

ITEM : C 39/04/16

MOTION IN TERMS OF RULE 18 OF THE RULES OF ORDER FOR COUNCIL FOR THE SCHEDULED COUNCIL MEETING ON 28 APRIL 2015

MOTION: COUNCIL RESOLVES TO DEFEND OUR CONSTITUTION

BACKGROUND

Section 2 of our Constitution reads:

"This Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled."

There are none who can credibly deny that our country was devastated by cruel decades of illegitimate government through the colonial and apartheid eras.

It is incumbent on every South African to contribute to, and work for, healing and unity in our country and in our cities and towns.

That task is so important to our collective prosperity and future that it is entrenched in the spirit of our constitution in the Preamble and Prayer as follows:

***"We, the people of South Africa,
Recognise the injustices of our past;
Honour those who suffered for justice and freedom in our land;
Respect those who have worked to build and develop our country; and
Believe that South Africa belongs to all who live in it, united in our diversity.***

We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to:

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

***Improve the quality of life of all citizens and free the potential of each person;
and***

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel' iAfrika.

Morena boloka setjhaba sa heso.

God seen Suid-Afrika.

God bless South Africa .

Mudzimu fhatutshedza Afrika.

Hosi katekisa Afrika.”

Whilst each of us is enjoined in the task of building our new South Africa and protecting our Constitution, and those of us privileged to serve in elected office have a greater opportunity to do so, the constitution specifically imposes these duties on The President:

Section 83 The President -

- (a) **is the Head of State and head of the national executive;**
- (b) **must uphold, defend and respect the Constitution as the supreme law of the Republic; and**
- (c) **promotes the unity of the nation and that which will advance the Republic.**

On the 31st March 2016, in delivering the unanimous judgment of the full bench of the Constitutional Court, the Chief Justice said:

“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. 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.”

The Constitutional Court found that:

“the President's failure to comply with the remedial action taken against him by the Public Protector is inconsistent with his obligations to uphold, defend and respect the Constitution as the supreme law of the Republic; to comply with the remedial action taken by the Public Protector; and the duty to assist and protect the office of the Public Protector to ensure its independence, impartiality, dignity and effectiveness.”

The President's failure to "uphold, defend and respect" the constitution is unprecedented in our democracy and despite calls from civil society, religious leaders, trade-unions, ANC-elders, ANC branches, opposition parties and ordinary South Africans that the President resign or is removed from office - the President remains in office and is protected by some in the governing party.

His protectors have had to perform intellectual gymnastics in an effort to justify why our President escapes ***“constitutionality, accountability and the rule of law”*** and why he shouldn't feel the ***“sharp and mighty sword that stands ready to chop the ugly head of impunity.”***

MOTIVATION

Cape Town is an integral part of the success of our South African democracy. It is evidence of our democracy and our constitution at work.

It is our duty to protect our democracy and protect our constitution for the future of our city and our country.

If those of us privileged to be elected to serve the people of Cape Town fail to defend our constitution and abandon the fundamental values of our young democracy- **constitutionality, accountability and the rule of law** - we are not worthy of the positions we hold nor of the trust and aspirations of those we serve.

It is imperative that we continue to demonstrate that Cape Town remains the embodiment of our democracy functioning under the supreme law of our constitution; and that we do not regard ourselves nor any other person as being above the rule of law and free to act with impunity. That includes our Head of State.

MOTION:

This Council:

1. Condemns the failure of the President to uphold, defend and respect the Constitution; and
2. Resolves to defend and protect our Constitution as the supreme law of our Republic; and
3. Calls on the President to resign from office.

PROPOSED BY : Cllr M Nikelo

SECONDED BY : Cllr A van der Rheede

DATE : 13 April 2016

MOSIE INGEVOLGE REËL 18 VAN DIE RAAD SE ORDEREËLS VIR DIE GESKEDULEERDE RAADSVERGADERING OP 28 APRIL 2016

MOSIE: DIE RAAD NEEM 'N BESLUIT TER VERDEDIGING VAN ONS GRONDWET

AGTERGROND

Artikel 2 van ons Grondwet lui:

“Hierdie Grondwet is die hoogste reg van die Republiek; enige regsvoorskrif of optrede daarmee onbestaanbaar, is ongeldig, en die verpligtinge daardeur opgelê, moet nagekom word.”

Daar is niemand wat op 'n geloofwaardige wyse kan ontken dat ons land gedurende die koloniale en apartheidsera deur wrede dekades van onwettige bewind verwoes is nie.

