



Address by Public Protector Adv Thuli Madonsela during the *Dialogue with the Public Protector* titled “A transformed Society is Possible” event in Durban, KwaZulu-Natal on Friday, May 11, 2012.

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**Programme Director and Chairperson, Diakonia Council of Churches r: Rev. Ian Booth;
Executive Director of Dioakonia Mrs Nomabelu.....Dandala
Members of the Diakonia Council of Churches;
Members of the media;
*Ladies and gentlemen;***

It is an honour and privilege to address this gathering tonight. I wish to thank the Diakonia Council of Churches for initiating this dialogue with this important section of the faith community. I particularly liked the idea of conducting a brainstorming session and providing feedback on the notion of a transformed society. I have cherished the feedback and will incorporate it in my feedback to the Public Protector team and dialogue opportunities with leaders of organs of state.

The faith community is not only an important partner in the Public Protector’s efforts aimed at giving people a voice against maladministration and corruption, this community has been a timeless voice of reason in the struggle for democracy, justice and human rights in our country.

I have fond memories of the assistance we frequently got as struggling trade unionists from struggle icons in the faith community such as Dr Beyers Naude and Father Smangaliso Mkhathshwa. From Johannesburg, we were also constantly aware of the selfless and courageous acts of Doakonia as it contributed to the struggle in many forms, including providing support to trade unionists and other struggle activists.

My engagement with you today focuses on opportunities for joining hands in building our nation by stopping maladministration and corruption in their tracks.

I’m engaging with you on the understanding that our country has become what we have collectively made of it. One of the reasons I cherish the opportunity to engage with you tonight is the potential you have as the faith community to make a contribution towards entrenching a culture of stewardship in the exercise of state power and delivery of public services. You also have enormous power to turn the tide against corruption and other abuses of state power and resources.

Yesterday we marked 18 years since President Nelson Mandela was inaugurated as democratic South Africa's first President. Many of us recall, as if it were yesterday, how the atmosphere on 10 May 1994 was filled with excitement, pride and above all hope. Finally, we had abandoned our unjust, exclusive and painful past and were poised for the realisation of an inclusive constitutional state anchored in the rule of law, human rights and a better life for all.

My own reflections on the journey we have travelled thus far as a nation brought about a mixture of joy and sadness.

It gave me a sense of joy to note that on many fronts of the human conditions in our country today is better than yesterday. For example, many more people have homes of their own, access to education, access to water and access to social security grants such as the disability and child grants. There is more even distribution of employment opportunities, particularly in the public sector. Inclusivity in the ownership of and control over the economy has also grown steadily, albeit slowly.

But I could not help feeling sad that many of our people are unemployed with the figures currently being estimated at about 25%. We also know that unemployment continues to have a predominantly black face with the majority of those affected being young African persons.

My reflections though primary centred on the challenges of maladministration and corruption and the impact of these on the constitutional promise of a prosperous South Africa with improved quality of life for all citizens and the freed potential of each person. We often refer to this as the constitutional or South African dream.

This South African dream is after all what powered the struggle that saw President Nelson Mandela being inaugurated as democratic South Africa's first President, 18 years ago. That is the struggle the faith community joined sometimes at personal cost to some its members, among those Dr Beyers Naude, Father Smangaliso Mkhathshwa and many members of Diakonia.

The question I ask, not for the first time, is have we done all we could to deliver the South African dream which powered the struggle? Can we legitimately continue to blame the lack or poor progress on some of the fronts, particularly the elimination of poverty and under development on apartheid? For example can we blame the lack of basic services such as water and sanitary facilities or education facilities on apartheid?

My experience, particularly in the last two and a half years as Public Protector, has convinced me that maladministration and corruption are responsible for many unfulfilled aspects of the South African dream.

The story of the people of Nala in the Free State supports my conclusions.

Towards the end of April my team and I visited the Monyakeng township, within the Nala Municipality in the Free State province, where I had been invited by community leaders mainly young people. The complaint was that a forensic report seeking to address the causes of systemic service delivery failure and ensure accountability for related misconduct, including fraud and corruption, had not been implemented and as a result the problems continued unabated.

Nothing had prepared my team and I for some of the human conditions we discovered during the inspection around the community of Monyakeng. We started with incomplete RDP (social housing) homes that we were told had been in that condition, mainly installed foundations, since the eve of the last national elections in April 2009. Then we went to see an unused community park that had allegedly been paid for but had virtually nothing and had grown wild. We then went to various sites reflecting a dysfunctional sewerage system. This included a pump that was no longer in use, a stream of sewerage water that we were told had just been pumped out shortly before our visit after having overflowed to nearby houses for along time, and a purification plant that had not worked for weeks.

