



**Address by Public Protector Adv. Thuli Madonsela during the South African Institution of Civil Engineering (SAICE) at Emperor's Palace in Gauteng on Monday, April 07, 2014.**

**President of the SAICE, Mr Stanford Mkhacane;**

**President Elect of the SAICE, Mr Malcom Pautz;**

**Vice President, Mr Tom McKune;**

**Past Presidents and other members of the Executive Board;**

**Chief Executive Officer, Mr Manglin Pillay;**

**Other executive officials;**

**Members of the SAICE;**

**Distinguished guests;**

**Ladies and gentlemen;**

It is an honour for me to address this crucial congress under the theme: "***The Engineering Revolution***".

I thank the organisers for inviting me. I apologise for messing up your schedule. I was initially scheduled to speak to you on Tuesday, however, due to other obligations, we had to reschedule to today.

I recently spoke to a friend of mine who happens to be an engineer and suggested that the world revolves around engineering.

He said everyone must study engineering. I am not sure if he is right. But I do think every organisation should have an engineer. We have done so at the Public Protector South Africa by employing a Business Process Engineer, whose role is to enhance our business processes through the use of technology, among other things.

I am a member of the World Justice Forum. Some of my fellow members are engineers. I wondered why and they said the value of law should not be left to lawyers alone. They are of the view that other professionals can play a role in upholding the rule of law.

I wondered why you have an interest in corruption. Then I realised this wasn't the first time I speak to you. Perhaps what you want is a level playing field when you bid for government contracts.

The timing of this congress, which brings together many of SAICE's members and others, including civil engineers, technologists and technicians, is perfect.

The congress comes at the time when, we as a country are taking time off to reflect on how we have fared over the last two decades in terms breathing life into the constitutional promise of an improved quality of all life for our people while transforming the state to one that conforms to the one envisaged in the Constitution.

As I reflected on the focus of my speech, which is corruption and ethics in the infrastructure engineering industry, I thought of a story I heard at an anti-corruption conference four years ago.

A civil engineer was called and told that his daughter had been in an accident. He was told that the school bus in which his daughter commuted was involved in an accident when a bridge it was passing on collapsed.

The first question that the engineer asked was "which bridge"? It transpired that earlier, this engineer was one of the people contracted to construct a bridge. During the construction, an inspector had come to the engineer to inform him that there was a small structural defect on the construction works of the bridge.

The inspector recommended that the bridge be destroyed and built anew. The engineer ignored the recommendation and ordered that work proceed as scheduled. The engineer paid the inspector to keep quiet. As life would have it, it turned out that this was the very bridge that would later claim the live of the engineer's daughter.

This congress gives us an opportunity to scrutinise the role and contribution of members of this industry to this vision and the critical role that you continue to play in that regard.

Civil engineering is one of the most critical aspects of infrastructure development, making the SAICE an important stakeholder of the state.

Encompassing important disciplines of the built industry such as architecture, quantity surveying and construction, civil engineering is the back bone of infrastructure development.

In his budget vote speech earlier this year, Finance Minister Pravin Gordhan announced that government will invest a staggering R847 billion in infrastructure development over the next three years.

He told the joint-sitting of the Parliament that about R1 trillion had already been spent in this area in the last five years.

This massive infrastructure investment is not only meant to develop our cities, towns, townships and rural communities but it is also aimed at improving the quality of life of South Africans, as I have already noted.

Through the construction of roads, railway lines, ports, power stations, hospitals, schools, dams and shelter, the constitutional vision of an improved quality of life is realised. This includes the provision basic rights as articulated in chapter 2 of the Constitution such as public healthcare, education, water, and housing. It also includes the provision of access to quality transportation and electricity.

Of course the realisation of this constitutional promise is not only dependent on infrastructure development as there are other aspects to it.

The point that the delivery of all this infrastructure is dependent on, among others, the knowledge, skills and services of the built industry, and in particular disciplines such as civil engineering, is a no brainer.

It is an open secret that government does not have the capacity to deliver this kind of infrastructure on its own and that is where the built industry comes in.

You therefore play a critical role in the development agenda of our state and your contribution thus far is something to be commended.

You have requested that I focus my speech on ***"corruption and ethics in the infrastructure engineering industry, taking into account corruption-related lessons we have learnt, and what engineers should be doing differently in order to meet the goals of service delivery to our people."***

While preparing this speech, I thought about that engineer I referred to earlier. I thought about the decisions he took. And I concluded that, that is why corruption matters. But what is this corruption?

