



**Address by Public Protector Adv Thuli Madonsela at the University of
Witwatersrand's Business School, in Johannesburg, on Thursday,
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“Active Citizens are Key to Good Governance”

**Program Director, Ms Iman Rappetti
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Chairperson of the Johannesburg Press Club, Mr. Mixael de Kock;
Professor Kalu Ojah, Deputy Head of the Wits Business School
Deputy Chairperson of the Johannesburg Press Club, Ms. Amina Frense
Former chairperson of the Johannesburg Press Club, Mr. Hopewell Hadebe;
Distinguished from the academic community and the media;
Ladies and gentlemen**

I am humbled and honoured to address this gathering. The media and academic community are important stakeholders in the work of my office, the Public Protector South Africa. I would like to thank the Johannesburg Press Club and the Wits Business School for the opportunity.

Furthermore, the contribution of the media and the academic community in promoting public dialogue on the place and role of my office in our democracy as well as specific activities, including reports, can never be over emphasised.

My team and I value public platforms of this nature as they contribute to our endeavours to ensure our services be accessible to all persons and communities in compliance with section 182(4) of the Constitution.

The Public Protector Team is deeply indebted to the organisers of this event.

Programme Director

My engagement with you today focuses on the role of citizens in promoting good governance in state affairs. I hope you agree with me that in any democracy, “Active citizens are key to good governance”.

Firstly what is good governance? As academics you obviously know more textbook definitions of good governance than I do. But I chose to settle for the simple understand of good governance as being about good decisions arrived at through good decision-making by those

exercising entrusted power.

Good decisions are obviously those made in the best interests of the people that have entrusted the decision-makers with power and the broader stakeholder community. Good decision making on the other hand incorporates, exercising entrusted power within the limits of assigned authority, with utmost integrity, participation of the power givers or beneficiaries and accountability. By implication, transparency in the exercise of entrusted power is an important part of good governance.

How many of you are familiar with situations where as soon as you elect someone to a position of authority, they start lording over you? Have you also had experiences where those exercising entrusted power, referred to by others as borrowed public power resist accountability by all means? Clearly such tendencies are not consistent with the idea of good governance.

If citizens are key to good governance, what then is their ideal role?

Programme director,

Perhaps the story of six people bound by fate may give us some pointers.

It is a story about six people sitting around a fire that was slowly dying down, on one bitterly cold dark night. Light and warmth were essential to get them through that cold dark night.

Each of them held one piece of log in their hand as they sat around the dying fire.

The first person, a woman, looked at her piece of wood before casting her eyes across the room and noticing that, among the six of them, was a man who belonged to a different racial group. On that basis, she decided to keep her piece of wood because she did not want that man to benefit.

The second person, another woman, looked across the fire and saw a person from a different religious group. She too decided that she was not going to benefit that person and thus chose to hang on to her piece of wood.

The third person, a rich man, noticed a scruffy poor man across the fire and thought "I will not let the lazy poor benefit from my piece of wood." He too chose to keep his piece of wood.

The fourth person, the poor man considered throwing his piece of wood into the fire but then he saw the rich man. He thought to himself why must I benefit the filthy rich" and decided to keep his piece of wood.

The fifth person, a man from a historically disadvantaged background looked around and saw people from a historically advantaged group. He asked himself why he should sacrifice his piece of wood to benefit a group that had historically exploited his group. He too chose to keep his piece of wood.

The sixth person was a person who never did anything for *mahala* (free). He could not bring himself to let five people that had not paid him benefit from his piece of wood.

The story comes from a poem titled "The Cold Within". The last stanza of the poem has the following words:

“The logs held tight in death’s still hands was proof of human sin. They didn’t die from the cold without . They died from THE COLD WITHIN”

Are the parallels between what these people did and what we often do as citizens of our country and of the organisations we are part of? Do we often fail to act just because we don’t want people we do not like or approve of to benefit?

What does all of this have to do with the assertion that “Citizens are Key to Good Governance?”

Our Constitution promises the people of this country a better deal than they got under apartheid. Among other provisions, the preamble states:

***“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.***

You will agree with me that the social conditions envisaged in the constitution require the transformation of our society and the state. Indeed a perusal of the Constitution confirms that the framers of our Constitution expected the state to be transformed to operate differently than it did under apartheid. If we look at section 96 for example, there are specific ethical bottom lines for members of the Executive. These include avoiding self interest and the entrenchment of the primacy of public interest. Chapter 10 on the other hand, outlines principles of public administration, which again, essentially put people first while section 237 requires constitutional responsibilities to be given priority.

