoing regardless of the position of the wrongdoers. We applaud you Bishop Makgoba together with your colleagues in the faith community, including Bishops Desmond Tutu and Barnabas Lekganyane, among others. It can't be easy as we know the backlash includes turning the tables on and labelling you.

On speaking truth to power in anticipation of a backlash, Bishop Makgoba walks in the footsteps of fellow theological giants such as Charlotte Maxeke, Dr Beyers Naude, Father Smangaliso Mkhathshwa, Bernard Ncube and Dr Brigalia Bam, among others in our rich history. I believe it is the power of the value of love as oppose to the love of power that encourages these voices of values based descent to speak truth to power or as we do it, at the Public Protector South Africa, whisper truth to power.

The message on values based leadership is very timely as our country celebrates the 21 year milestone amid challenges regarding the direction we took on some of the Constitutional goals and values, among them the goal and value of achieving equality and the protection of freedom and human dignity for all. If you watch some of the debates in some of our key institutions you wonder what place is accorded to the value of human dignity. In this regard you may compare our society with debates in Sweden a country committed to civility and egalitarianism, among others.

I am reading from your actions that you care about our collective fate as a people, country, continent and human race. In this regard you are not like two men on a boat with four men who stood by as the boat was sinking leaving it to the two men on the sinking side to take out the water with a bucket. You are also not like the six persons trapped by happenstance, who collectively died from the cold within in James Patrick Kinney's poem, the Cold within.

You probably have heard about James Patrick Kinney's poem where each of six persons withheld their log which could have saved a dying fire on a cold bitter night

because of their bigotry and indifference. In the end they perished together which underscores our interconnectedness as a human race.

The poem reminds us that human solidarity is not an act of charity but that of self-preservation as a human race.

I am certain that commitment to human solidarity and related social justice is what underpins our presence tonight and the very existence of the Bishop Thabo Makgoba Trust. It is a source of comfort to know that the value of human solidarity also underpins our Constitution.

The coincidence of our dialogue with *Heritage Day*, which took place yesterday, may be unintended but it is apposite. As we celebrate our heritage, which is what we value from our past, we need to remind ourselves that the Constitution is our greatest heritage, a cherished legacy for this and future generations that deserves to be upheld and protected by all of us.

The Constitution is our collective lodestar directing us to the South Africa we want, which is one that is inclusive, based on social justice, human dignity, the freed potential of all persons and improved quality of life for all. At the core of the constitutional vision is human dignity underpinned as the Constitutional Court said in *Sv Makwanyane* by the value of “*Ubuntu*”

I also believe that to uphold the Constitution and fulfil the South African dream underpinning it, we need value based leadership in all areas of society and at all levels of personal and positional leadership. That value based leadership starts with me and you. It starts with all of us regardless of whether or not we have positional authority.

While leadership generally has a transformational dimension as it is about influencing yourself and other to successfully pursue chosen cause or goal, the leadership required to take our country from where it was at the dawn of democracy to the South African dream in the Constitution had to be principally transformational. It also had to be values based or principle centred.

In other words, the transformation of society dictated by the Constitution demands ethical leadership.

The framers of our Constitution were themselves aware of the need for ethical leadership at least among public functionaries or those entrusted with state power and control over public resources. This is clear in that in addition to outlining the vision of society South Africa is to become, the Constitution outlines basic human entitlements in the form of rights, the values to inform operations of the state and society, the structure and the character of the state to oversee the realisation of the envisioned society.

The society envisioned in the preamble is one that is inclusive based on the achievement of quality, human dignity, an improved quality of life for all and freed potential of every person. The basic entitlements to all human beings include civil and political rights such as the right to equality, human dignity and freedom as well as social and economic rights such as access to food, water, health care services, education and housing.

The character of the state includes value based decision-making informed by foundational principles such as the achievement of equality, human dignity, freedom constitutional supremacy and the rule of law.

What is values based decision and what role can it play at all levels of society?

Values based decision is decision-making that is informed by values or principles. For example, a decision in state affairs must always take into account the requirements of honesty, public interest, people first, equality and the rule of law, among others.

What are values: The things we hold dear as persons, a group or community and on the basis of which we justify our decisions, and sanction or reward others.

