



PUBLIC PROTECTOR  
SOUTH AFRICA

**Address by the Deputy Public Protector, Adv. Kevin Malunga, to the  
YPO-WPO “MBA in a Day’ ‘Sink or Swim’- Resilient Leadership,  
University of Cape Town Graduate School of Business**

**Mr Khutso Mampeule, Regional Chair of YPO Africa;  
Dr Michael and Karin Louis and the YPO/WPO leadership who have graciously invited us  
here today  
Representatives of the government and the diplomatic corps  
Your Royal Highness Dr Kingsley Fletcher  
Professor Michael Katz  
The leadership and studentry of the University of Cape Town here present  
Western Cape Representative of the Public Protector, Adv. Ruthven Janse van Resnburg  
Distinguished guests  
Ladies and Gentlemen**

In my other hat as a South African Qualifications Authority board member, we would have serious problems with a one day MBA!

The title of my address to day is in keeping with the theme “Sink or Swim” – Resilient Leadership. We are meeting during a very unusual socio-economic dispensation in which we have seen the likes of Standard and Poor downgrading of our credit rating. In a similar vein we have seen the triple challenges of unemployment, poverty and inequality spiralling, epitomised by the year of the Marikana massacre in 2012. Obviously that is very close to me as it was my last posting before I became Deputy Public Protector. When launching the Office of the Public Protector in 1996, President Nelson Mandela said the following;

***“Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new constitutional order.”***

A critical starting point is to outline what, why and how do we do what we do as the Office of the Public Protector?

An essential part of that constitutional architecture is those state institutions supporting

constitutional democracy. Amongst those are the Public Protector, the , the Auditor General, the Independent Electoral Commission, the Commission on Gender Equality, the Human Rights Commission, the Constitutional Court and others.

Recognising that the task of ensuring adherence to the Constitution and good governance could not be guaranteed by the traditional institutions alone the Constitution during CODESA created these institutions to protect and promote the rights of specific constituencies in South Africa and to contribute to the transformation of Democracy into the Constitutional promise of a better life for all South Africans. Such a democracy requires governance that is dependent on mechanisms, processes and institutions through which citizens and groups can articulate their interests, exercise their legal rights, meet their obligations, mediate their differences and a secure tolerance to accept the things that they cannot change.

From the Public Protector perspective it is absolutely crucial that citizens are able to respond to service or conduct failures by the state in a manner that reinforces the institutions and values of our precious democracy, our ethical values and justice, and protects sustainable development and the rule of law. Where people have lost confidence in the democratic structures it is an attractive option to sections of the population, particularly those marginalised in a socio-economic sense, to resort to protest and unrest, or even to revolting against the government as we have witnessed in the so-called service delivery protests and indeed the Marikana debacle which many argue was about socio-economic frustration and survival.

*Resolution, conciliation* and indeed, *reconciliation* are at the heart of good governance that is needed to consolidate and sustain a high quality and liberal participatory democracy such as ours. It embodies some of the crucial elements of a Constitutional democracy built on -

- Participation - providing channels for settling conflicts over interests and values and for making broadly legitimate policy choices.
- Responsiveness to the needs and concerns of, and respect for the rights of society
- Equality among citizens – (Political equality is linked to economic equality, and that money and high social status are determining factors in access to power and more influence over government.

In light of the foregoing an ombudsman is an independent, objective investigator of people's complaints against government agencies and other organizations, both public and private sectors. After a fair, thorough review, the ombudsman decides if the complaint is valid. In investigating complaints, the Ombudsman has to establish that an act of mal-administration exists and then recommend corrective action to be taken by the Government department or agency concerned. Maladministration manifests itself in the form of but not limited to bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness, etc. The role of the Ombudsman is the pursuit of administrative justice in a manner which is confidential, informal, and flexible.

This brings me to the mandate of the Public Protector, which is one of the public accountability avenues given to the people of South Africa by the Constitution. Established under section 181 of the Constitution the Public Protector's constitutional mandate, as articulated in section 182, is to investigate alleged or suspected improper conduct in state affairs or the public administration; to report on that conduct and to take appropriate remedial action. The Constitution further states that the Public Protector has additional powers as determined by national legislation. It further enjoins the Public Protector to be accessible to all persons and communities.

