



Address by Public Protector Adv Thuli Madonsela on the occasion of a dinner of the Rotary Club of Johannesburg on Tuesday, November 08, 2011.

**Programme Director;
President of the Rotary Club of Johannesburg, Mr Mike Moriarty;
Members of the Rotary Club;
Ladies and gentlemen;**

I am deeply honoured by the invitation to address this august gathering of the Rotary International and the Rotary Club of Johannesburg.

More than anything, I am humbled because this invitation has made it possible for me to be among a community of humanitarians and exchange views with them. These are the people who make a real difference without any legal obligation to do so!

The Rotary Club of Johannesburg belongs to the global rotary movement, which has over decades seen business and professional persons voluntarily making efforts to provide humanitarian services to the needy, promoting good ethical conduct and advocating for peace.

Apart from the important aspects of ethics and peace, the key word for me in all of this is “humanitarian”, which derives from “humanity”, simply known in my culture as “Ubuntu”.

Ubuntu encapsulates a sense of selflessness, care and compassion, among other things. It talks to an act of willingly providing a service to a stranger or community without expecting anything in return and doing it because it needs to be done and not even requiring public recognition for it.

Unpacking this concept of Ubuntu, fellow humanitarian and former South African state President, Nelson Mandela, put it this way:

“A traveller through a country would stop at a village and he didn't have to ask for food or for water. Once he stops, the people give him food, entertain him. That is one aspect of Ubuntu, but it will have various aspects. Ubuntu does not mean that people should not enrich themselves. The question therefore is: Are you going to do so in order to enable the community around you to be able to improve?”

This explanation of Ubuntu probably best captures the essence of what rotary clubs around the world, including this one, exist for.

While browsing your website in preparation for this address, it was heartening for me to learn of the meaningful contribution you continue to make in improving the lives of the needy and helping develop our society.

I was touched to read about the crèches in Bonsmont and Nancefield, a school in a rural settlement north-west of Johannesburg and a health care clinic in Vosloorus, to mention but a few.

All these and more were built for needy communities, thanks to the devotion of the selfless men and women gathered here tonight with a little help from their counterparts elsewhere in the Americas and Europe.

I have taken a keen interest in this element of Ubuntu because parallels can be drawn from this aspect of your work and what my office does. As a matter of fact, Ubuntu is one of the ten institutional values that my team and I strive to live by in the execution of our duties.

Early this year I attended an event where William Gates Snr gave a keynote address at the Third World Justice Forum in Barcelona Spain. He implored business people across the globe to incorporate corporate social investment as an integral part of business.

He argued that without this contribution by business, we cannot successfully overcome global challenges such as disease and abject poverty. Incidentally some of the participants asked Bill Gates Snr for a recipe for successfully engaging business people in Africa and Asia to interest them in meaningful sustained corporate social investment work.

I am encouraged that your club is already involved in the work Mr Gates and his son are passionate about. The challenge in our context is for pioneers such as yourselves to encourage new business people to do the same. For example, instead of blowing obscene amounts of money in petty ventures such as birthday parties and related social events, these business persons, who are largely beneficiaries of transformative state policies such as Broad Based Black Economic Empowerment, could build schools and hospitals or donate much needed school and hospital equipment in our country.

Getting back to your request that I address you on the role and operations of my office, your invitation and suggestion on the focus of my address got me and my team thinking. We asked: What really did the drafters of our Constitution have in mind when they came with the concept of "protecting the public". Against whom or what was the public to be protected?

Our answer is that the public needs to be protected against potential excesses in the exercise of public power. Like the Swedish Monarch about two centuries ago, the drafters of our Constitution concluded that the traditional checks and balances that seek to curb improper exercise of public power would be inadequate for the constitutional democracy we sought to transform our country into.

This reasoning gave birth to the inclusion in our institutional framework of constitutional bodies such as the Public Protector, Auditor General Human Rights Commission, Independent Electoral Commission and the Public Service Commission.

