



**Address by the Public Protector, Adv Thuli Madonsela, at the opening
of the Tshwaraganang Legal Advocacy Centre exhibition, in
Johannesburg, Gauteng on Thursday, 05 August 2010.**

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Ladies and gentlemen;

It is an honour to share this special occasion with you and a privilege to say a few words.

The timing of this important exhibition couldn't be better. We have just commenced Women's Month and in four days will be celebrating our National Women's Day.

On this month and occasions such as today we are reminded of the sacrifices women before us made to create spaces we enjoy today. Sadly, we are also reminded that although we have won a lot of battles, the struggle for women's rights and gender equality is far from over.

One of the indicators of the fact that the struggle continues, is the issue that brings us together today, the issue of gender violence generally and the heinous crime of rape specifically. It is sad to note that 15 years into our hard won democracy and the promises in our Bill of Rights, women still cannot leave their homes without the fear of rape.

Worst of all even their homes are not the sanctuaries they are meant to be. Every day, we hear horrendous stories of some little girl, older person, person with disability or woman in general, having been raped in their homes where they should be safe. More often than not such rape is perpetrated by a relative or someone close the girl or woman.

When such things happen to the people, the state has two key roles being to care for the victim/survivor and affected family and to prosecute the perpetrator. In addition to this, the state's duty includes the protection, which, according to emerging court jurisprudence, incorporates the prevention of preventable harm. Unfortunately, the state often fails women on all of these. This is the point that the exhibition entitled "Brick Wall: Rape and the Criminal Justice System", seeks to drive home.

Before going further I want to applaud Tshwaranang Legal Advocacy Centre for conceiving a simple yet effective way to communicate the difficult and painful subject of the plight of rape victims or survivors as they navigate the criminal justice system in search of justice. Those of you that have already gone through the exhibition will recall that at one state we had to trample on the faces of women, representing victims. Unfortunately, this is often the plight of those who seek justice after an experience of rape. We then proceed to a maze of red-tape which again symbolises the obstacles that victims or survivors of rape are subjected to in the criminal justice system. I'm told that at this point some turned back as this appeared to be too much trouble. Again unfortunately, this is what victims or survivors of rape often do. When they contemplate the trouble they are likely to go through, they abandon the process and unfortunately, struggle to find closure.

There are plenty of service failures in the justice system that are depicted in the exhibition, which includes videos. It would be great if all leaders in government, particularly the criminal justice system could take time to come and see the exhibition and gain valuable insights from this simple yet powerful depiction of the service failures in the criminal justice system's handling of rape cases. I'll revert later to the role I play as the Public Protector when the state fails to meet its service obligations to its people.

Exactly two years ago, in July 2008, a study titled "Tracking Justice: The Attrition of Rape Cases Through the Criminal Justice System in Gauteng" revealed deplorable details of how rape victims often suffer gross prejudice at the hands of the state.

Conducted by among others, Tshwaranang Legal Advocacy Centre, which organized tonight's event, the study focused on about 70 police stations across the province of Gauteng, sampling more than 2 000 rape cases.

Some of the key findings were that:

- Half of the cases the study focused on resulted in arrests but only 42.8 percent of the perpetrators were charged ;
- Police closed 45 percent of the cases in the sample;
- More than half of the cases closed by police were disposed of because the perpetrators could not be identified or located;
- Descriptions of the perpetrators were absent from more than three quarters of the victims' statements; and
- In more than half the dockets, instructions had to be issued twice or more before the investigating officer complied with it and in 30.2 percent of the cases where an instruction was issued on two or more occasions to arrest the suspect, the suspect had disappeared.

Furthermore, according to SAPA, the number of general criminal dockets lost at police stations across the country should be a source of great concern to all of us. In 2008/09, the police

reportedly lost 668 dockets, marking an alarming 56 percent rise from a figure recorded a few years earlier (www.news24.com.)

Service failures in the criminal justice system that culminate in injustice to rape victims are not restricted to police conduct. These include public hospitals and clinics, where medical examinations crucial to in the prosecution of perpetrators are often bungled by officials in such service points.