Dit is die plig van elke Suid-Afrikaner om by te dra tot en te werk aan genesing en eenheid in ons land en in ons stede en dorpe.

Daardie taak is so belangrik vir ons gemeenskaplike vooruitgang en toekoms dat dit soos volg in die gees van ons Grondwet in die aanhef en gebed verskans is:

***“Ons, die mense van Suid-Afrika,
Erken die ongeregthede van ons verlede;
Huldig diegene wat vir geregtigheid en vryheid in ons land gelyk het;
Respekteer diegene wat hul beywer het om ons land op te bou en te ontwikkel;
en
Glo dat Suid-Afrika behoort aan almal wat daarin woon, verenig in ons
verskeidenheid.***

***Daarom neem ons, deur ons vryverkose verteenwoordigers, hierdie Grondwet
aan as die hoogste reg van die Republiek ten einde –***

***Die verdeeldheid van die verlede te heel en 'n samelewing gegrond op
demokratiese waardes, maatskaplike geregtigheid en basiese menseregte te
skep;***

***Die grondslag te lê vir 'n demokratiese en oop samelewing waarin regering
gegrondves is op die wil van die bevolking en elke burger gelyk deur die reg
beskerm word;***

***Die lewensgehalte van alle burgers te verhoog en die potensiaal van elke
mens te ontsluit; en***

***'n Verenigde en demokratiese Suid-Afrika te bou wat sy regmatige plek as 'n
soewereine staat in die gemeenskap van nasies kan inneem.***

***Mag God ons mense beskerm.
Nkosi Sikelel' iAfrika. Morena boloka setjhaba sa heso.
God seën Suid-Afrika. God bless South Africa.
Mudzimu fhatutshedza Afurika. Hosi katekisa Afrika.”***

Hoewel elkeen van ons aangesê word om aan ons nuwe Suid-Afrika te bou en ons Grondwet te beskerm, en dié van ons wat die voorreg het om tot 'n amp verkies te wees 'n groter geleentheid het om dit te doen, word die president in die besonder deur die Grondwet gelas om hierdie pligte uit te voer:

**83. “Die President–
(a) is die Staatshoof en hoof van die nasionale uitvoerende gesag;
(b) moet die Grondwet as die hoogste reg van die Republiek handhaaf,
verdedig en eerbiedig; en
(c) bevorder die eenheid van die nasie en alles wat die Republiek sal laat
vooruitgaan.”**

Op 31 Maart 2016 het die hoofregter met die eenparige uitspraak van die volle regsbank van die Grondwethof gesê:

“Een van die beslissende elemente van ons grondwetlike visie is ’n doelbewuste wegbreek van die onbeteuelde misbruik van staatsmag en -hulpbronne wat in die apartheidsera feitlik geïnstitutionaliseer is. Om hierdie doelwitte te bereik, het ons die waardes van verantwoordingspligtigheid, die heerskappy van die reg en die oppergesag van die Grondwet vir ons grondwetlike demokrasie aangeneem. Daarom loop staatsampsdraers gevaar as hulle hul grondwetlike verpligtinge verontagsaam. Dit is omdat grondwetlikheid, verantwoordingspligtigheid en die heerskappy van die reg die skerp en magtige swaard is wat slaggereed staan om die lelike kop van straffeloosheid van sy stywe nek af te kap.” (nie-amptelike vertaling),

Die Grondwethof het soos volg bevind:

“Die president se versuim om die regstellende stappe na te kom wat die Openbare Beskermer teen hom gedoen het, is onbestaanbaar is met sy verpligtinge om die Grondwet as die hoogste reg van die Republiek te handhaaf, verdedig en eerbiedig; om die regstellende stappe wat deur die Openbare Beskermer gedoen is, na te kom; en die plig om die kantoor van die Openbare Beskermer by te staan en te beskerm om die onafhanklikheid, onpartydigheid, waardigheid en doeltreffendheid daarvan te verseker.” (nie-amptelike vertaling)

Die president se versuim om die Grondwet te **“handhaaf, verdedig en eerbiedig”** is ongeëwenaard in ons demokrasie en ten spyte van beroepe deur die burgerlike samelewing, godsdiensteleiers, vakbonde, ANC-ringkoppe, ANC-takke, opposisiepartye en gewone Suid-Afrikaners dat die president moet bedank of uit sy amp verwyder moet word, bly hy aan bewind en word hy deur sommige lede van die regerende party beskerm.

