



**Address by Public Protector Adv Thuli Madonsela during the 15th
Annual National Internal Audit Conference at the Sandton Convention
Centre in Johannesburg, Gauteng on Monday, August 13, 2012**

**Programme Director;
Chief Executive Officer of the Institute for Internal Auditors SA, Dr Claudelle von Eck;
The entire leadership of the IIASA;
Chairman of International Integrated Reporting Committee, Corporate Prof Mervin King;
Other participants on today's programme;
Members of the media;
Ladies and gentlemen;**

It is a great honour and privilege to address you this morning. For my team and I, this is yet another opportunity to make the Public Protector accessible to all person and communities in compliance with Section 182(4) of the Constitution.

In the light of the media furore that has ensued since my attendance of a particular stake holder engagement and outreach event in the past week, I was not sure you would still consider me an appropriate person to talk about "*Gaining and maintaining stakeholder confidence*". In the end though I thought that this incident was a good illustration of the central point I intend to make today, which is that gaining and maintaining stakeholder confidence is a dynamic process fraught with ongoing challenges. In stakeholder relations management you can never say "I have arrived".

You will agree with me that as auditors you belong to the family of oversight bodies or integrity sector. As such there are parallels between your work and mine as the Public Protector.

The one thing I am certain about is that the need to be seen by stakeholders as a credible oversight body confronts both of us. Neither of us can make the impact we are required to make on good governance if we lack credibility or stakeholder confidence.

I hold the view that the auditing process is the backbone of good governance and that internal audit has the same critical role as primary health care. Sadly, like primary health care, the leadership of organisations, particularly organs of state, tend not to give internal audit the place it deserves as complying institutions. I believe internal auditing is under appreciated and undervalued by organisations, particularly those within the state.

If internal audit functions optimally, it should be possible to pick up and arrest many of the risks

that lead to the problems uncovered by the Auditor General's report. The same applies to other anomalies my office and other enforcement mechanisms pick up when we step in at the point when there already is an allegation of governance failure. Properly appreciated, auditors play a critical role in prevention and early detection of maladministration and other administrative maladies, including corruption and fraud.

A few weeks ago the country woke up to news that the majority of municipalities had not only failed to obtain clean audits but also that previous recommendations of the Auditor General had tended to fall on deaf ears.

The Auditor General announced that according to his latest audit report on local government structures, none of the municipalities in the Eastern Cape, Free State, Gauteng, Northern Cape or North West received clean audit reports, much to the nation's shock.

While attributing the state of affairs to systemic administrative deficiencies such as: failure to implement key controls; lack of consequences for poor performance and transgressions; and a lack of minimum competencies of officials in key positions, especially those that have to do with financial management; he specifically singled out persistent failure to implement his previous findings as a major factor.

According to the Auditor General, therefore, many of the governance and service delivery failures identified during the latest local government audit are due to failure by the leadership in these organs of state to harness the opportunities the audit process presents for arresting maladministration and related maladies.

Enough said about my views on the importance of auditing, let us go back to the issue of gaining and maintaining stakeholder confidence. I thought I could be of meaningful assistance if I drew from lessons we have learned as the Public Protector SA team on gaining and maintain stakeholder confidence.

As I suggested earlier gaining and maintaining stakeholder confidence, which is inextricably tied to institutional credibility, is a dynamic and never ending process. Let us go back to the media furore I mentioned earlier regarding my attendance of a stakeholder engagement and outreach event.

The broad context is that the Public Protector is specifically required by section 182(4) of the Constitution to be accessible to all persons and communities. To achieve this we use every possible avenue to reach out to all communities and groups.

The specific context is that my team and I are currently involved in our annual stakeholder consultative dialogue. This year's dialogue incorporates public hearings on two systemic investigations, one focussing on RDP housing delivery and the other on alleged illegal conversion of panel vans into minibus taxis. The stakeholder consultative dialogue and public hearings also provide space for communities and groups to engage us on other public service delivery challenges that impact on communities or groups. During the event we also provide tables where persons may privately lodge individual complaints on alleged maladministration unrelated to RDP housing or the alleged illegal conversion of panel vans.

The format of the stakeholder dialogue involves two public events in each province, one with combined special interest groups at a central point such as the legislature and other, an outreach event at a remote village or township. The engagements also include inspections in

loco. Also included, are private meetings we have pre-arranged with special interest groups such as the Legislature and the Executive in the Province and Municipal Councils. Similar meetings are scheduled to take place with political parties at the end of the process. Incidentally, the ANC is, as was the case last year, getting its own meeting while the opposition parties get a combined meeting.

Also included in the stakeholder dialogue, are invitations such as today's, which were accepted on the basis of being found during the planning of the stakeholder engagements to fit in with our broad objectives and accessibility strategy while presenting my office with an opportunity to traverse frontiers we would not be able to reach on our own. The meeting that has incurred the ire of a chief whip of one of the political parties in parliament and an organisation affiliated to this party belongs to this category of meetings.