Ladies and gentlemen,

I would imagine, for a rape victim, there is nothing as frustrating as learning that the person who inflicted so much pain on you will roam free or get a slap on the wrist just because of incompetence or service failure on the part of a responsible state organ or state organs.

Service failure in the criminal justice system, often means, as may be seen from the study that brought us here today, that victims undergo secondary victimization. Often, this includes re-living those horrendous moments by reporting their cases again to redress institutions such as the Independent Complaints Directorate (ICD) and the Public Protector. Had the police and other service providers in the criminal justice value chain done their job accordingly, this would not have been necessary. However, it should not put victims off seeing to it that justice prevails.

In most cases, you find that the victims are living in poverty and do not have the resources to take the matter to court. In such instances, institutions such as the Public Protector are there to help victims hold the state accountable, get justice, rebuild their lives and move on.

Established by the Constitution, the Public Protector is an independent institution created by Chapter 9 of the Constitution to support and strengthen constitutional democracy. It is an impartial institution that exercises its powers and performs its functions without fear, favour or prejudice. The Public Protector is accountable only to the law and the constitution and only reports on its activities to the National Assembly. No person or organ of state may interfere with the functioning of this institution. In fact organs of state are compelled by section 181 of the Constitution to support the Public Protector and other constitutional institutions.

The work of the Public Protector is principally regulated by section 182 of the Constitution and 5 key pieces of legislation. These are the Public Protector Act of 1994(PPA), the Executive Members Ethics Act of 1998, the Protection and Promotion of Access to Information Act of 2000(PAIA), the Protected Disclosures Act of 2000(PDA) and the Prevention and Combating of Corrupt Activities Act of 2004 (PCCA). The most relevant legislation for the purposes of our topic this evening is the PPA which covers the conduct of all public authorities except court decisions.

Victims can approach the Public Protector anytime when they have complaints regarding improper or prejudicial conduct of an organ of state or public official or public office bearer. Even if it is not a complaint but information or an allegation of impropriety, they may still approach the

Public Protector.

Programme Director;

The only matters excluded from my powers as the Public Protector are matters involving the conduct of private persons/entities and judicial matters. Other matters, such as police and prosecutorial conduct are discretionary matters for me. In other words I can choose to investigate or defer to an internal institution such as the ICD, where police conduct is involved. But even when I ask an agency such as the ICD to investigate, I retain a watching brief. In deciding whether or not to exercise my discretionary right to refer, I take into account whether or not the institution I wish to refer the investigation to has the power to take remedial action as I do under section 192 of the Constitution and corresponding sections of the PPA.

In the Public Protector has focused a lot on the investigative powers.

While continuing to use investigations, we are harnessing the full powers of the Public Protector. We are now exhausting all the powers given to us by law to resolve your complaints in a manner that ensures justice.

We have committed ourselves to a vision that states that we seek: “to be a trusted, effective and accessible Public Protector that rights administrative wrongs and consistently acts with integrity to ensure fair, accountable and responsive decision-making, service and good governance in all state affairs and public administration in all spheres of government”.

Flowing from this vision, are two specific promises, we have made to the public:

- To be accessible to and trusted by all persons and communities;
- To deliver prompt remedial action
- To promote good governance.

The Public Protector has offices spread across the country, where victims can report alleged or suspected improper or prejudicial conduct by the state for investigation. Details can be obtained on our website: www.publicprotector.org or our toll free line 0800 11 20 40.

As we prepare to commemorate National Women’s Day this coming Monday, remembering the bravery shown by 20 000 women, who at the height of apartheid, marched to the Union Buildings against pass laws in 1956, I take this opportunity to commit my office to doing its part to hold the state accountable for discharging its responsibilities with regard to promoting women’s rights and ending gender based violence.

You will agree with me that the state ought to take a lead in the process of giving back to women the human dignity taken away by gender based violence and ensuring that they enjoy the rights given to them by the Constitution and the international human rights instruments such as CEDAW, which we have freely signed as a country.

My office commits itself to working with all stakeholders within the state and civil

society to ensure that the state serves all women and victims or survivors of violence with accountability, integrity and responsiveness.

Thank you.

Adv Thuli Madonsela.