Corruption is defined in the Prevention and Combating of Corrupt Activities Act as the influencing of a party by another for gratification. This shows that corruption is a two-way street.

If we go back to the story of the engineer, you will see that there was another person there, an inspector.

I was encouraged to note that you are already a step ahead in that you have systems in place aimed at rooting out corruption and to encourage ethical conduct at least among members of the SAICE.

I found your Code of Ethics encouraging and I thought if all professionals in this industry lived by it, we would have made greater strides as a country in terms of infrastructure development and I will come back to this point later on.

Bear with me for a moment as I quote a few exemplary provisions as articulated in the SAICE Code of Ethics for members, which I must add, need to be emulated by other industries, especially those that do business with the state.

Among other things, the Code calls on members of the SAICE to do the following:

1. **Act with integrity and fairness;**
2. **Have regard for the public interest and for the interests of all those affected by your professional activities;**
3. **Maintain and broaden competence and assist others to do so;**
4. **Exercise appropriate skill and judgement;**
5. **Avoid conflict of interest;**
6. **Treat people with dignity; and**
7. **Don't misrepresent your areas of experience and responsibility.**

If all engineers, even those that are not members of SAICE, operated according to these, we would not come across the things we come across in our investigations.

Our messages are always informed by the practices we uncover during the course of implementing our constitutional mandate, which I will also touch on in a moment.

Last week I had an opportunity to interact with a group of young people at the University of Johannesburg. One of the questions I posed to them was whether -as our democracy turns 20- we are where we were supposed to be in terms of development and the improvement of the people's quality of life.

My view was that, yes we have made great strides, but we are not where we should have been. I indicated that maladministration has played a big role in this in a sense that resources that should have been used to bring us where we were supposed to be were lost through bad governance and that is a fact.

One needs to look no further than the reports of the Auditor General, the Special Investigating Unit and my office, among others, for proof.

Every time I make such a point, there is a tendency to assume that I am laying the blame squarely at government's door. This assertion couldn't be more wrong. While government should shoulder some of the blame or much of it, it is only fair to place on record that some in the business world have had a role to play too. We already know that corruption is a two-way street, involving the corrupter and the corrupted.

May I state at the outset that like in government, where the majority of people are principled human beings who puts the public interest ahead of their own, the most of the people in business are people with scruples, who have the best interests of the country at heart.

However, we must acknowledge that among people with morals there are always bad elements, whose conduct regrettably tarnishes the good name of their disciplined counterparts.

Who will forget the built industry scandal that involved big industry players that colluding in a bid to obtain public tenders involving the construction of big capital expenditure projects such as the FIFA World Cup stadia?

Some in society have even questioned why such conduct is only termed "**colluding**", arguing that critics are always too quick to term improper conduct in state affairs "**maladministration**" or even "**corruption**". However, it is clear that when the Competition Commission dealt with that matter, it did so under the Competition Act, which uses the word "collusion" and not other words. This did not stop any other agency to investigate if there was corruption involved.

Since becoming Public Protector more than four years ago, I have dealt with many cases that opened our eyes to these realities. I invite you to read my reports *Pipes to Nowhere*, *On the Point of Tenders*, and *Secure in Comfort*. You might also want to follow our intervention in Braamfischerville, Soweto and our systemic investigation into government's RDP housing programme.

In all these, we have observed and/or found that unscrupulous business people engage in the following:

1. Over billing or inflation of costs;
2. False billing or billing for work not done;
3. Shoddy work but contractors paid in full; and
4. Scope creep.
5. Dishonest certification of projects

Let us start with **over billing**.

There is a practice where state money is handled as though it is orphaned money. Services that would cost a certain amount in a private project suddenly cost double that or more just because it is the state that pays.

In line with the SAICE Code of Ethics, would this kind of conduct be consistent with acting with integrity and fairness? Would it have the due regard for the public interest and for the interests of those affected?

Certainly not! This is one of the things that have slowed down the pace of improving the quality of life of the people of this country because the extra funds that are channelled towards over billing could have been used to build more houses for people, built more roads, brought access to healthcare, provided water and sanitation and helped eradicate the school under tree phenomenon.

### **False billing**

This is tantamount to theft. Business people who engage in this practice are basically stealing from the poor.