What's this meeting that has caused so much trouble? Although billed as a rally, the meeting was in fact a workshop with about 700 ordinary women mostly drawn from the poverty stricken parts of Port Elizabeth and surrounding areas. The meeting was organised by a branch of DAWN, full name being DA Women's Network. Other than blue Dawn T-shirts and their party branding, there were no politics. The focus was as per the invitation to me in June 2012, on Constitutional and Other Mechanisms Available to women to redress poverty, unemployment and violence against women. My own speech focussed as usual on the constitutional promise and mechanisms in place for women to enforce rights promised in the constitution and the role of the Public Protector as one of such mechanisms. I explained my office's mandate, its modus operandi, including the RDP systemic investigation and impact on poverty and gender violence. At the end, the women were presented with an opportunity to ask questions and lodge complaints as is normal practice, which they did. Indeed most of the complaints related to RDP housing and the delivery of public services relating to violence against women.

While some of the inputs dealt with the difficult issue of feedback on service delivery changes allegedly confronted under our own Eastern Cape provincial office, we left in high spirits believing we had scored a small but important goal towards our constitutional obligation to be accessible to all persons and communities. We thought we had made a difference in the lives of over 700 ordinary women.

When the following morning my chief of staff received an enquiry from the ANC Parliamentary Chief Whip, we thought it odd but quickly explained the nature of the meeting, including that it was not a DA political rally and thought the matter had been disposed of. I must say we were totally surprised when around 16:30; the same office issued a statement condemning our presence at the meeting.

Having been assured by more balanced perspectives in social media discourses on the matter, a further condemnation of the attendance by a TV programme and another condemning statement by the South African Communist Party (SAPC), were confusing.

What lessons have we learned on building stakeholder confidence from this incidence and other experiences my office has had over the years?

(1) The first lesson is the one I started with. Stakeholder confidence must be ***gained and maintained on an ongoing basis.***

One of our strategic goals as an organisation is to ensure that we are accessible to and trusted by persons and communities. We seek to achieve this through our operations and

communication, including outreach initiatives.

An incident such as the one I have related provides some indication that there may be groups or components of groups that have trust issues with my office. This is identified as an opportunity for dialogue with that group to get to the root of the perception and if we thereafter deem it appropriate, we adapt our operations. I must indicate that we do not arbitrarily adapt our operations because one stakeholder or group wants things done their way. Mine is always a principled decision that I can stand the test of the standards set in the constitution, particularly the requirements of independence, impartiality and operating without fear or favour.

The late Chief Justice Ismail Mahomed once said that one of the keys to judicial independence lies in the judges themselves ensuring that their conduct was above reproach. Although separate from the judiciary, the Public Protector is an important non-judicial public accountability mechanism, to whom this wisdom applies. The council also applies to other oversight bodies, including internal and external auditors. Going beyond being impartial and ensuring that my office is not just impartial in fact but is also perceived to be impartial is something that my team thrives for on a day to day basis.

Incidentally, it was in pursuit of this principled stand that we accepted the invitation to address the women we addressed on Thursday August 09, 2012. We meant to convey a message that we do not care who you are affiliated to, you will get our service because you are citizens and residents of South Africa.

But it has become clear that the issue of attending meetings of this nature poses an ethical dilemma. I'm interested in your views? What would you have had me do? In future when women, workers, people with disabilities or any special interest group affiliated to or associated with a political party invites me, must I decline? When I do so do I lie and say I will not be available or, do I say no I will not come because the organising body is part of or is affiliated to a political party.

(2) **Credibility** is non-negotiable and that credibility is primarily linked to the integrity associated with your work.

As the Public Protector Team we strive to balance rigour and swiftness in our investigations. It is important to us that we never say there was no wrong doing when there was or there was wrong doing when the wasn't. This often means independent investigation of the facts beyond the stories and documents we are given by actors in organs of state or state affairs. Swift action is not only about complying with the adage that justice delayed is justice denied but also to ensure that the answers we provide are relevant and not academic. I must indicate though that with resource constraints, this delicate balance is a constant challenge.

Independence and impartiality are paramount not only as a reality but also in terms of perceptions. It is often said that to each person their perception is their only reality. One of the lessons we learned from the incident I related earlier is the need to constantly anticipate and deal with perceptions. Even if a decision is fair its credibility is compromised when a perception of bias is allowed to fester. I must say though that certain political games will always be there and cannot be helped. Who hasn't heard of stories of criminals who having been caught red-handed insist on telling fellow in-mates that they are in prison because of the judicial officer's bias or some other unfair action(s) that conspired to place them there?

Consistency is another important factor. People will not trust a system that seems to be

swayed by immaterial considerations such as the identity of the complainants and respondents. Paying attention to my previous decisions, which we refer to as touchstones, is one of the means we employ to ensure that similar circumstances are not treated differently. However, stakeholders often do not understand the distinguishing factors. For example in my case, I've had comparisons drawn between the *Against the Rules* reports and the *Yes We Made Mistakes report*. To those able to take the time to read my reports, the differences are very obvious. It gives my team and I enormous gratification to see self referrals such as that of the Deputy President as they suggest a level of trust in the integrity of my office's work.