But what is the reality on the ground on the eve of the second decade milestone of our had earned democracy? If things are not the way they should be, what is our responsibility as citizens of this country and co-architects of our destiny?

Yesterday I released five reports presenting my findings on allegations of maladministration and directives on remedial action in pursuit of the power and responsibilities assigned to me and my office under section 182 of the Constitution of the Republic of South Africa, 1996 and the Public Protector Act of 1994. A common denominator in the stories underpinning the reports is the cost of the indifference of public authorities, to ordinary people.

One of the reports, “*Sombre Records of Our Past*”, covered a 14 year journey of a pensioner in her seventies who has been hitting a brick wall in her efforts to get her pension pay out recalculated by the Eastern Cape Department of Education and the Government Pensions

Administration Agency.

A report titled “*Unpaid Services*” covered the trials of a small business person, who has been battling to get payment for contract work done for the Ngwathe Municipality since 2008.

My office hears similar stories virtually every day, mostly relating to government employee pension payouts, workers compensation payouts, Identity Documents and various permits for non-nationals. A business person in this province lost everything simply because City employees could not find the time in their busy schedules to switch off water and lights in two buildings he had purchased, leading to huge consumption of electricity and water by squatters?

In a country that has committed itself to half poverty by 2015 as one of its Millennium Development Goals, how do we allow acts of indifference and sometimes blatant abuse of power, to plunge millions of our people into poverty?

How is this consistent with the state’s commitment to faithfully implement our globally celebrated Constitution, which promises an improved quality of life to all citizens anchored in fundamental human rights and freedoms that are enshrined an enforceable Bill of Rights?

You may be wondering, but those are omissions of public servants, not citizens. That’s true. However, we must recall that public employees are citizens too. Furthermore, don’t we often see wrongdoing and do nothing about it?

There are also areas where public sector wrongs involve the combination of wrongdoing by public sector actors acting in collusion with private sector actors.

Let us, for example, consider the looting, through corruption and fraud, of funds meant for the provision of basic services aimed at improving the quality of life for our people, primarily through advancing social and economic rights? During our 2012 Stakeholder consultation, my team and I were exposed to shocking maladies in the execution of the RDP Housing Programme. Some of the cases have been investigated conclusively confirming allegations of maladministration, including corruption and false billing in the housing procurement processes.

We’ve also been asked to look at the health system. The allegations include uncaring attitudes by health professionals and procurement irregularities, including corruption, leading to lack of medical supplies and essential hospital equipment.

Where there is corruption, it is principally a matter of collusion between private persons and state actors. Clearly a lot of the corruption that concerns us as a nation involves huge amounts of money particularly in the state procurement system.

With regard to corruption, there is one area where all ordinary citizens can make a difference on a day to day basis. This is in the area of petty corruption or retail corruption. What about thinking twice next time before bribing a traffic officer? What about that health or environmental inspector? We could also heed calls such as those of Corruption Watch and the Minister for Public Service and Administration, to do something about corruption. When we see something we must not look the other way. It is said that evil prospers not because of the might of evil people but because of the silence of good people.

I must hasten to say that most acts of corruption and other wrongdoing in the exercise of state power have been arrested because of good women and man who do something when they see

wrongdoing. Some have done so at the cost of their jobs and a few, their lives. It is for this reason that as one of the guardians of the Protected Disclosures Act and the Prevention and Combatting of Corrupt activities Act, we have persistently called for the strengthening of whistleblower protection. Furthermore, when genuine whistle blowers come to my office for protection after suffering an occupational or other detriment, we use all available legislative powers of my office to ensure such protection. In this regard, you may have noticed my report titled *“They Called it Justice”*.

What opportunities exist for citizens and residents to with my office work in the pursuit of good governance in state affairs?

As you know, section 181 and 182 of the Constitution enjoin the Public Protector to strengthen and support constitutional democracy by investigating 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. Section 182(2) provides for possible additional legislative powers, which over the years have culminated in the following six key statutory mandate areas:

- **Power to investigate and redress maladministration and related wrongs such as abuse of power, capricious or discourteous conduct, undue delays, abuse of state resources, unjust enrichment, corruption under the Public Protector Act 23 of 1994** :
- **Power to investigate alleged executive ethical lapses, covering alleged ethical lapses by all members of the Cabinet and Provincial Executive Committees** under the Executive Members’ Ethics Act 82 of 1998 and the Executive Ethics Code;
- **Power to investigate offences in parts 1-4 and sections, s17, s20 and s21 and referral for prosecution, where appropriate**, under the Prevention and Combatting of Corrupt Activities Act 12 of 2004, read with the Public Protector Act;
- **Power to receive protected disclosures from whistle-blowers and protect them** under the Protected Disclosures Act 26 of 2000;
- **Power to resolve access to information disputes through ADR and other measured deemed appropriate** under Promotion of Access to Information Act 2 of 2000;;
- **Power to review the decisions of the National Home Builders Registration Council** under the Housing Protection Measures Act 95 of 1998.

