



**Address by Public Protector Adv. Thuli Madonsela during the
commemoration of Human Rights Month in Calvinia, Northern Cape on
Tuesday, March 26, 2013**

**Programme Director and Head of the Department of Labour, Mr Leukes;
Mayor of Namaqua District Municipality, Cllr. van der Heever;
Mayor of Hantam Local Municipality, Cllr. Albert Fritz;
Deputy Mayor, Councillors and the Municipal Manager;
Representatives of Government Departments; and
Members of the media**

I greet you all and to the broader of Calvinia on behalf of the Deputy Public Protector, Adv Kevin Malunga, the Public Protector Representative Mr Botromia Sithole and the Public Protector team from Pretoria and the Northern Cape province.

We have travelled more than 1 500 kilometres from Pretoria to bring the services of my office to you. The Kimberley-based team and those located in Upington trekked between 400 kilometres and 650 kilometres.

Our presence here today forms part of measures seeking to give effect to section 182(4) of the Constitution, which calls upon the Public Protector to be accessible to all persons and communities. Accessibility also forms part of our institutional service promise. Our promise to you and other communities includes providing prompt justice, remedial action; promoting good governance in all state affairs, and being accessible to and trusted by all persons and communities.

We are aware though that while at 372 889 square kilometres, taking up 30.5 percent of South Africa's land area; the Northern Cape is also the least populous of all our nine provinces. This means communities are far apart and this calls on us to redouble our outreach efforts in order to meet our constitutional duty to be accessible to you as a community.

Our visit here today is two-pronged. We are here to bring our services to you, as I have indicated. We are also here to commemorate with you the Human Rights Month, a very important month in the South African calendar.

A few days ago, on 21 March, South Africa commemorated National Human Rights Day, at Mbekweni, Paarl in the Western Cape. Several other commemorations took place in the rest of the provinces. The events seek to pay tribute to the 69 people who tragically lost their lives in

Sharpeville in 1960 when apartheid security forces opened fire on anti-pass laws protesters, while renewing our human rights commitments as a nation.

Elsewhere in the world, the international community commemorated March 21 as the International Day for the Elimination of Racial Discrimination. March 21 was proclaimed by the General Assembly of the United Nation in 1966, as a day focused on the elimination of all forms of racial discrimination, in solidarity with the then oppressed people of South Africa.

As the Public Protector South Africa, we observe this month under the theme: “Administrative Justice is a Human Right.” Accordingly, my speech will focus on the right to administrative action which is a human right entrenched under section 33 of the Constitution. I will also talk to you about your right to complain and why it is important to have your complaint addressed by the Public Protector and other state entities. If you complain accordingly you are exercising a constitutional right and you are not an enemy of the state. I hope those in government got that.

I thought I should begin my speech by sharing with you a short true story. This is a story about government maladministration that left a senior citizen unable to enjoy several basic human rights.

Mr N was employed by the provincial Department of Education in Gauteng as a night watchman at a primary school. One night there was a burglary at the school and certain items were stolen. Mr N saw and reported the people who were involved in the crime. Among them, he alleged, was the principal’s son.

The thugs were not happy that Mr N reported them to the authorities and in an apparent backlash, they returned to the school on another night to brutally attack him. He landed in hospital after sustaining serious injuries that left him disabled and unable to return to work.

Mr N approached the Public Protector in 2011, 14 years after the incident, when his attempts to get the pension benefits due to him from the Government Employees Administration Authority (GPAA) drew a blank.

He had been battling to recover his benefits from the Gauteng Department of Education, with the assistance of his pastor. In his complaint to me, Mr N alleged that he was informed by the department that he would not get the R34 600 that was due to him at the time of his retirement as the money had been used to cover an alleged departmental debt.

He was allegedly told that the debt arose from an overpayment of his salary during his absence of leave after his injury, which the department also failed to report to the Compensation Fund as required. Mr N also complained about his unsuccessful attempts to report his injury-on-duty to the Compensation Fund.

Following my office’s investigation of both the deduction of the departmental debt and the failure by the department to report his injury-on-duty, in which I found in his favour, Mr N was paid all his dues, including arrear pension benefits dating back to 1999.

The 63-year-old KwaZulu-Natal man received arrear pension benefits to the tune of R430 000. He was also refunded his full pension benefits, with interest equal to the capital amount. Mr N was further expected to receive monthly pension to the value of R3 506, and liability for his injury-on-duty was accepted by the Compensation Fund after more than a decade of failed attempts to claim from the fund.

I am encouraged that Mr N knew about us and exercised his right to complain. My only regret is that it took so long, plunging him into poverty. I have no doubt in my mind that bad administrative action of this nature is one of the factors accounting for our failure to achieve Millennium Development Goal (MDG) number one which is to eradicate extreme poverty and hunger by 2015. The question that arises from this story is: Did it have to take the Public Protector's intervention for the state to do what is right?

This brings me to the issue of just administrative justice. As I have already indicated, just administrative action is a right enshrined in chapter two of our world-acclaimed Constitution, section 33 to be specific.