Why values based leadership? 7

It is to ensure congruence between values and decisions thus not making decisions that hurt the things we cherish. For example if we cherish peace, we aren't to encourage acts or decisions that promote conflict.

But often people do not realise they are leading. We lead in pronouncements, deeds and inactions. Often we believe if we say nothing we are not leading yet we are. In our silence, in the face of wrongdoing, we are consenting to such wrongdoing.

But is mostly through what we do, including what we reward or sanction that we lead. Through such conduct we influence the direction for our families, peers, organisations, our country and the world. I accordingly believe, there is never a lack of leadership but an abundance of bad leadership that is to blame for failed organisations.

Hallmarks of Values Based Leadership

- ❖ Congruence between values and action that is walks the talk
- ❖ Authentic leadership characterised by integrity with one's values and pronouncements and consistency
- ❖ Purpose and mission driven
- ❖ Morally defensible
- ❖ Unlikely to defend the indefensible in terms of own actions and those of others

- ❖ Does not depend on being policed as ethics is an inside out job
- ❖ Accountable and likely to say, yes I made a mistake and make amends
- ❖ Is accountable to all they have to be accountable to including horizontal accountability
- ❖ Is a systems thinker understanding the impact of one decision or action on the broader system

My office comes in at the level of horizontal accountability in state affairs. Values based leadership has no problems accounting to the people or the exercise of entrusted power through multiple channels, including vertical accountability through institutions such as the Public Protector.

Nelson Mandela, a leader who epitomised values based leadership said the following about my office at the Regional Workshop of the International Ombudsman Institution in 1996:

***“We were mindful from the very start of the importance of accountability to democracy. Our experience had made us acutely aware of the possible dangers of a government that is neither transparent nor accountable. To this end our Constitution contains several mechanisms to ensure that government will not be part of the problem; but part of the solution.*”**

***“Public awareness and participation in maintaining efficiency in government within the context of human rights are vital to making a reality of democracy. Many South Africans can still recall a time when the face of the Public Service was hostile, and a complaint could lead to victimisation or harassment; when access to justice seemed an unrealistic dream. In the new South Africa the face of the Public Service is changing radically.*”**

“However, we are not yet out of the woods; much still needs to be done in terms of transformation. In this sense, therefore, our Public Protector's Office is not only a critical instrument for good governance. It also occupies a central place in the transformation of the public service by, among other means, rooting out the arrogance, secrecy and corruption so rampant during the apartheid years.”

Today, we have a world-acclaimed Constitution that promises everyone a freed potential and an improved quality of life. The Constitution is also clear about the character of the state that has to deliver on this promise. It further makes it clear that, coming out of apartheid, ours had to be an inclusive society based on human solidarity, social justice and equal enjoyment of entrenched fundamental rights and freedoms.

Let us look briefly at some of these constitutional provisions that breathe life into this vision, with a specific focus on the golden thread of accountability, transparency and openness.

Section 1(d) of the Constitution, under the founding provisions, states that our republic is one, sovereign, democratic state founded on, among other values the values the **"universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness"**.

The bill of rights in Section 32 provides thus: **"Everyone has the right of access to**

a) Any information held by the state; and

b) Any information that is held by another person and that is required for the exercise or protection of any rights."

This section gave birth to a piece of legislation known as the Promotion of Access to Information Act or PAIA.

To further enhance accountability, transparency and openness under the bill of rights, the Constitution enshrines everyone's freedom of expression, including freedom of the press and other media in Section 16(1) (a).

Under the principles of co-operative government and intergovernmental relations in Section 41.1, the Constitution provides, among other things, that all spheres of government and all organs of state within each sphere must **"provide effective, transparent, accountable and coherent government for the Republic as a whole"**.

In terms of Section 55(2) (a), under Powers of the National Assembly, the Assembly must provide for mechanisms **"to ensure that all executive organs of state in the national sphere of government are accountable to it"**.

In Section 92 under Chapter 5, which deals with the President and National Executive, the Constitution provides that **"the Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions"**. Similar provisions exist in respect of provincial and local government executives.

Transparency and accountability are also among the basic values and principles governing public administration as outlined under Section 195.

But the Constitution does not stop there. It establishes several institutions that should ensure that the state and its actors are held accountable and that there is transparency and openness. I have already referred to Parliament. We also have the judiciary and tribunals.