What exactly does the Public Protector do? Before I outline what my office does, perhaps I should start with the constitutional foundations for the office. The Public Protector is established under section 181 of the Constitution as one of several independent institutions whose mandate is to support and strengthen constitutional democracy. The specific mandate of the Public Protector as outlined in section 182 which states that:

“(1) the Public Protector has the power, as regulated by national legislation-

(a) 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;

(b) to report on that conduct; and

(c) to take appropriate remedial action”

Section 182(4) further provides that:

“The Public Protector must be accessible to all persons and communities”.

Section 182(2) states that:

“The Public Protector has additional powers and functions prescribed by national legislation”.

One of the hidden secrets regarding the statutory mandates of the Public Protector is that the office can review the decisions of the Home Builders Registration Council under the Housing Protection Measures Act and that it has an anticorruption mandate under the Prevention and Combating of Corrupt Activities Act and is one of the agencies with an original mandate to protect whistle blowers under the Protected Disclosures Act. The Public Protector is also one of the information regulators under the Protection of Access to Information Act.

What I believe you already know very well must be the Public Protector’s core and classical mandate to investigate and redress maladministration, abuse of power and abuse of state resources under the Public Protector Act. You also are probably familiar with the mandate as a sole agency responsible for enforcing the Executive Members’ Ethics Act and the Executive Ethics Code.

In the past year we handled over 21 000 cases. Over 14 000 of these were received in the same year while the rest had been carried over from the previous year.

Most of the cases we handle involve classical maladministration in the form of service failure. Service failure predominantly involve service delayed, which includes matters such as business licences, identity documents, residence permits, RDP houses, refugee documents and various social grants.

Service failure often involves service denied. This usually involves contested administrative decisions that refuse one a service. Examples would again include home affairs documents, SASSA grants, municipal billing disputes leading to the suspension of basic municipal services such as water and electricity.

Some time last year I helped a business person from the Caribbean who had been struggling for a long time to get an appropriate permit for his family. When I met him on a plane from Curacao he told me that he had resolved to disinvest in South Africa and wrap up his businesses. After he got the necessary permit following my office's intervention, he informed me that he and his family had resolved to retain some of their business interests.

One of the cases my office mediated recently involved both aspects of service delayed and service denied. The Combined Chairpersons Committee approached me with a complaint that the City of Johannesburg was unreasonably delaying the processing of an application for boom gates. The complainants also mentioned a few instances where they alleged that the opportunity to establish gated communities was declined unreasonably often without reasons being given.

Many South Africans have had their suspended social grants reinstated, unattended social housing applications finally processed, identity and other important document with correct details issued and money owed by government for services rendered paid with interest.

Writing to me after my office successfully unlocked his life in July this year, Mr Vinesh Selvan of Centurion in Pretoria, a military veteran, had the following to say:

“I would like to thank you for the excellent service you brought to me and all the ex-soldiers with regards to the Military Veterans Bill. I have been fighting my personal battle since 2002 and since your appointment; I have seen excellent progress ... Please note that you are one of the few beacons of hope for many people like me. Keep up the good work, your efforts are not in vain and are well appreciated by many people that you never meet or hear of.”

We also have made a significant impact in the areas of accountability with regard to control over state resources and executive ethics. Many of you should be familiar with the transformational impact my office has had on accountability in regard to ethical governance as envisaged in the Executive Ethics Act and Code. You may have also noted the spotlight we have put on weaknesses in the government procurement system, particularly in regard to overpricing and poor quality assurance. These activities emanate from the office's mandates regarding conduct failure which includes corruption.

According to the Chairperson of the Parliamentary Portfolio Committee on Justice and Constitutional Development, Mr Luwellyn Landers, when the Public this institution was established shortly after the dawn of democracy, it was decided that the name Public Protector was favoured over Ombudsman in order to make this institution closer and identifiable to the people.