The image that has haunted me since the visit though, was the encounter with a grandmother and a dysfunctional bucket toilet system. A classical example of the marginalised complainant my team and I habitually refer to as Gogo Dlamini, I'll refer to this grandmother as Gogo J.

When we visited Gogo J, the bucket had not been collected for days. She informed us that we were witnessing a regular experience for her and her family. She advised that she often dug holes in her backyard to empty the buckets. But she complained that her children often excavated the waste when playing in the yard and that in any event, when the buckets were full, the children regularly relieved themselves in the back yard. She advised that four members of her family had TB, which she attributed to her appalling living conditions.

The sad reality is that Gogo J's home did have a modern toilet next to the make shift one which used a bucket. During the discussion with Gogo J and later the team of community representatives that were taking us around, we were informed that the reason the proper toilet had become a white elephant was that the piping ended just in front of the toilet and did not link to any reticulation system. It was further alleged that the company that did the shoddy and to be honest fraudulent job, had been paid in full and even more than the original contract price.

The complaint that had brought us there was that a forensic report that had uncovered everything and advised on action to be taken against wrong-doers was gathering dust. The community representatives further alleged that the alleged wrongdoers were being protected because they had powerful connections.

If it is true that contractors were unlawfully favoured resulting in abuse of state resources because of powerful connections, that is corruption as defined in the Prevention and Combating of Corrupt Activities Act. That also fits in with Transparency International's definition of corruption as abuse of entrusted power for personal gain. What we know for now is that the forensic report does confirm allegations of corruption, fraud, abuse of state resources and other forms of maladministration. What we also know for sure is that what happened in Monyakeng cannot be consistent with service delivery in pursuit of the better life all as promised by the Constitution. We can also confirm that money will have to be found somewhere to redo what should have been done properly in the first instance. In ombudsman terms we refer to the conduct in question as maladministration.

An encouraging facet of the Nala story is the fact that despite the extreme conditions, which include occasional spills of sewage into people's homes and which has led to them being ordered by the municipality to stop using the modern toilets until the problem is fixed, the community has still chosen to pursue an avenue provided by the Constitution to engage with organs of state involved.

This brings me to the mandate of the Public Protector, which is one of the public accountability

avenues given to the people by the Constitution.

My office is often referred to as the voice of the people and the conscience of the state. In response to our symbol of choice, we are also increasingly called, the *Makhadzi*. Those of you familiar with Vhenda culture, or at least the TV programme called *Muvhango*, will know that the *Makhadzi* is an aunt with a specific designation to act as a buffer between the rulers and the people. What is the Public Protector and what does this office do?

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.

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.

Many of you are familiar with the Public protector's powers relating to improper conduct under the Constitution and maladministration under the Public Protector Act(PPA). This is a typical power arrangement for an ombudsman institution, which is the global family name for institutions such as the Public Protector.

Introduced in Sweden about 202 years ago, the Ombudsman office sought to strengthen public accountability by adding a non-judicial office to address gaps left by traditional accountability mechanisms such as direct accountability to the public, accountability through Parliament and accountability through the courts.

However, only a few are aware that the South African Public Protector's power transcends the classical Ombudsman's powers. Firstly the constitutional mandate to investigate improper conduct covers virtually all administrative conduct in state affairs. Secondly, the constitutional requirement that the Public Protector takes appropriate remedial action is broader than the traditional requirement that the Ombudsman recommends remedial action.

The PPA itself 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 evidence of criminality, 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 also a safe refuge for whistle-blowers under the Protected Disclosures Act. Under the PDA the Public Protector, the Auditor General and others to be determined by

proclamation, have the power to receive information from whistle-blowers believing that criminal conduct or impropriety has occurred at their place of work.

The Public Protector is also the sole agency with the power to assist the President in the enforcement of the Executive Members' Ethics Act and the Executive Ethics Code. The statutory mandates include the power to act as one of the information regulators under the Promotion of Access to Information Act (PAIA) and a review agency for decisions of the Home Builders Registration Council under the Housing Measures Protection Act.

However, I must indicate that we are happy that Parliament is considering taking away the PAIA mandate with a view to granting it to a specialised agency. We have also asked that the power to review the decisions of the Home Builders Registration Council need to be given to a specialised agency

In pursuit of section 182(1) (c), we also follow up to ensure that the remedial action we have directed is implemented expeditiously. This is done to ensure that the office does not become a gate to nowhere. However, our enforcement is non-judicial and relies primarily on a persuasive public pressure or moral suasion. The media's facilitation of dialogue in this regard is priceless. This is an area where the faith community can also play a critical role.