How would a person that engages in this behaviour sleep at night after learning that a five-year old plunged into a pit latrine and died because there government didn't have enough resources to build flush toilets for that school in Limpopo?

How does such a person sleep at night after learning that school kids in KwaZulu-Natal are forced to abandon their schooling for weeks, even months on end, because their homes and school are separated by a raging river and the government is unable to build them a bridge due to lack of funds?

Clearly false billing is not in the spirit of the provision of the SAICE Code of Ethics that deals with integrity and public interest.

### **Shoddy work**

Poor workmanship is another area of concern, more so in the RDP housing programme. I held

public hearings across the country on this subject in 2012. Everywhere I went; communities were complaining that the houses are falling apart. As a result, government has had to dig deep into its pockets to fund the rebuilding of many of those houses.

This means the funds that could have been used to build new houses for those people that have been left behind by development, and there are many of them, are used to correct what has already been paid for.

The said part is such contractors still continue to get state contracts. Again, this cannot be consistent with principles of integrity and public interest.

### **Scope creep**

This is an occurrence where things that did not form part of the initial scope of work or contract are allowed to creep in and bloat the cost of projects, with the state paying nevertheless.

Again, this chips away at the resources that would have been earmarked for something else and contributes to the slowdown of progress in the government's infrastructure development agenda and the broader vision of improving the quality of life for the people of South Africa.

### **Dishonest certification of project**

In Nala, Free State, we were shocked to learn that a contractor brought in to provide good quality sanitation to the community left the job undone but got paid in full.

The report titled ***Pipes to Nowhere*** chronicles how the contractor would erect the toilet structure, complete with pipes but not connecting the pipework to the main sewage arteries. As a result, communities continued to use the bucket system while the modern toilets remained white elephants in their backyards.

This brings me to the role of my office. Section 181 of this Constitution establishes the Public Protector, to support and strengthen constitutional democracy.

Section 182 gives the Public Protector the power 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

The Public Protector also strengthens constitutional democracy through the pursuit of the following key statutory mandate areas:

#### **1. 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.

#### **2. 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.

### **3. Corruption Investigations**

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.

### **4. Protected Disclosures**

Receive protected disclosures from whistle blowers as mandated by the Protected Disclosures Act 26 of 2000.

### **5. Review of decisions of the National Home Builders Registration Council (NHBR)**

Review decisions of the National Home Builders Registration Council as mandated by the Housing Protection Measures Act 95 of 1998.

In conclusion, what then should be the role of the collective that has gathered here today?

Your Code of Ethics has all the answers, but just to reiterate the traits of an honest business person that has the interests of this great nation at heart, I would like to leave you with the following:

1. Business people that trade with the state must always play fair. Charge the state what you would have charged if you were contracted by a private sector establishment.
2. Use resources sensibly and guard against the temptation of maximising profits at the expense of providing quality infrastructure that will be used by generations to come.
3. Be honest when charging the state. Only charge for work done and if you have not done any then do not submit an invoice.
4. Do not short-change the government. If the infrastructure you build is structurally unsound, do not charge the government in full. Actually, you should consider dismantling the whole thing and start anew at your own cost because it would have been your own fault. That is the right thing to do.
5. When approached with offers of kickbacks, do not play along. Believe in earning a living by the sweat of your brows.
6. Raise alarms in the event of scope creeps and advice that a separate procurement process be embarked upon for extra works that crops up during a project.
7. Do not certify work that you know very well that it was not done according to standards because it may have serious consequences. Apart from the state having to spend more money to enlist the services of another contractor to mop up the spills of the previous one, such projects, if they are bridges or buildings, might pose danger to the public.
8. Report any suspected improper conduct to institutions such as my office. You also lodge a protected disclosure as a whistle-blower and if you wish, we will protect your identity.

Ladies and gentlemen, we live in a very rich country. Even though news channels are still abuzz with news that Nigeria has just overtaken us Africa's new economic powerhouse, I believe that we have more than enough to see to it that the constitutional promise of an improved quality of life for our people is realised.

All we have to do as sectors, industries and individuals is to do our bit to ensure that our resources are used in line with the law and in the public interest.

It is our duty to play a role in efforts to ensure that ours is a state that is accountable, operates with integrity and is responsive to the needs of its people.

Thank you.

**Adv. Thuli Madonsela**

**Public Protector of South Africa**