The idea behind the establishment of the Ombudsman institution was to have a senior public officer to help balance power between the state and citizens beyond the traditional checks and balances within democracy while serving as a buffer that reconciles the two parties.

This would help provide another mechanism to curb excesses in the exercise of power by those entrusted with public power and stewardship over public resources over and above parliaments, courts and tribunals.

However, we have since learned that even in African culture, institutions similar to the Ombudsman have always been in existence. One such institution is the Venda Makhadzi, which have adopted as a model that best describes our role.

The Makhadzi serves as a buffer between the traditional ruler and the people by serving as the voice of the people and ears of the traditional leader. This keeps the traditional ruler in touch with the views and needs of citizens thus reconciling the people and the administration. But the system only works as long as the ruler in question takes the Makhadzi's role as the voice of the people and conscience of the administration seriously.

Except under the EMEA, anyone may lodge a complaint with my office 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, I need not necessarily receive a complaint.

Basically, my office understands its mandate as involving righting administrative wrongs of the state by redressing service and conduct failure.

Our approach to investigations is two-pronged. We strive to promptly resolve each complaint and redress each upheld wrong while assisting organs of state to diagnose and correct systemic administrative deficiencies with a view to curbing recurring service and conduct failures. The systemic interventions include helping organs of state review their internal complaints mechanisms to eliminate the need for my office's involvement in complaints handling.

My office's work is driven by the commitment we have made to the people of South Africa and Parliament, to be accessible to and trusted by all persons and communities; provide prompt remedial action; and promote good governance in all state affairs.

More often than not, people who come into contact with my office want to know if we really have the power to have our decisions implemented by the state. They worry if, like the courts, we can order organs of state to correct their wrongs.

If you look closer, these are very genuine concerns by the people because people who come to my office for help come to me as a last resort after exhausting all available avenues. Therefore, the last thing they want is to suffer secondary victimisation.

Our customers are also in the main poor people who do not have the financial muscle to take the state to court. Neither do they have the time to withstand the lengthy court procedures and processes. They want a quick solution to their problems as some of their complaints involve issues of socio economic rights freedom.

Our view as an office has always been that there is no way that the drafters of our constitution created this institution just to add the numbers. This office was established as an alternative to courts and tribunals. However, its success weighs heavily on the cooperation of organs of state.

While we do not have powers to issue orders like a court of law, this does not mean people can simply tell us where to get off when we direct them to correct their wrongs. This is because the constitution explicitly talks about "taking appropriate remedial action." Furthermore, the Public Protector Act talks "negotiating", "conciliating", "mediating" or using any other means to about resolve complaints. This gives me discretion to either "resolve" complaints, "express a view" or "recommend" corrective action.

For some reason, our detractors always choose to focus on the recommendation, ignoring all these other provisions when attempting to substantiate why they do not want to implement our remedial action.

I always say this and I am going to say it again tonight: If organs of state do not take us seriously enough to make efforts of understanding our constitutional mandate, we might as well close shop because they will continue to ignore us thereby rendering us a gate to nowhere.

I must, however, hasten to put in on record that it not all organs of state that put us in this awkward position. The truth of the matter is that it is only a few bad apples that give government a bad name but we continue to engage them by sitting around the table to interrogate this discourse.

This is important because communities out there are in dire need of basic services that are promised in the Constitution. Some of these services are not reaching them because some people are abusing their power by spending public funds selfishly and are lining their pockets and those of people in their inner circles.

This is in a nutshell what my office does to protect the public. I am eager to take questions to expand on this and clarify areas that did not come across clearly.

Again, let me seize this moment to thank the Rotary Club of Johannesburg for the invitation and laud the Club for the good work it continues to do. Keep up the good work and please recruit more business people as I suggested earlier and may you be blessed with more so that you may do more.

Thank you

**Adv TN Madonsela
Public Protector of the Republic of South Africa**