



**Address by Public Protector Adv Thuli Madonsela during the Annual
Conference of the Black Management Forum, 2013**

**Programme Director, Mr Sandile Gwala;
President of the Black Management Forum, Mr Bonang Mohale;
Black Management Forum Board Executives;
Distinguished guests;
Ladies and gentlemen;**

I am honoured and delighted to address this Conference of the Black Management Forum. I'm deeply grateful to the organisers for the privilege to engage you on *"The Common Causes of Governance Failure in Organisations."*

Firstly, I congratulate the BMF for weathering many storms and continuing to be significant player in our democracy after so many years. Over the years the BMF has contributed immensely to transformative debates in this country. I recall that the BMF was instrumental in the affirmative action dialogue that contributed immensely to the conceptualisation of the Employment Equity Act. Since then you've made your mark on many other policy dialogues, including Broad Based Black Economic Empowerment.

It is not surprising therefore that this time around you have made good governance an issue for your constituency. On the issue of good governance my office shares your interest.

I was wondering if it was by design or coincidence that your conference under the theme *"Can Good Governance Increase Trust amongst Government, Civil society, Labour and Business"*, takes place during National Good Governance Week. Whether by design or coincidence, your dialogue will contribute to the aims and objectives of the National Good Governance Week. A project of the Public Protector SA in cooperation with fellow integrity sector bodies, the National Good Governance Week, which is in its fourth year, incorporates a National Good Governance Conference, and seeks to facilitate a national dialogue on good governance. The good governance dialogue is aimed at fostering a shared understanding of good governance while strengthening synergies between the different activities we all pursue as we seek to promote good governance.

It was in the context of your dialogue's contribution to the broader national conversation on good governance that I feel privileged to participate. My dialogue with you today contributes to my office's quest to be accessible to all persons and communities as directed by section 182(4) of the Constitution.

Why should we be concerned about good governance? In the case of my office, we get paid to ensure good governance. Investigating, redressing and eradicating improper conduct or maladministration in state affairs, is clearly about promoting good governance.

What about the BMF constituencies? Why should managers be concerned about good governance? I heard you earlier talking about excellence as one of the things that your managers should strive towards.

Clearly managers should be concerned over the governance of their companies or organisations. We know that governance in this context has an impact on functionality and ultimately profit and sustainability if the entity in question is a business enterprise. But I believe, you've included governance in today's dialogue because your interests transcend what happens in each individual enterprise. Why really should a manager or business person be concerned about governance beyond his or her own enterprise?

I believe the answer lies in our understanding of the interconnectedness of everything in our country and the world. I believe that you have included governance issues in your dialogue because you understand that our society operates as a system and so does the world. When there is a malfunction somewhere in the system the entire system feels the impact.

For example, scandals in the construction industry, which include the findings of collusion in the construction of stadia, roads and bridges, have tainted the entire industry. The impact of the bread price fixing scandal was the same and so has been the impact of the auction collusion scandal. Business has also suffered reputational repercussions from on-going findings of tender-rigging, fraud, false billing, overcharging and scope creep, among other things. Shenanigans in the RDP housing and school books distribution programmes have not left business looking good.

I believe it was this appreciation of the interconnectedness of humanity and societal systems that caused the United Nations to adopt the Millennium Development Goals in 2000. The same reason must have influenced the poverty eradication bias in the Millennium Development Goals. Key to that understanding is that as long as there are those that are trapped in poverty and social injustice among us we cannot experience peace. With this in mind, my team has decided to make poverty the focus of our stakeholder dialogue 2013 and the National Good Governance Conference we concluded yesterday. Even our health public hearings and site visits had a poverty slant as it is primarily those with little means that use public health services or facilities.

However, when I received the invitation, I got a sense that you wanted me to focus on state related governance failure challenges and factors behind those challenges. Why should managers be concerned about what happens within the state? More interestingly why should you be bothered by governance failure at that level?

Let us examine what happened in Malamulele a few days ago. In response to systemic service failure and an unsuccessful call for re-demarcation, some of the members of that community resorted to violent mass action. Such action included burning local infrastructure, including shops. Of course I do not condone the action or even think it solves the problems faced by such communities. I'm merely alluding to Malamulele, to show that governance failure within the state has an impact on business. Sometimes the impact is direct as in Malamulele but most of the time the impact is indirect.

As I pondered the interconnected between the state and the people, questions I thought about a poem titled "*The Cold Within*", reproduced in John Mason's book titled "*Believe you can: The power of a positive attitude*".

The poem narrates the story of six people trapped in mutually dependent circumstances, a pitch-black night, which was bitterly cold in the face of a dying fire in need of logs. Each was in possession of a single log of wood.