Ons president se beskermers moes al intellektuele gimnastiek doen in ’n poging om te regverdig waarom hy aan die **“grondwetlikheid, verantwoordingspligtigheid en die heerskappy van die reg”** ontsnap en waarom hy nie die **“skerp en magtige swaard”** **“wat slaggereed staan om die lelike kop van straffeloosheid af te kap”** moet voel nie.

MOTIVERING

Kaapstad is ’n integrale deel van die sukses van ons Suid-Afrikaanse demokrasie. Daar is bewyse van hoe ons demokrasie en ons Grondwet aan die werk is.

Dit is ons plig om ons demokrasie te beskerm en ons Grondwet vir die toekoms van ons stad en ons land te beskerm.

As dié van ons wat die voorreg het om verkies te word om die mense van Kaapstad te dien, sou versuim om ons Grondwet te verdedig en die fundamentele waardes van ons demokrasie versaak, naamlik **grondwetlikheid, verantwoordingspligtigheid en die heerskappy van die reg**, is ons nie die posisies wat ons bekleed of die vertrouwe en aspirasies van dié wat ons dien, waardig

nie.

Dit is uiters belangrik dat ons voortgaan om te toon dat Kaapstad die beliggaming is van ons demokrasie wat onder die hoogste reg van ons Grondwet funksioneer, en dat ons nie onself of enige iemand anders as verhewe bo die wet en vry om straffeloos op te tree, ag nie. Dit sluit ons staatshoof in.

MOSIE:

Hierdie Raad:

1. Verwerp die president se versuim om die Grondwet te handhaaf, verdedig en eerbiedig; en
2. Besluit om ons Grondwet as die hoogste reg van ons Republiek te verdedig en beskerm; en
3. Doen 'n beroep op die president om uit sy amp te tree.

VOORGESTEL DEUR : Rdl. M Nikelo

GESEKONDEER DEUR : Rdl. A van der Rhee

DATUM : 13 April 2016

**ISIPHAKAMISO KULANDELWA UMGAQO 18 WEMIGAQO YENKQUBO
LEBHUNGA OKANYE WENTLANGANISO YEBHUNGA ESHEDYULIWEYO
YOMHLA WE-28 EPRELI 2016**

**ISIPHAKAMISO: IBHUNGA LENZE ISIGQIBO SOKULWELA UMGAQOSISEKO
WETHU**

IMVELAPHI

Icandelo 2 loMgaqosiseko wethu lifundeka ngolu hlobo:

"Lo Mgaqo-siseko ngowona mthetho wongamileyo kwiRiphabliki; umthetho okanye izenzo ezingahambi kunye nawo azinamandla okusebenza kwaye izimiselo ezimiselwe nguwo kufuneka zizalisekiswe."

Akukho bantu banokuphika ukuba ilizwe lethu latshatyalaliswa yiminyaka emininzi yorhulumente owayengekho mthethweni ngeminyaka yobukolonali neyocalulo.

Kufaneleke ukuba ummi ngamnye woMzantsi Afrika abe negalelo yaye asebenzele ukuphiliswa kwelizwe lethu kunye nobumbano kwilizwe lethu, kwizixeko zethu needolophu zethu.

Lo msebenzi ubaluleke kakhulu wokuba ilizwe lethu lichume kwanokuba sibe nekamva elinomoya woMgaqosiseko wethu ofumaneka kwiNgabula-zigcawu nakuMthandazo obhalwe ngolu hlobo:

*“Thina bantu boMzantsi Afrika,
Siyaziqonda iimeko zolwaphulo-bulungisa zamaxesha ethu adlulileyo;
Sibanika imbeko abo beva ubunzima bebulalekela ubulungisa nenkululeko
elizweni lethu;
Siyabahlonela abo bathi basebenzela ukwakha nokuphuhlisa ilizwe lethu;
kwaye
Sikholelwa ekubeni uMzantsi Afrika ngowethu sisonke thina sihlala kuwo,
simanyene nangani siziintlobo ngeentlobo*

*Thina ke ngoko, ngabameli bethu abanyulwe ngokukhululekileyo, siyawuvuma
lo Mgaqo-siseko ukuba ungowona mthetho wongameleyo weRiphabliki ukuze:*

