



Address by Public Protector Adv. Thuli Madonsela during the 35th Crime Stoppers International Conference in Cape Town, Western Cape on Tuesday, October 14, 2014

**Minister of Environmental Affairs, Edna Molewa
Crime Stoppers International President, Mr Alex MacDonald
Directors of Crime Stoppers International
Conference Chairman, Mr Yusuf Abramjee
Mr Michael Burgin of the US Secret Service
Dutch National Special Rapporteur on Human Trafficking, Ms Corrine Dettmeijer-Vermeulen
Senior SAPS officials
Corporates
NGOs
Members of the public
Members of the media
Distinguished guests
Ladies and gentlemen**

The Public Protector SA Team and I are honoured by the privilege of participating in this historical event, the 35th International Crime Stoppers Conference, organised under the theme "It's time For Change."

I understand that our beautiful continent, Africa, is hosting this global gathering of Change Agents dedicated to combatting crime for the first time and that there's about 600 activists in this room.

Congratulations to Crime Line and the South African Police Service, the joint organizers, for a job well done. I believe the successful collaboration between a civil society and government is based on appreciating the need for closing the cracks in our societies that only benefit criminals.

My brief contribution this morning focuses on the role of my office, the Public Protector South Africa, in the fight against the crime of corruption. I must indicate upfront that our crime combatting role as the Public Protector SA transcends our contribution to anti-corruption efforts.

As fellow South Africans already know, the Public Protector is an independent constitutional body given power by the Constitution to investigate improper conduct in state affairs, including maladministration, abuse of power, abuse of public resources, unethical conduct and corruption, to report on that conduct and to take appropriate remedial action. This mandate goes into various dimensions of state efforts against crime in addition to corruption and malfeasance. With regard to crimes other than corruption and malfeasance, our role as the Public Protector is that of policing those that have the direct responsibility to combat crime.

How does this work? Let's examine two case studies.

One of my first reports as the Public Protector involved red-carding our colleagues, in the SAPS, for not taking timely action to investigate alleged drug trafficking activities at a house in Pretoria. By the time the investigation took off the criminals had been warned and they had relocated but leaving behind evidence, including a police radio. Implementation of remedial action included charging the police officers that were found to have been involved in the drug syndicate.

Another of my early reports involved red-carding the entire justice system for failing a gang rape victim who had endured having her case postponed 48 times in 9 years before the culprits were successfully brought to book. Remedial action included a diagnosis of the criminal justice process to identify systemic administrative deficiencies that had enabled the ball dropping and closing the gaps, in addition to consolatory payment to the victim.

On the specific question of the crime of corruption, yesterday I was asked by Transparency International and Corruption Watch, on when was my first experience of the crime of corruption. I battled. I eventually told them about the traffic officer who asked my team and I for "cool drink" after we were caught exceeding the speed limit shortly after the dawn of democracy. Although I was not the driver, being the most senior in the car, I immediately took over the negotiations. When the "cool drink" request was made, I quickly dispatched someone to the car boot to check through leftovers from the official function we were coming from. Delighted to find a can of soda, I cheerfully offered it to the officer, who politely declined and indicated the request had been a joke. When we told our colleagues at the Department of Justice about the encounter the following day, they had a good laugh at our ignorance and explained that the fellow had been asking for a bribe.

But was that really my first encounter with corruption. It dawned on me that many encounters I had as I was growing up may have been taken for granted as normal, like the stories I used to hear about a Home Affairs office at a place in SOWETO called New Canada. The gratification requests I heard about then included demands for sexual favours in addition to normal monetary bribes.

Talking about Home Affairs, why was corruption so rampant then? I believe Professor Robert Klitgaard's equation on corruption, offers some answers. According to Klitgaard, Corruption (C)=Monopoly (M) + Discretion(D) -Accountability (A). The apartheid state allowed monopoly of decision-making minus many contemporary safeguards excesses such as transparency and supervised exercise of public power. The final say in many instances was with either the Executive or the Legislature. While the judiciary played a crucial role, particularly in the area of administrative law, many ordinary persons, the ones we refer to as Gogo Dlamini's could not afford the courts.