The first woman is said to have held hers back because she noticed a person outside her race and felt she could not benefit him. The next person held his back because she noticed the presence of someone outside her religion. The third person, a poor man in rags noticed the presence of a rich person and was not prepared to have the idle rich benefit from his effort. The rich man held back his stick of wood because he did not want to benefit the lazy, shiftless poor. The fifth man withheld his to spite those he considered to be historically advantaged and the last man held his back because he never did anything in life expect for gain.

*The poem ends with the following words:
"The logs held tight in death's stilled hands
Was proof of human sin
They didn't die from the cold without,
They died from the cold within.*

These six people unconsciously chose death because they forgot that you cannot light another's path without brightening your own. Perhaps this poem has some insights for the heightened conflict between capital and labour today. We are still recovering from Marikana, among other signs of broken trust and actions taken in that context.

I listened with keen interest as our informative keynote seaker gave us an overview of our economic situation. He said our Gross Domestic Product has more than doubled since 1994. In fact, some have said we are the largest economy in the continent.

But we also heard from the Minister in the Presidency, Hon. Collins Chabane, a few weeks ago that poverty grew from 48% in 1996 to 52.3% in 2012. We also hear that real unemployment is at 36% and it stands at 25% when we use its official definition.

We also heard from Minster Trevor Manuel yesterday that the *gini coefficient* is among the highest in the world. We are said to be the most unequal society in the world.

I hope I am not wrong in believing that your invitation that I speak to you stems from your choice not to die from the cold within. This is the choice that all those who live in South Africa need to make. After all the Freedom Charter, which is one of the historical value statements that brought our magnificent country to its prided position within the global community, says that "*South Africa belongs to all who live in it...*" As a people, we can only rise or fall together. It's our choice as to which one will it be.

If something belongs to you value it and ensure that it continues to increase or at the very least maintain its value. In the context of our country, what does choosing life instead of dying from the cold within mean? For me it means the choice of identifying your place in making South Africa work and playing your part with honesty and commitment.

That is all that my team and I endeavour to do as we go about discharging our constitutional

responsibility of investigating and redressing improper conduct in all state affairs and the public administration.

You are probably aware that the Public Protector is established under section 181 of the Constitution and given power under section 182 “...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”

However, many of you might not be aware that the Constitution envisages additional powers for the Public Protector as prescribed in national legislation. As we speak these additional legislative powers, which have come from more than a dozen statutes, have caused my office to evolve into a multiple mandate or remit office, whose role includes playing a part in the anticorruption architecture of South Africa.

I am often concerned that when government outlines the anticorruption architecture, my office is often omitted. One of the implications is underfunding and inadequate synergy within the work of the anticorruption agencies.

The key mandates of my office to-date include the following:

1. A maladministration mandate, incorporating abuse of power and abuse of state resources under the Public Protector Act of 1995;
2. The sole enforcement agency for the Executive Ethics Code under the Executive Ethics Act of 1998;
3. An anticorruption mandate deriving from improper conduct in section a82 of the Constitution, maladministration under the Public Protector and the reference made to the Public Protector under the provisions of the Prevention and Combatting of Corrupt Activities Act of 2004;
4. A safe harbour for whistle-blowers under the Protected Disclosures Act of 2000;
5. One of several information regulators under the Promotion of Access to Information Act ; and
6. The final administrative review authority over decisions of the Home Builders’ Registration Council under the Housing Protection Measures Act

While the Public Protector is recognised as an Alternative Forum under *the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000*, this mandate is diminished in our current strategy as the Human Rights Commission and the other Human Rights focussed Chapter 9 institutions are better suited for this remit. Most of the other statutes merely recognise the residual jurisdiction of the Public Protector, for example the *Special Investigation units and special Tribunals Act (SIU Act)* and the *National Environmental Act (NEMA)* while a few assign the Public Protector a few tasks of an administrative nature as is the case with the *Public Finance Management Act of 1999* and the *National Archives and Record Service Act of 1996*.

Going back to the question of causes of governance failure/ I do not purport to know all the answers on that front. I’m certain that a sociologist can do better. However, I thought I could share what my team has learnt from investigations we conduct and interactions with fellow members of the integrity sector, including the Auditor General and the SIU.

Key factors that seem to contribute to governance failure include the following:

1. Inadequate or distorted accountability to shareholders/citizens with an increasing trust deficit
Loss of institutional memory
2. Inadequate skills, knowledge and values
3. Inadequacies in the regulatory framework particularly at enterprise or organisational levels
4. Lack of or inadequate organisational systems
5. Poor or inconsistent enforcement mechanisms
6. Lapses in leadership and leadership ethics or integrity
7. An Animal Farm leadership Ethos instead of Batho Pele Ethos
8. Emerging culture of lack of respect for the rule of law
9. Power mongering and endless power struggles, often exacerbated by external influences
10. A fragmented state perpetuating “left behind communities”
11. A fragmented integrity sector that does not operate seamlessly

Let us briefly discuss each of these with illustrations from the cases we deal with on a day today basis.