This section led to the passing of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). This act, in simpler terms, says to you as citizens and residents of this country: You have the right to fair; lawful and reasonable administrative action and you also have a right to reasons for administrative action that affects you negatively.

By administrative action, I am referring to any decision taken by an administrative authority. This includes all government departments, municipalities and parastatals such as Eskom and Transnet, and such a decision affects your rights. The private sector too owes you a duty to only subject you fair, lawful and reasonable administrative action. Your right to just administrative action includes the right to be given reasons for administrative action that affects negatively. This takes us back to the example of Mr N. He applied for his pension benefits and workmen's compensation after suffering injury-on-duty, which eventually rendered him disabled and unable to continue with work. The Department of Education in Gauteng had to make a decision to report his injury-on-duty to the Compensation Fund and the Department also had to make a decision to set off the processing of his pensions in conjunction with the GPAA.

PAJA calls on administrators to do the following:

- Follow fair procedures when making decisions;
- Allow you to have your say before taking any decision that might negatively affect your rights;
- Clearly explain the decisions they take;
- Tell you that you can ask for written reasons for the decision;
- Advise you about any internal appeals within their department. If there is no internal appeal, they must tell you that you can ask a court or tribunal to review the decision.

You might wonder why you need this law. This piece of legislation gives you the right to be treated justly and fairly by all decision makers. Fairness includes being given a chance to tell your side of the story before any decision is taken. Once a decision is taken, it lets you find out why the decision went against you. It also makes sure you can challenge decisions that you consider to be unfair or not taken properly.

In the event you are not satisfied with the reasons advanced for any action you deem unjust, you can explore available internal remedies. Organs of state are required to have internal complaints-handling bodies. My office goes as far as encouraging the establishment of an internal ombuds office.

Once you are certain that you have exhausted all available avenues in terms of getting your complaint resolved, it's then that you can turn to institutions such as my office, the Public Protector. But what is the Public Protector? Where does this body get its powers to help people

such Mr N? How does one approach the Public Protector?

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. In addition, the constitution's section 182(4) states that the Public Protector must be accessible to all persons and communities. My colleague from Namibia, Adv John Walters, interprets this as giving you the right to complain and the state the responsibility to ensure that my office's services are accessible to you.

The Constitution further states that additional powers are given to the Public Protector by several pieces of legislation.

- The Public Protector Act 23 of 1994 which confers maladministration and appropriate resolution of state related a disputes mandate.
- The Executive Members' Ethic Act of 1998 which involves enforcing the Executive Ethics Code which seeks to ensure that the President, Ministers, Premiers and Deputy Ministers conduct themselves ethically.
- The Prevention and Combating of Corrupt Activities Act 12 of 2004 read with the Public Protector Act which confers an anticorruption mandate;
- The Protected Disclosures Act 26 of 2000 which recognises the Public Protector as a safe harbour for whistle-blowers.
- We can also assist get information that has been unfairly denied under the Promotion of Access to Information Act 2 of 2000; and
- We have the power to review decisions of the Home Builder's Registration Council under the Housing Protection Measures Act 95 of 1998.

My office also has the power to investigate without a complaint. When we read an apparently unjust newspaper story, or watch such on TV, we often initiate an own initiative investigation. Once a matter is lodged with us, it is subjected to an assessment process, which seeks to ascertain jurisdiction and merit on the claims. Once jurisdiction and merit of the allegations have been confirmed, I have the discretion to decide whether to investigate or not, especially on complaints that concern actions that took place more than two years earlier, or where internal remedies have not been exhausted.

We resolve most service failure matters through our early resolution interventions, which utilise appropriate dispute resolution mechanisms, such as conciliation, mediation, negotiation or a combination of these. Matters that are investigated fully often result in formal reports of the nature you may have seen me release through media briefings.

In a bid to broaden accessibility to the people of South Africa, we have 20 walk-in offices spread across the country. In the Northern Cape we have offices in Kimberley, Upington and in Kuruman. We do not have an office in this particular area. However, we make up for that with outreach clinics similar to this one. We also have a mobile office that visits areas such as this one periodically. I urge you to make use of such opportunities. Otherwise you have the option of using our toll-free line, 0800 11 20 40, or lodge complaints online at www.publicprotector.org or email them to E-mail: Registration2@pprotect.org. We are in the process turning our one-person toll-free line into a fully-fledged call centre.

Today is also an opportunity for you to register your complaints with my office. Accompanying

me is a team of investigators who will take down your complaints for my attention. We will deal with complaints in two ways. Shortly after my I am done with my speech, we will make time for complaints to be raised from the floor. I must emphasise that these should be only complaints that affect a community or a group. Individual complaints should be taken to our stall at the back of this venue, where our investigators are ready and waiting to assist you.

Remember that you have a right to complain. Do not be shy to exercise that right. My office has a duty to help you. The right to just administrative action is also a human right that all of you are entitled to, from all decision makers, particularly those that are entrusted with state power, public resources and public opportunities. Together we can ensure that all are accountable, act with integrity at all times and are responsible to the needs of all the people of South Africa.

Thank you.

Adv Thuli Madonsela

Public Protector of the Republic of South Africa