Key mandate areas in pursuit of that ideal can be discerned from the Constitution and legislation are the following:

- Maladministration and appropriate resolution of state related disputes mandate as conferred by the Public Protector Act 23 of 1994. The maladministration jurisdiction transcends the classical public complaints investigation and includes investigating without a complaint and redressing public wrongs ;
- Executive ethics enforcement mandate as conferred by the Executive Members' Ethics Act of 1998 and the Executive Ethics Code. It is important to note that this mandate only covers the entire Executive, i.e. President, Ministers, Deputy Ministers, Premiers and Members of the Executive Council.
- Anticorruption mandate as conferred by the Prevention and Combating of Corrupt Activities Act 12 of 2004 read with the Public Protector Act. This mandate is shared with other agencies;
- Whistle-blower protection mandate as conferred by the Protected Disclosures Act 26 of 2000. This mandate is shared with the Auditor-General and other agencies to be named by government;
- Regulation of information mandate as conferred by the Promotion of Access to Information Act 2 of 2000; and
- The power to review decisions of the Home Builder's Registration Council as conferred by the Housing Protection Measures Act 95 of 1998.

Except under the Executive Members' Ethics Act, anyone may lodge a complaint with the Public Protector against any organ of state and the service is free. The complainant need not be a victim of the alleged improper conduct or maladministration. It is also important to note that to investigate, the Public Protector does not necessarily need to receive a complaint. Essentially we ask three questions;

1. What happened?
2. What should have happened?
3. Is there a discrepancy between the two and, if so, does it constitute maladministration and, if so, what would be the corrective measure required?

The Public Protector represents an evolution of a modern democratic oversight institution which has moved away from a "mere complaints department" to an "architect of good governance." This important role of the Public Protector should situate it at the centre of the struggle to attain good administration and sustain good governance in South Africa. In terms of its mandate to strengthen constitutional democracy the Public Protector therefore has a reactive and a proactive mandate regarding ensuring that state affairs are conducted with integrity and general good governance. The Public Protector is one of the key institutions mandated by the Constitution to ensure that those governing do so in compliance with the Constitution and other regulatory provisions, remain true to their mandate and are accountable to the mandate givers.

Essentially the Public Protector helps people exact accountability from those they have entrusted with public power when direct accountability fails. This includes ensuring justice for state wrongs or maladministration and accountability for control over state resources.

The Public Protector Act (PPA) goes beyond maladministration, making reference to abuse of power and abuse of state resources, in addition to maladministration. The PPA further expands the Public Protector's functions to include resolving disputes concerning conduct in state affairs

through conciliation, mediation, negotiation and any other means deemed by him or her as appropriate.

A combination of the Constitution, Public Protector Act and Prevention and Combating of Corrupt Activities Act gives the Public Protector power to investigate corrupt acts and where there is evidence of criminality or impropriety, to refer the matter to the National Prosecuting Authority for prosecution. You will note here that as the referral power under the Public Protector Act is not to the police, the Public Protector may only make such referral when he/she has gone as far as the police would have gone.

The Public Protector is required by the Constitution to be accessible to all persons and communities. This openness comes at a price as we at times have some colourful complainants who spend weeks sleeping or camped outside our offices. However, that is transparency at work. We are constantly making efforts in pursuit of this constitutional injunction but resources make it impossible for our team to reach all in an effective way.

Accessibility is not only about physical availability of services but also includes people knowing about those services and using them effectively whenever need arises. Assistance can also ensure that complaints are lodged early enough before evidence disappears and before people lose everything, including homes. People often approach the Public Protector 5 and up to 10 years down the line. This is often the case in matters we prioritise as bread and butter matters such as owed pension monies and outstanding ID document matters.

The Public Protector is part of the National integrity framework that plays a role in generating a proper public service ethos that informs public sector decision-making as one that sees public service as stewardship. Therefore we seek to give effect to the premise that those exercising public power need to know it is not their power they exercise but it is power given by the people on the basis of trust to be used in service to the people.