Transparency is an important part of gaining and maintaining stakeholder confidence. In writing my reports, we strive to ensure that it is clear to the reader what evidence or factors were taken into account and how the evidence was sourced. We keep that narrative simple. We ask: What happened or probably happened? What should have happened? Is there a discrepancy between the standard that should have been upheld and the challenged conduct? If the finding is that there was a discrepancy the next step is to determine if the discrepancy constitutes maladministration and what should be the appropriate remedial action.

Consequences are another important factor regarding gaining and maintaining stakeholder confidence. On issues of justice in the context of service failure, we endeavour to place the complainant as close as possible to where they would have been but for the impugned action. In conduct failure cases, including corruption, we seek to ensure that there is no impunity and that where state resources were abused or appropriated.

Impact is another important factor in stakeholder confidence. Stakeholders want to be ensured that your existence as an oversight body offers value for money. This is something that has been hammered by Parliament since I assumed office. A question was raised during my first interface with the Parliamentary Portfolio on Justice and Constitutional Development. What would the people of South Africa miss if your office ceased to exist? Confidence is built when affected parties are convinced that you make apposite difference in their lives, particularly the pursuit of their legitimate aspirations. In so far as organs of state are concerned such impact includes improving their performance against the requisite standards and reduction of risks on non-compliance in the future. The RDP housing fiasco is an example.

Regular interface or dialogue with stakeholders is an important factor in gaining and maintaining confidence. It's important that the communication is regular and effective. This includes ensuring that written materials such as reports are easy to understand. In this regard I like the Auditor General's Dash Board reports as they not only suggest that the Auditor General cares about the success of the organs of state and is willing to assist them to get there but also provides them with guidance and early warning opportunities to arrest risks that may lead to adverse negative findings. With the Public Protector team the annual stakeholder engagement process is inspired by similar considerations and so are regular one to one dialogues with leaders of stakeholder organisations especially organs of state. The same applies to the National Good Governance Focus Week we sponsor annually in October. Our new stakeholder empowerment strategy includes outreach materials directed at organs of state and planned seminars on good governance, public accountability and remedial action.

Empathy is an undervalued dimension of stakeholder confidence. Stakeholders need to feel understood and that the oversight body cares about their vision and circumstances. In an investigation process this applies to both complainants and respondents.

I have briefly shared with you the lessons we've learned as the Public Protector SA team on

gaining and maintaining stakeholder confidence. While these are specific to our experience in pursuit of our mandate of exacting accountability in the exercise of state power as envisaged in section 182 of the Constitution and various laws, I am certain that there are some parallels with your work as auditors. For example the issue of making a difference is critical for internal auditors as a primary mechanism for safeguarding good governance. As indicated earlier, if this works a lot of the risks that lead to adverse audit findings or findings of the Public Protector in the public sector should be reduced. The same applies to some of the fraud scandals that have rocked the financial services sector overseas, in the last few years.

Before I conclude I also thought it was important that I take this opportunity to engage you on the importance of strengthening synergies between the various oversight mechanisms. We know for example that corruption and fraud are not easily picked up during regular auditing. However, by highlighting anomalies and possibly referring these to complementary oversight of oversight bodies such as the Public Protector, synergies may be strengthened thus reducing the opportunity of maladies such as corruption falling through the cracks. To achieve this effectively, we need to know each others mandates. The Auditor General's and my office have identified this as a priority for our offices and we intend to adapt our memorandum of understanding soon to factor in this understanding.

As you know his is an auditing body while mine is an investigating agency that comes in when there's an allegation or suspicion of wrongdoing. My office acts primarily in terms of section 181-2 of the Constitution, which requires the Public Protector to strengthen constitutional democracy by investigating any alleged or suspected improper conduct in state affairs, to report on that conduct and to take appropriate remedial action.

My office also acts in terms of additional powers assigned by various laws, key among these being six statutes. The Public Protector Act is the principal legislation and confirms the investigative power over improper conduct labelled as maladministration, abuse of power and abuse of state resources among others while conferring additional power to resolve public grievances through conciliation, mediation, negotiation and any other means I deem appropriate.

Another important law is the Executive Members' Ethics Act, appoints the Public Protector as the sole agency to enforce the Executive Ethics Code. The Public Protector and the Auditor General also have the power to receive information from and to protect whistleblowers under the Protected Disclosures Act. There is also an anti-corruption mandate under the Prevention and Combating of Corrupt Activities Act. An unusual mandate is the power to review the decisions of the Home Builders Registration Council under the Housing Measures Act. The Public Protector also currently serves as one of the information regulators under the Promotion of Access to Information Act.

We value stakeholder collaboration. We believe that working together we can make a more visible difference in the pursuit of good governance and eradicating maladministration, corruption and related maladies.

We accordingly extend our hand to you with a view to collaborating in any legitimate way to strengthen our efforts in strengthening public accountability, integrity and responsiveness.

Adv TN Madonsela
Public Protector of the Republic of South Africa

