



**Address by Public Protector Adv Thuli Madonsela during a Press
National Club Media briefing held at the Court Classique Hotel in
Arcadia, Pretoria on Wednesday, November 24, 2010**

24 November 2010

**Chairperson of the National Press Club, Ms Doreen Ghogh;
Other members of the Executive Committee present;
Members of the media;
Ladies and gentlemen;**

It is always an honour for me to address the National Press Club. The media is a very important stakeholder with a critical role in ensuring that my office effectively plays its role of giving the people of South Africa a voice, remedying government's administrative injustices or failures and reconciling the people with the state.

Today marks a very important moment in the history of the Public Protector as a constitutional institution. For the first time since this office was established in 1995, we have created rules that will strengthen the Public Protector's power to exact accountability when service or conduct fails in the administration of state affairs.

Aimed at expediting the resolution of complaints and ensuring compliance with the Public Protector's remedial action and recommendations by organs of state found guilty of failing the public, these rules will standardise timelines, subpoenas, search and seizures and contempt of the Public Protector orders, among other things.

Noting the critical role that my office and other constitutional institutions play in strengthening and supporting our constitutional democracy through exacting accountability, former President of the Republic of South Africa and renowned humanitarian, Nelson Mandela once said that:

"Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to the scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new constitutional order.

An essential part of that constitutional architecture is those state institutions supporting

constitutional democracy. Amongst those are the Public Protector, the Human Rights Commission, the Auditor General, the Independent Electoral Commission, the Commission on Gender Equality, the Constitutional Court and others.”

The President of South Africa, His Excellency Mr Jacob Zuma, has acted in a manner that suggests that he shares former President Nelson Mandela’s views on the importance of the Public Protector as one of the checks and balances against maladministration and related state excesses in dealing with people and public resources. In the Presidency’s dealings with my office, the President has remained true to the remarks he made upon my appointment just over a year ago when he said:

The Public Protector “takes on an important responsibility, having to protect South Africans against any abuse of power by state organs or officials.” He further noted that the Public Protector needs to ensure that this office “continues to be accessible to ordinary citizens and undertakes its work without fear or favour.”

Such conduct is encouraging to me and my team as it suggests an appreciation of the fact that the drafters of the Constitution deliberately gave the people of South Africa an additional avenue to the courts and tribunals for accessing justice and exacting accountability on public officials and office bearers. The conduct further suggests an appreciation that complaining against or reporting improper conduct by organs of state is not criticism but a form of dialogue that seeks not only to remedy administrative injustices by the state but also seeks to keep government in touch with the needs, thoughts and wishes of its people. This cannot be bad for democracy and the pursuit of the country’s developmental objectives, including Millennium Development Goals.

Unfortunately, there are a few organs of state and actors who disregard the Public Protector’s processes, findings and views on remedial action. One or two of these have even questioned my powers at the expense of distressed citizens who chose this cost free avenue instead of courts and tribunals in the belief that the Constitution and the law are not bluffing them when they state that the Public Protector must provide remedial action and resolve disputes involving the conduct of organs of state.

Recently I received a letter from one national department, incorporating advice from a state lawyer, which advised that the organ of state in question had no legal obligation to implement my findings. After correctly stating section 182 of the Constitution which gives me the power to take remedial action and the Public Protector Act which gives me the power to resolve disputes involving alleged maladministration, abuse of power and prejudicial conduct by organs of state, the legal opinion cited some archaic academic article that said the Ombudsman institution is only entitled to make recommendations.

The opinion given to the organ of state in question not only failed to understand the constitutional and legal foundations of the Public Protector but also disregarded abundant contemporary jurisprudence on the institution of the Ombudsman. Contemporary jurisprudence states, among others, that each institution has powers as vested by statute and that organs of state may only refuse to implement the findings of an Ombudsman if they have cogent reasons for disputing such findings.

Many of the findings that sought to alleviate the plight of distressed citizens who had suffered injustice or prejudice due to acts and omissions of government were being rejected. Incidentally, in total disregard of the principle of maladministration or bad administration underpinning the Public Protector’s mandate and principles of administrative justice, which constitute one of the

pillars of our constitutional democracy, the misleading advice informed the organ of state that since its action was not unlawful, there was no impropriety or wrong.

I admit that organs of state need not swallow all I say lock stock and barrel. The issue is that there must be cogent reasons for contesting my findings and in the case in point, my office cannot find any. In any event when it comes to the duty on organs of state or state actors to respond promptly to communication from my office and to attend meetings, this is not negotiable.