The Public Protector's contribution to the promotion of integrity and good governance also aims to form part of moral regeneration, - including entrenching anticorruption attitudes and behaviour both in the public sector and civil society. This should include ensuring that all understand that government money is not orphaned money but public money to be used to give effect to a better life for all as promised by the Constitution.

The power to turn the tide against maladministration and corruption in pursuit of the consolidation of our democracy lies in our collective hands. One of the things we need to do is to stop politicising corruption and take responsibility for it. The Public Protector recently emphasised that one of the essential factors needed to end corruption is strengthening public accountability – this includes empowering civil society to ask questions; transparency – without transparency accountability is impossible. This also means strengthening whistle blower protection and usage and ensuring media freedom and; ending impunity.

In keeping with the theme of a building a resilient leadership we are mindful of the fact that our respectability, credibility and legitimacy among all the stakeholders over whom we exercise jurisdiction is vital for our success. As we conciliate or mediate over state organs we have to create an environment where there is trust and confidence in our processes. I would like to say without equivocation that we could not ask for a more ethical, impartial team than the one we have now. We are not there to nail people but to protect the gains of this democracy. When we protect the body politic from maladministration and impropriety we in turn protect the economy.

The tender system is very often failing the people of South Africa, often with so much being paid for so little. A report released by our key partner – the Auditor-General yesterday indicates over the past three years the public sector has spent R33.5 bn on consultants. My guess is that half, if not more of that work could have been done by people who are actually employed to do it. Every now and then around the country we see road works in one spot that never seem to end while the meter keeps running and the final bill gets bloated. As long as we have an environment where there are individuals and service providers who feel that they can loot the state by providing shoddy service in return for exorbitant, vulgar payments our role as the Public Protector cannot be more profound.

Very often we will use less adversarial methods to achieve positive results but where we do not receive adequate cooperation we will not hesitate to use our legally entrenched powers of subpoena and consequently firm legal sanctions such as arrest and fines which come from ignoring our processes. You all read newspapers and definitely know that the Office of the Public Protector now has substantial teeth which can be seen a mile away. Which reminds me of an old African saying 'A lion has 30 teeth but where do you stand to count them'? The whole political spectrum in South Africa has endorsed these efforts as they protect this country from the kind of impunity that has seen other countries literally go to the dogs. It is with this background that our interventions have the power to sink South Africa or indeed let it swim or I dare say - fly! However, let me reiterate that we carry out this mandate in the right temperament of respect and without heavy handedness. Remember it has been proved that you don't get the best results in disciplining an errant child by shouting at them all the time or through corporal punishment. Of course some say the occasional spank works and we have the power to spank within reason of course. Our major challenge of course remains that of human capacity and resources. The statistics from the past financial year are telling;

- **5 603** complaints carried over from the previous financial year.
- **20 626** new complaints received
- **27 376** complaints investigated
- **16 763** complaints finalised
- **10 183** carried over to the 2012/2013

All this has to be done with 140 investigators nationally who have just had a welcome addition of 100 learner investigators. In the Western Cape alone a single investigator is sitting with 120 or so pending cases.

To ensure that our constitutional democracy works as a constant dialogue between the people and those they have entrusted with public power, our people need to be empowered to understand how government works. In addition to communities making informed inputs into policy processes, empowerment should bolster their role in exacting accountability in state affairs. The idea is to ensure that people ask the right questions to the right persons through correct channels. Such empowered engagement should reduce the frustrations that often lead to rioting and destruction of the public infrastructure that communities need for effective service delivery.

As the Public Protector and as part of the greater family of Institutions Supporting Constitutional Democracy in our country, we will continue to contribute to the realization of human rights of all South Africans by strengthening constitutional democracy focusing on good governance and responsive service delivery. Good governance, anchored in ethical leadership, plays a vital role in ensuring that the State is accountable to all, without distinction as to race, sex, language or religion, or any other ground and will promote and encourage respect for human rights and for

fundamental freedoms of all people and groups. Through recognition, dialogue, and participation, all the citizens of a diverse society can form a greater understanding of one another's concerns.

**I thank you.**