In the apartheid state, there was too much discretion for state decision-makers such as home affairs officials. Among other things, there were no guaranteed fundamental human rights, which citizens and residents could claim as basic entitlements that limit the discretion of officials. We also know that there wasn't much accountability either. Of course the courts played some role in ensuring accountability but without a Constitution that clearly spells out citizen entitlements and dos and don'ts for those entrusted with public power, accountability was an uphill battle. But even then civil society agencies such as the Black Sash, Lawyers For Human Rights and the

Legal Resources Centre made some difference regarding accountability. Where are we today and what do accountability forums or bodies such as the Public Protector or Ombudsman offer against corruption in a democracy?

As I reflected on all of this while preparing my address, I came across a speech by the former General Secretary of the United Nations, Mr Kofi Annan, when he addressed the UN General Assembly during the adoption of the UN Convention Against Corruption in New York, eleven years ago. Mr Annan said the following:

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish.”

He went further to say:

“This evil phenomenon is found in all countries big and small, rich and poor but it is in the developing world that its effects are most destructive. [It] hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid.”

I'm certain Mr Annan's sentiments resonate with each and everyone of you as crime combatting change agents. It could be said that you agree that corruption, as part of a broader problem of crime, is a common enemy that we must all mobilise against and defeat.

You will further agree that to succeed against crime not only must we use all our arsenal against it but we must also close the cracks. One of those cracks is impunity. If criminals know they can play the system to evade accountability, more will do the same, and before we realize what's happening the rule of law will be undermined.

My long held view is that corruption is a societal than rather than governmental problem. I'm certain that that's your view too. I'm also certain that we are here today because we believe that crime generally is a societal problem and in the light of globalization, a global problem.

On corruption, I'm sure that it is our common belief that if there was no corrupt individual in society, there would be none in the public sector. There would also be no corruption in the private sector. On the question of private sector corruption, let us not forget that it is as insidious and harmful to particularly the poor as public sector crime. Consider the Wall Street shenanigans that caused a global economic collapse. Here at home we have the bread price fixing scandal that robbed mostly the poor as it is they that principally depend on bread. We also have had price fixing in construction, which is probably partly responsible for obscene price escalation in building materials. Then we have the auction collusion scandal that our modern day Robin Hood, the fearless Wendy Applebam is fearlessly tackling as she concurrently tackles unscrupulous credit providers.

Back to our anti-corruption work as a Public Protector, we are able to make a difference against corruption because we are part of an integrity system that is built to last. The constitutional architecture of our accountability system, particularly in the public sector, is designed in a manner that fosters synergies that limit impunity. My office for example, is part of administrative reinforcements introduced in the new constitutional architecture to remedy the cracks that according to Klitgard, enable corruption through the $C=M+D-A$ equation.

Part of the accountability safeguards are entrenched in Chapter 9 of the Constitution. They were designed, as President Mandela acknowledges, to limit the power of political actors in the state as these, even when benevolent, can be self-serving or make mistakes.

We know that corruption is a matter of self-interest trumping public interest.

This takes me to the definition of corruption. What is corruption? In South Africa we use the simple Transparency International (TI) definition and one in the Prevention and Combatting Corrupt Activities Act. Let us start with the Transparency International (TI) one. "Corruption is the abuse of entrusted power for private gain," states TI.

The Prevention and Combating of Corrupt Activities Act essentially defines corruption as involving the influencing of a party by another to make a dishonest decision for gratification.

The key phrases that we pick up from these two definitions are "abuse of entrusted power" and "the influencing of one by another" as well as "private gain" and "gratification."

These definitions were carefully worded with the understanding that modern corruption transcends the offering and acceptance of bribes.

I am often asked the question: Is South Africa a corrupt country? My response is always: No, we are certainly not a corrupt country. Like many other nations, we are a country that has a problem of corruption. I must add that we are a country that is built to fight and is resolutely fighting corruption and other crimes and threats to the rule of law.

According to the 2014 Ibrahim Index of African Governance, we are number 4 after Mauritius, Cape Verde and Botswana. This is good and we should build on it, going forward.

We owe our success in this regard to a multi-pronged approach to promoting good governance including combatting corruption. We have a sound constitutional and legal framework with a complimentary arsenal of anti-corruption safeguards that we have established since the dawn of our 20-year-old democracy.