*Ungcibe udibanise izantlukwano zangaphambili uze wakhe uluntu olusekwe
kwizithethe ezixabisekileyo zedemokhrasi, ubulungisa kwezentlalo
namalungelo abantu asisiseko;*

*Wenze isiseko soluntu oluphila ngendlela yedemokhrasi nolwenza izinto
elubala apho urhulumente asekelwe kwintando yabantu nalapho wonke ummi
ekhuselwe ngokulinganayo ngumthetho;*

*Uphucule ixabiso lokuphila kwabo bonke abemi, uze uvumele ukusebenza
kwesakhono somntu ngamnye; kanjalo*

*Wakhe uMzantsi Afrika omanyeneyo nonedemokhrasi onakho ukuthabatha
indawo yawo efanelekileyo njengelizwe elinobunganga kusapho lwezizwe
ngezizwe.*

*Wanga uThixo angabakhusela abantu bakokwethu.
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Ngeli lixa sihlanganisiwe kumsebenzi wokwakha uMzantsi Afrika nokukhusela
uMgaqosiseko wethu, abo kuthi bathe banethamsanqa lokusebenzela izikhundla
esizikhethelweyo sinethuba elikhulu lokwenza njalo yaye uMgaqosiseko unika le
misebenzi ilandelayo kuMongameli:

Icandelo 83 lithi uMongameli -

- (a) uyiNtloko yomBuso kwanentloko yesigqeba sesizwe esinolawulo
oluphezulu;
- (b) kufuneka awuxhase, awukhusele aze awuhlonele umGaqo-siseko
njengowona mthetho uphezulu weRiphabliki; kwaye
- (c) ukwakhuthaza umanyano lwesizwe kwanoko kuya kuthi kuyiqhubele
phambili iRiphabliki.

Nge-31 Matshi 2016, iwisa isigwebo ekuvenwe ngaso zijaji zonke zeNkundla yoMgaqosiseko, iNtloko yeeJaji ithe:

“Enye yemiba ebalulekileyo kumbono womgaqosiseko wethu kukuphuma siphela kuxhatshazo olungabekelwanga liso lwamandla nezibonelelo zikaRhulumente olwalusenziwa ngokusesikweni ngeminyaka yocalu-calulo. Ukuphumeza le njongo, samkele uniko-nkcaza, ukulawulwa ngumthetho nobunganga boMgaqosiseko njengeenqobo zedemokrasi yomgaqosiseko wethu. Ngenxa yesi sizathu, amagosa karhulumente akaluhoyi uxanduva lwawo lomgaqosiseko oluphambi kwawo. Oku kwenziwa yinto yokuba, usetyenziso lomgaqosiseko, uniko-nkcaza nokulawulwa ngumthetho ngamakrele abukhali namakhulu asele elungele ukugeca intloko yokungabikho kolohlwayo kwiintamo eziqinileyo.”

INkundla yoMgaqosiseko ifumanise ukuba:

“Ukungaphumeleli kukaMongameli ukuthobela amanyathelo olungiso lokwenzekileyo ayechazwe nguMkhuseli woLuntu akuhambelani noxanduva lwakhe lokuphakamisa, ukukhusela nokuhlonipha uMgaqosiseko njengomthetho owongamileyo weRiphabliki; ukuthobela amanyathelo olungiso lokwenzekileyo ayechazwe nguMkhuseli woLuntu; noxanduva lokuncedisa iofisi yoMKhuseli woLuntu ukuqinisekisa ukuzimela kwayo, ukungathathi cala, isidima sayo nokusebenza ngempumelelo kwayo.”

Ukungaphumeleli kukaMongameli "ukuthobela, ukukhusela nokuhlonipha" uMgaqosiseko yinto engazange ibonwe kule demokrasi yethu yaye noxa kukho amakhwelo asuka kuluntu, kwinkokheli zamabandla, imibutho yabasebenzi, amagqala eANC, amasebe eANC, amaqela aphikisayo nabemi boMzantsi Afrika ngokubanzi lokuba uMongameli ehle okanye asuswe esikhundleni - uMongameli usahleli kwisikhundla sakhe yaye ukhuselwa ngabathile kwiqela elilawulayo.