Inadequate or distorted accountability to shareholders, with an increasing trust deficit

“If we start a fire they will come”, is a mindset that is currently bedevilling a number of disgruntled disadvantaged communities. We can blame it on political exploitation but we know it’s more than that. Part of the problem lies in failure to appreciate, internalise and institutionalise the values underpinning our constitutional democracy. They include human dignity, the achievement of equality, freedom and constitutional supremacy.

Loss of institutional memory

A high leadership and technical skills turnover in organisations exposes the organisation to uncertainties about rules, procedures and systems. Experience is also lost leading to people making big mistakes as first leadership mistakes. The life cycle of a DG is less than 3 years these days. In the olden days a DG or Municipal Manager could hold his or her post for more than a decade. The same can be said about Ministers and Mayors. There is also too much fluidity in technical areas such as finance and procurement. Lapses in executive ethics for example are often due to poor advise on executive benefits.

Inadequate skills, knowledge and values

Linked to but distinct from institutional memory is the issue of skills, knowledge and values. Many of the tenders we have investigated show systemic fault lines in this regard.

Inadequacies in the regulatory framework particularly at enterprise or organisational levels

Many municipalities operate without internal policies on key issues. Where policies exist they are not institutionalised and therefore systematically violated. e.g The Children Shall Pay

Lack of or inadequate organisational systems

SOPs and technology can improve governance. But many organisations do not have these or adequate capacity to harness these. Municipalities, CPAs, Traditional Authorities and School

governing Bodies experience these a lot.

Poor or inconsistent enforcement mechanisms

Impunity is a major cause of organisational disfunctionality.

Lapses in leadership and leadership ethics or integrity

Conflict of interest has become a major issue whether we are designing policies, enforcing policies or executing core business processes. When the decision-maker finds himself or herself serving two masters something Personal interests are not only financial, they may include political has to give. The interests of the organisation and shareholders or citizens are more often than not abandoned in favour of personal interests. Personal interests transcend financial interests.

An *Animal Farm* leadership Ethos instead of *Batho Pele* Ethos

In this setting, the people are liberated and they choose to have a few among them to manage resources on their behalf and regulate their lives instead of a situation whereby everyone does as they please. As in the book, *Animal Farm*, those chosen to manage the affairs of the people and regulate their lives, start dedicating resources to their own comfort instead of the people. When asked why, they say “*we are eating for you.*”

Emerging culture of lack of respect for the rule of law

Professor Heinz Klug speaks about declining legal continuity. This is when the interpretation of laws is overtaken by expediency and not public or organisational interest. The rule of law also requires that no one is above the law. But in organisations and the state we often confront a culture of some are more equal than others. Not knowing the law is a problem too e.g CPAs are not Committees bit the people but on the ground reality is different.

Power mongering and endless power struggles, often exacerbated by external influences

Power struggles within organisations are counterproductive and compromises governance in a sense that tend to people sabotage one another because they do not to see their boss or colleagues shine.

A fragmented state perpetuating “left behind communities”

This is particularly the case in poor municipalities. No school days across rural areas due to poor roads and no bridges. Kuruman Olifantshoek blew up because of lack of money for roads and lack of implementation of poverty node promises. Diep sloot is struggling to get funds for a police station and Nala is without a functional sewage system.

A fragmented integrity sector that does not operate seamless

Competition rather than complementarity undermines seamless enforcement of regulatory provisions whether in organisations or the state.

Bad external influences can also undermine good governance. In government this includes the failure to separate the state from political structures and processes.

What can we do to improve good governance? Among other things, business can:

1. Refrain from offering or agreeing to provide bribes or other forms of gratification;
2. Refuse to form part of cartels and report invitations to participate in such, including illicitly sharing tenders (I'll scratch your back if you scratch mine and price fixing;
3. Refrain from using power and connections to influence the issuing of unnecessary tenders or getting tenders they do not qualify for
4. Operate ethically taking into account the need for sustainability, including knowing that having Islands of affluence in a sea of poverty is not a sustainable approach to business.

These are my humble non- expert views on the causes of governance failure.

Thank you again for inviting me. Together we can contribute to bringing about a state that is accountable, acts with integrity at all times and is responsive to all its people. We can also create more functional organisations and structures at all levels of society. This will ultimately ensure that we do not die from the cold within.

Our destinies are linked even if you were to relocate your business to other parts of the globe. May your organisation prosper as our nation prospers and fulfils its dreams. Let us place our logs on the fire and keep our people's hopes and dreams alive.

Former President Nelson Mandela once said the following:

“Overcoming poverty is not a task, it is an act of justice. Like slavery and apartheid, poverty is not natural. It is man-made and can be overcome and eradicated by the actions of human beings. Sometimes it falls on a generation to be great. You can be that great generation. Let your greatness blossom.”

Thank you.

Adv. Thuli Madonsela

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