In addition to these traditional checks and balances, our constitution establishes, under Chapter 9, Section 181, a set of independent institutions that support and strengthen constitutional democracy. They are the following:

- a) The Public Protector;**
- b) The South African Human Rights Commission;**
- c) The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;**
- d) The Commission for Gender Equality;**
- e) The Auditor-General; and**
- f) The Electoral Commission.**

In line with your request, let us briefly look at the Public Protector. Section 182 of the Constitution, which states that:

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

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;

To report on that conduct; and

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.”

The Public Protector has more powers given to the office by legislation in pursuit of section 182(3) of the Constitution.

The laws that give the Public Protector additional powers have added the following mandates:

- a) Power to investigate, conciliate, mediate, negotiate, advise or do anything necessary to resolve disputes and rectify maladministration in state affairs**

and reared matters, including abuse of power, abuse of state resources, unethical conduct and corruption on own initiative or complaints under the Public Protector Act;

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

c) Shared power to investigate allegations of corrupt activities as envisaged under the Prevention and Combating of Corrupt Activities Act;

d) Shared power to receive protected disclosures and serve as a Safe Harbour under the Protected Disclosures Act;

e) Sole power to review the decisions of the National Home Builders Registration Council under the Housing Protection Measures Act;

f) An alternative forum under the Promotion of Equality and Prevention of Unfair Discrimination Act; and

g) Information regulation under the Promotion of Access to Information Act.

The establishment of this office 20 years ago was a ground-breaking invention in so far as levelling the playing field between ordinary citizens and those exercising public power and control over state resources.

It is one of the levers of constitutional democracy that enables the people, as the owners of public power and resources, to exact accountability from those entrusted with public power when the traditional public accountability mechanisms fail or encounter limitations. In many circumstances, that accountability involves seeking answers regarding service failure impacting on the rights you are given by the Constitution as citizens.

We also step in to help people vindicate their rights as citizens against excesses in the exercise of public power that involve conduct failure such as abusing resources meant for delivering public services through incompetence, negligence, malfeasance, self-interest and corruption.

The beauty of an avenue such as the Public Protector is the authority and ability to mediate power and resource imbalances between the people and government. Naturally there is a massive power imbalance between an ordinary Gogo Dlamini and state actors, whoever they may be.

For example, we assisted Ms M from this province, who had been denied a social grant for one of her children due to corruption involving identity theft and organized crime cutting across Health, Home Affairs and Social Development Departments. Our intervention uncovered the corruption and vindicated her child's right to social security.

We do not only help the Gogo Dlaminis. A former member of the Executive in this province was short-changed in the payment of her gratuity and denied answers when she asked about the formula for calculating the gratuity. Our intervention not only got the Department concerned to provide the formula but uncovered that she had indeed been short-changed and ensured she was paid outstanding amounts.

Without values based leadership, our office cannot be a meaningful buffer between government and the people. One of the needs in this regard is a paradigm shift from pre-Constitution thinking which is anchored in Parliamentary supremacy and the notion that some authorities are above the law. In this regard I recall President Kruger saying judicial scrutiny is a principle of the devil.

We need a situation where decision-makers fully submit to constitutional supremacy including scrutiny by whoever or whatever structure is given power by the Constitution to hold them accountable regardless of rank of such structure in the government hierarchy. We also need systems thinking as opposed to transactional thinking, the latter takes no account consequences beyond the one decision.

The goals we seek in pursuit of accelerated inclusive development in the next 21 years of democracy assisted by the National Development Plan and join Africa in the pursuit of Agenda 2063 and the global family in the pursuit of SDGs, are pipe dreams without values based leadership. In this regard it starts with all of us. In addition to our private deeds we can all ensure that the state is accountable, acts with integrity at all times and is responsive to all regardless of race, gender, disability, nationality ethnic origin, religion nor any other characteristic of human diversity.

Che Guevara once said, A true revolutionary is guided by a feeling of love.” Revolutionary or not, those who buck the trend of conformity, stretching us to posse the best we can become, are driven by love for us as humanity and for the values they challenge us to embrace and reflect in our lives.

Unlike James Patrick Kinney’s people, they throw their log of wood so that the flame of common good may burn for all of us and we all may survive.

Thank you.

Adv. Thuli Madonsela

Public Protector of South Africa