Abo bamkhuselayo kuye kwafuneka beze neqhinga eliphekiweyo kwiinzame zokunikeza izizathu zokuba kutheni uMongameli wethu ephepha **“usetyenziso lomgaqosiseko, uniko-nkcaza nokulawulwa ngumthetho”** kwanokuba kutheni kufuneka engalivanga **“ikrele elibukhali nelikhulu esele lilungele ukugeca intloko yokungabikho kolohlwayo kwiintamo eziqinileyo.”**

ISIZATHU

IKapa yinxalenye engundoqo yempumelelo yedemokrasi yoMzantsi Afrika. Ibubungqina bedemokrasi yethu noMgaqosiseko wethu osebenzayo.

Ngumsebenzi wethu ukukhusela idemokrasi yethu nokukhusela uMgaqosiseko wethu ukulungiselela ikamva lesixeko sethu nelizwe lethu.

Ukuba thina bathe banethamsanqa lokunyulwa ukuba bamele abantu baseKapa siyasilela ekukhuseleni uMgaqosiseko wethu nokungahoyi iinqobo ezingundoqo zedemokrasi yethu esahlumayo- **usetyenziso lomgaqosiseko, uniko-nkcaza nokulawulwa ngumthetho** – asifanelanga ukuba sibe kwezi zihlalo sikuzo yaye asifanelanga kuthenjwa ngabo bantu sibameleyo ukuphumeza iminqweno yabo.

Kubalulekile ukuba siqhubeke sibonisa ukuba iKapa isafukame idemokrasi yethu

esebenza phantsi komthetho owongamileyo womgaqosiseko wethu; yaye asiziboni thina kwanjalo singaboni kukho omnye nawuphi omnye umntu ofanele ukuba angawuthobeli umthetho yaye enze unothanda angohlwaywa. Oku kubandakanya iNtloko yethu ePhethe iLizwe.

ISIPHAKAMISO:

Eli Bhunga:

1. Liyakukhalimela ukusilela kukaMongameli ukuthobela, ukukhusela nokuhlonipha uMgaqosiseko; yaye
2. Lindulula ukuba kukhuselwe uMgaqosiseko wethu njengomthetho owongamileyo weRiphabliki; yaye
3. Lithi kuMongameli makehle kwisikhundla sakhe.

SIPHAKANYISWE NGU : UCeba M Nikelo

SIXHASWE NGU : UCeba A van der Rheede

UMHLA : 13 Epreli 2016

MOTION: COUNCIL RESOLVES TO DEFEND OUR CONSTITUTION

BACKGROUND

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Recognise the injustices of our past;

Honour those who suffered for justice and freedom in our land;

Respect those who have worked to build and develop our country; and

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We therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to:

Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;

Lay the foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law;

Improve the quality of life of all citizens and free the potential of each person; and

ms AMR

Build a united and democratic South Africa able to take its rightful place as a sovereign state in the family of nations.

May God protect our people.

Nkosi Sikelel' iAfrika.

Morena boloka setjhaba sa heso.

God seen Suid-Afrika.

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MN AAVOK

On the 31st March 2016, in delivering the unanimous judgment of the full bench of the Constitutional Court, the Chief Justice said:

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The President’s failure to “uphold, defend and respect” the constitution is unprecedented in our democracy and despite calls from civil society, religious leaders, trade-unions, ANC-elders, ANC branches, opposition parties and ordinary South Africans that the President resign or is removed from office - the President remains in office and is protected by some in the governing party.

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MOTIVATION

Cape Town is an integral part of the success of our South African democracy. It is evidence of our democracy and our constitution at work. It is our duty to protect our democracy and protect our constitution for the future of our city and our country.

If those of us privileged to be elected to serve the people of Cape Town fail to defend our constitution and abandon the fundamental values of our young democracy – **constitutionality, accountability and the rule of law** - we are not worthy of the positions we hold nor of the trust and aspirations of those we serve.

It is imperative that we continue to demonstrate that Cape Town remains the embodiment of our democracy functioning under the supreme law of our constitution; and that we do not regard ourselves nor any other person as being above the rule of law and free to act with impunity. That includes our Head of State.

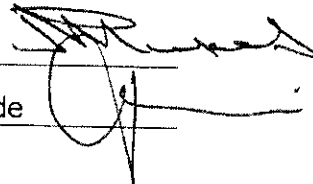
MOTION:

This Council:

1. Condemns the failure of the President to uphold, defend and respect the Constitution; and
2. Resolves to defend and protect our Constitution as the supreme law of our Republic; and
3. Calls on the President to resign from office.

PROPOSED BY:

Cllr M Nikelo

**SECONDED BY:**

Cllr A Van Der Rheede

DATE:13 April 2016