What else can we do together? I see accessibility of Public Protector services as a key area of impact for the faith community. My office is required by the Constitution to be accessible to all persons and communities. We are constantly making efforts in pursuit of this constitutional injunction but resources make it impossible for my team and I to reach all in an effective way.

We have 20 offices across the country where people can lodge complaints anytime during office hours without appointment. Here in KwaZulu-Natal, we have two offices, one here in eThekweni and the other in Newcastle. The eThekweni office can be found at 22nd Floor, Suite 2114, Commercial City Building while the Newcastle one is located at No 58, Corner Allen and Scott Street.

Complaints can also be lodged through a toll free line, a letter, a fax, e-mail and via our website. We also have mobile offices and other outreach facilities through which my officials and sometimes myself and my deputy visit communities to inform them about our services and to take complaint or reports of maladministration.

We also use the media, particularly the radio, TV and newspapers to reach out to communities. Our outreach efforts include an annual Stakeholder Consultation Dialogue in July to August and an annual Good Governance Week in October.

The issue of accessibility is an area where the faith community can help. Accessibility is not only about physical availability of services but also includes people knowing about those services and using them effectively whenever need arises. The faith community attracts a huge audience, particularly on designated religious days such as Saturdays and Sundays. This makes you a powerful platform from which word can be spread about the roles of institutions such as my office so that our people do not suffer in silence, not knowing where to go. Assistance can also ensure that complaints are lodged early enough before evidence disappears and before people lose everything, including homes. People often approach my office 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 moneys and outstanding ID document matters. My office tries to resolve these in a short-time frame as early resolution matters, from a day to a

maximum of 3 months.

The faith community is also well placed to play an effective role in efforts aimed at combating the twin evils of maladministration and corruption in state affairs. This is not to say there is no corruption in civil society. In fact quite the opposite, we have corruption in the public sector because there is corruption in civil society. Otherwise who corrupts those who exercise public power? Furthermore persons in the public sector are members of all our communities. If our communities have zero tolerance for corruption like communities in countries such as Denmark, New Zealand, Denmark and Singapore, there would be no corruption in any part of our society, including the public sector.

This is why I believe we are where we are in terms of state behaviour because of the choices we have made collectively as a society.

The faith community is excellently positioned to play a role in generating a proper public service ethos that informs public sector decision-making is one that sees public service as stewardship. Those exercising public power need to know it is not their power they exercise but its power given by the people on the basis of trust to be used in service to the people and not the self interests of those entrusted with such power. The faith community's contribution, to form part of moral regeneration, should also include 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.

President Nelson Mandela once said

Religion is one of the most important forces in the world. Whether you are a Christian, a Muslim, a Bhiddist, a Jew, or a Hindu, religion is a great force, and it can help one have command of one's own morality, one's own behaviour, and one's own attitude"

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. Corruption thrives because it tends to be posed as a disease that only affects politicians. What about the public servants? And what about the civil society people that offer or pay bribes to those in the public sector.

In fact the reality is that most maladministration and corruption in government takes place at the lower operational levels without the involvement of politicians. Let us take the Nala experience. Who are the engineers that certified that the piping had been installed according to specifications? They certainly are not politicians. What has been their accountability? I've asked the same questions at Bramfischerville in Gauteng where the community is also battling with a dysfunctional sewerage system. Of course the politicians should provide leadership and oversight. When they interfere in operations as is alleged in Nala, it is then that they can be legitimately blamed.

Going back to collaboration between my office and the faith community, one of the areas the faith community may make an impact is in the area of civic empowerment. To ensure that our constitutional democracy work 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. I understand that Diakonia already does this at the level of local government. 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.

In conclusion, the faith community has enormous power to help promote ethical governance based on public service as stewardship. This should contribute to ending maladministration and corruption. With a stewardship ethos and the absence of maladministration and corruption, we will achieve the ideal of a state that is accountable and operates with the highest level of integrity at all times while being responsive to the needs of all its people.

Together as patriots we are more powerful than forces for maladministration and corruption.

You may further contact us on the toll free number **0800 11 20 40** and for those with access to internet and email, we are reachable on www.publicprotector.org and complaints can also be lodged on registration2@pprotect.org.

Thank you

Adv Thuli Madonsela
Public Protector of the Republic of South Africa