As indicated earlier, many citizens and residents already work with my office in the pursuit of good governance and in the process, the strengthening of constitutional democracy. Some take their concerns to the media with many of these ending up as subject of complaints lodged with my office. This was the case with the people of Bramfischerville, who approached a BBC journalist. The investigations we undertook resulting in reports such as *Against the Rules*, *In the Extreme*, *Costly Moves* and *On the Point of Tenders* also started with media stories.

But can citizens do more than finger-pointing? If all we do as civil society is finger-pointing, how different are we from the group of six that died from the cold within?

Examples can be found in organisations such as Corruption Watch, a civil society initiative that is slowly but surely entrenching itself as a serious corruption-buster. The efforts of LeadSA and Crime Line are also worth noting. These organisations are doing more than finger -pointing regarding their concerns on matters such as crime and corruption. They are mobilising citizens to take responsibility for being part of the solution.

Business organisations such as Business Unity South Africa (BUSA) are increasingly taking a stand against corruption and fraud not only in SA their private dealings but also in their interface with government. The Property Association is one of those that have decided to take a stand in this regard. The Law Society of South Africa (LSSA) is also pursuing the same direction and has offered to work with my office and others where appropriate.

Can citizens make similar contributions with regard to service failure, particularly systemic service failure in organs of state such as municipalities? Yes they can. A good practice worth noting is that of Non-Profit Organisations such as Ndifuna Ukwazi, which writes in its website that it exists to build and support social justice organisations and leaders and that **“it was formed in response to the need to foster, develop and provide appropriate mentorship and support to local organisations and young leaders who are pursuing various social justice struggles in SA and are thereby attempting to hold government at all levels accountable.”** Right to Know Campaign is also one of them.

Among public officials and office bearers there are many men and women that toil tirelessly everyday, often going beyond the call of duty to serve our people. There are also those that as I indicated earlier speak out when they see wrongdoing. Some also take action to stop such wrong doing when they have the authority to do so, often suffering occupational detriments as a result.

Imagine if we multiplied all these efforts in a manner that engages all citizens, including children at pre-schooling stage. Imagine if such efforts incorporated learning together on the values that underpin our Constitution and which are a precondition for the state to deliver on the constitutional promise or an improved quality of life for all its people with equal opportunities and the freed potential of all.

There can be no true peace anywhere as long as there is injustice somewhere. Whether we like it or not, our destiny is a shared one like the people that sat with a dying fire between them while dithering about contributing their pieces of wood.

Can you imagine what would happen if we were to stop pointing fingers and identify our respective roles in causing the maladministration and corruption as well as our roles in helping the country resolve these problems?

How far would we go as a nation if we held people entrusted with public power accountable for all wrongful acts, and not just those that affect us personally but also those that affect Gogo Dlamini (Such as Mrs Mdaka) who cannot speak for herself? Would these not help alleviate poverty and other social maladies that are exacerbated by public wrongs?

You must agree with me that if our people were empowered as Ndifuna Ukwazi is trying, to exact accountability in the exercise of state power meaningfully using dialogue channels availed by the Constitution and the law, there wouldn't be much need for mass action. My team and I have established that there is a strong need to educate our people about how government systems work; how they can get involved in the planning of the development of their own surroundings through the Integrated Development Plans of municipalities; that they have the right to complain; and how they can complain, with a view to holding their leaders to account.

Many people bear the brunt of maladministration for years on end and they accept that as their fate, not knowing that they hold massive power that –if used wisely and responsibly- can turn

their fortunes around. They just need us –the enlightened ones- to help them realise that power.

Citizen and others also need to work with the many other institutions that work hard to stem maladministration within the state in its different forms. These include the Auditor General, the South African Human Rights Commission, the Public Service Commission, the Special Investigating Unit and the Hawks, among others.

It is said that each set of citizens gets the government it deserves. If we want the accountable government that acts with integrity and the best interests of all its people, we need to up our input towards the pursuit of good governance and ultimately, a strong constitutional democracy. This is the right time to act. In twelve (12) months time, our democracy turns 20. What will we tell our children about what we did to get things right?

The future of our country lies in the hands of each and every single one of us. We are co-architects of our democracy and our destiny.

Thank you.

Adv. Thuli Madonsela

Public Protector of South Africa