Our Constitution, which is the supreme law of the country, lays the foundation, which includes dos and don'ts for those entrusted with public power. Constitutional imperatives include open democracy, public accountability, the supremacy of the Constitution and the rule of law. Supremacy of the Constitution means our courts, with the Constitutional Court at their pinnacle, have a final say on conduct required in compliance with the Constitution and people's right

Regarding legislation, we have the Prevention and Combatting of Corrupt Activities Act, the Prevention of Organized Crime Act, the Protected Disclosures Act, the Witness Protection Act and the Financial Intelligence Centre Act and the Public Protector Act among others.

On the watchdogs like us, we have the Directorate for Priority Crime Investigation also known as the Hawks, the Independent Police Investigation Directorate, both falling under the SAPS, the Asset Forfeiture Unit under the National Prosecuting Authority, the Special Investigating Unit, Witness Protection Unit, the Presidential

Hotline and the Anti-corruption Coordinating Committee under the Department of Public Service and Administration. We also have independent constitutional institutions with administrative oversight powers, which include the Public Protector, the Auditor-General and the Independent Electoral Commission and the Public Service Commission. Human Rights bodies such as the South African Human Rights Commission also play a role in fostering integrity by limiting discretion of decision-makers through enforcing human rights.

Our corruption mandate, as the Public Protector, comes from section 182 of the Constitution, giving us powers to investigate, report on and remedy maladministration, read with legislation that includes the Public Protector Act, the PCCAA, read with relevant sections of the PPA. Complaints can also be lodged under the PDA, under which assigns my office and the Auditor-General as safe harbours for whistle/blowers

Like the police, we can investigate cases and if evidence of criminality is uncovered, we handover the information to the National Prosecuting Authority for prosecution and or ask the Asset Forfeiture Unit to take action. The NPA under Adv. Menzi Simelane had began the process of strengthening synergies. Our deliberations in this regard recognized that calling some of the conduct on maladministration our remit first. Devore prosecution can bolster the subsequent prosecutorial process. We've seen evidence of this in action on some of the cases that have since been prosecuted following our findings of maladministration involving corruption and malfeasance.

In conclusion, I have already noted that South Africa is fourth on the Ibrahim Index of African Governance. To improve on that we need to take a hardline stance in the following approach.

Borrowing from the theme, I would say It's Time:

- 1) To respect our Constitution and the rule of law, with the understanding that not a single one of us is above the law.
- 2) Linked to this is accountability; we come from a very dark past, where, as the President Mandela once said, the then government was neither accountable nor transparent. This is precisely why we should not let our guard down, basking in the glory of a world-renowned and progressive Constitution. We must ensure that no one

, especially those exercising public power and control over state resources, escapes scrutiny and accountability.

3) Ending impunity: if evidence of wrongdoing is found, action must be taken. No one should be spared. The day we allow impunity for some in society is the day we would have sold our hard-earned democracy to the highest bidder.

4) Shun and deal with retail or small acts of corruption as it fosters a culture of acceptance of wrong. We need to shun corruption wherever it surfaces.

5) And let it not stop there. Let us report corruption. I have already referred to a variety of agencies that have a mandate to fight corruption. Whatever you do, don't turn a blind eye because the ghost of what you plead ignorance to might just come back to haunt you in the long run.

6) The integrity sector needs to work more collaboratively and strengthen synergies. There is a need for a united front against this common enemy, corruption.

7) Protect whistle blowers, they are a critical part of the solution.

I'm certain your dialogue will emerge with solutions that will make a difference in the fight against all crimes, including the insidious soulless crime of corruption. You will also somehow contribute towards ensuring that future generations inherit states are accountable state that operate with integrity at all times while being responsive to the needs of all people. Remember we're either part of the problem through our words and actions or part of the solution. The only ones that celebrate the cracks are criminals, including those involved in corruption.

Don't forget to enjoy the beautiful city of Cape Town and if possible enjoy the rest of our beautiful country.

It's Time For Change indeed!

Thank you.

Adv. Thuli Madonsela
Public Protector of South Africa