It is in such cases that my office is not going to hesitate to use its full powers to exact compliance with the Constitution and the law. This will include subpoenas and an order of contempt of the Public Protector where appropriate. This brings me back to the rules we are launching today. The rules seek to strengthen our measures on ensuring cooperation with the investigations by my office and the implementation of my findings.

The development of the rules which will be published in the Government Gazette for public comments early next week, is in line with section 7 (11) of the Public Protector Act of 1994. The Act states that the Public Protector may make rules in respect of matters that have a bearing on investigations provided that such rules are published in the Gazette and tabled in the National Assembly.

Heavily influenced by our resolve to, among other things, provide prompt remedial action on all complaints lodged, we find it unacceptable that some organs of state still give us a run-around when we seek answers on behalf of distressed or aggrieved members of the public.

The people who come to my office for help often have no financial means to take the mighty state to court and come to me as a last resort, believing that my office can provide them with justice free of charge and quicker than tribunals and courts. If my office, with the powers vested on it by the Constitution and national legislation, struggles to help the ordinary old woman in the street with a legitimate complaint against the state due to a non-cooperative organ of state, then invoking the full powers given to me by the law is the only way to go. This includes issuing a subpoena, search and seizure and a contempt of the Public Protector order.

Chairperson;

I must say, however, that I am encouraged by those organs of state that recognize and respect the role of my office and continue to implement my findings on maladministration and remedial action. This exemplary conduct ought to rub-off on the few that are still problematic for the benefit of our constitutional democracy and the government's own integrity.

The rules, as I have indicated before, also seek to ensure more transparency regarding the operations of my office. More importantly this will be a key mechanism for ensuring that timelines are kept and accordingly case turnaround times are drastically reduced leading to prompt remedial action as promised in our strategic objectives. Copies of the rules are included in your packs that will be distributed shortly.

Ladies and gentlemen;

Today, I am also releasing some of the reports that I have finalised and issued since our last media briefing in June 2010. In the main, these relate to the cases we refer to as "bread and

butter” matters and other issues that involve ordinary people. There are also cases that deal with ethical conduct and integrity in the conduct of state affairs. Some of the cases combine both conduct service and conduct failure.

There are 16 reports. They include my findings in an investigation where the Durban Commercial Crimes Unit failed to act in accordance with the law resulting in the complainant suffering financial prejudice. In this case my findings include comparable financial compensation. Another case involves an internship applicant that was robbed of an internship while the salary under her name was fraudulently paid to someone else. Here my findings include compensation and an internal investigation with a view to disciplinary action against those involved in conduct failure. There’s also a report on abuse of power by a state institution that is meant to be a custodian of justice and fairness.

This is just a sample of the interventions of my office that have made a difference through redressing administrative injustices or failures of the state while generally promoting good governance. Many of the matters are settled through a predominantly friendly or informal early resolution process.

You will find copies of all the reports in disks as part of your packs also. A few printed copies are also available for your perusal during this session.

Programme Director;

I would like to take this opportunity to express my deepest gratitude to the media and members of the public that have continuously supported the work of my office in the last 13 months since I took office. We continue to rely on you to identify matters that we need to consider for investigation, leads on evidence, particularly in matters involving conduct failure, including corruption. Some of the investigations my office has undertaken in the past year were a result of good investigative work by the media to expose the rot in state affairs. Some also dealt with systemic service failure affecting communities that had no voice of their own.

The media also helps keep my office on its toes regarding turnaround times and quality of work. We constantly receive calls and e-mails seeking progress regarding these investigations. This shows how passionate the media and society are about instilling senses of good governance, accountability and integrity in the public sector. These principles and the principle of responsive governance are central to the existence and functioning of my office.

I trust that we will continue to work together to ensure that those wronged by the state get tangible justice and that the state is continuously alive to the needs of its people while being to entrench good governance and the rule of law.

I am happy to take questions on the rules, the reports issued today and some of the investigations currently underway for purposes of bringing you up to speed with progress on all matters of interest to you regarding my office.

But before questions, and through you Chairperson, I would like to give the Deputy Public Protector, Adv Mamiki Shai, an opportunity to briefly take us through the key details regarding the rules. I thank her and the team that worked with her in the drafting of the rules.

I also thank the rest of my team for the hard work and responsiveness that enables this office to deliver on its constitutional mandate and promises. The work is done under enormous resource

constrains and in this regard I hope government will eventually give the office a reasonable amount of resources to realistically pursue its constitutional and statutory mandate.

Thank you

Public Protector South Africa
Adv TN Madonsela