



**Address by the Public Protector, Adv Thuli Madonsela on the occasion
of the Provincial Stakeholder Forum at the Capricorn District
Municipality, Limpopo**

25 March 2010

**Programme Director,
Mr N D, Masemola, MEC for Education,
Mr L Masoga, Member of the Provincial legislature,
Mr M Monakedi, Executive Mayor,
Mr SP Mdaka, Executive Mayor,
Ms N Mateta, Provincial Electoral Officer and Leaders of Other Chapter 9 Institutions and
Statutory Bodies,
Members of the Media,
Traditional and Religious Leaders,
Community Leaders,
Ladies and Gentlemen:**

I am deeply grateful to all of you for honouring this event and extend the warmest greetings from myself and the entire Public Protector team.

You probably already know that this meeting is part of a nation-wide stakeholder consultative process. In fact you are the 8th province that I'm meeting. After this I'll be going to Mpumalanga. I'm also hosting a national consultative forum on the 29th where I will present feedback on these provincial consultative meetings.

The purpose of today's meeting and similar meetings I've held in other provinces is to introduce myself to you as stakeholders and get your views on the constitutional mandate of the Public Protector. I also seek to share with you my vision for this important anchor of our constitutional democracy and the strategic priorities my office and I have agreed to having taken into account stakeholder inputs we have received since December last year. These engagements also seek to create and strengthen relationships to facilitate cooperation, particularly by organs of state when approached by anyone on behalf of the Public Protector.

Let us now briefly discuss the constitutional Mandate of the Public Protector. The Constitution establishes the Public Protector as one of six (6) institutions whose mandate is to support and strengthen constitutional democracy. These institutions, which are created by Chapter 9 of the Constitution, are usually referred to as Constitutional Institutions or Chapter 9 Institutions.

The Public Protector has the most general mandate of them all. Its powers and functions cover virtually every conduct by the state or public authorities. The only public sector matters excluded from the Public Protector's jurisdiction are judicial functions. What exactly does the Public Protector do? Section 182 of the Constitution states the following:

1. The Public Protector has the power as regulated by national legislation-
 - 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;
 - to report on that conduct; and
 - to take appropriate remedial action,
2. The Public Protector has the additional powers and functions prescribed by national legislation,
3. The Public Protector may not investigate court decisions,
4. he Public Protector must be accessible to all persons and communities

Key pieces of legislation that gives the Public additional powers are the following:

- Public Protector Act, No 23 of 1994; and
- Executive Members' Ethics Act, No 82 of 1998

The Public Protector Act gives the Public Protector a comprehensive mandate that basically involves accepting or identifying complaints against any part of the state and investigating or resolving them through Investigating, ADR or any other means that achieves remedial action.

In other words the Public Protector ensures that the state and those who exercise state power (State actors) are accountable for their actions and omissions. Some people call the Public Protector "the Gripe Master". My guess is that this nickname springs from the understanding that whatever dissatisfaction you have with the conduct or decision of a public authority, the Public Protector is the place to go.

The Executive Members' Ethics Act assigns the Public Protector the sole responsibility of investigating and reporting on any violations of the Executive Ethics Code by members of the Executive (Cabinet and Provincial Executives). There are a few differences between this and the Public Protector Act. The first difference is that the Executive Members' Ethics Act restricts the power to initiate an investigation to Members of Parliament and Provincial Legislatures. The second difference is that the Executive Members' Ethics Act does not give the Public Protector a discretion regarding whether to investigate or not to do so. Another key difference is that this Act specifies that an investigation must be concluded within thirty days and that the Public Protector must submit his/her report, with recommendations, to the President within 30 days to forward to Parliament within 14 days.

The Public Protector's investigative and dispute resolution powers regarding state conduct are further reinforced by additional mandates under legislation such as the Prevention and

Combating of Corrupt Activities Act, No12 of 2004, Protected Disclosures Act, No 26 of 2000 and the Promotion of Access to Information Act, No2 of 2000. The full list is provided is the one page summary of our vision that we have distributed and the actual laws are captured in a booklet on Legislation Regulating the Work of the Public Protector that we recently compiled.

Ladies and Gentlemen,

I must quickly mention that the services of the Public Protector are free. You may complain or make an allegation about any matter involving improper or prejudicial state conduct. Off course we would prefer that you do not make any frivolous, malicious or baseless allegations.

Otherwise, your complaint may be as simple as a matter of rudeness by a state official or office bearer. Incidentally, I had one such matter two weeks ago when a person complained about a Maintenance Court Prosecutor's rudeness in violation of his human dignity. The complaint or allegation may involve a complex matter such as fraud, corruption, poor service delivery for a whole community or environmental degradation.

It could be action or inaction. For example when we were at Bungeni Village yesterday, we received a number of complaints involving allegations that government had not provided certain basic services. The issue could be a delay or denial of a service. Such matters include applications for social grants, IDs, Government Employee Pension Fund payments, UIF benefits, Workers Compensation, Legal Aid, court appeals and Low Cost or RDP Houses.

For example yesterday I consulted a group of complaints in this province regarding the denial of pension benefits. This group, who call themselves the Vhembe Concerned Pension Group, lodged a complaint with my office a while ago, alleging improper and prejudicial conduct by the Government Employee Pension Fund(GEPF) in denying them (as retired employees of the former Venda) standard pension benefits. Incidentally the issue of pensions from the former TBVC states is one of the matters that deeply concern me and for which I have decided to go for a systemic intervention.

Many of the complaints we received yesterday and generally receive on a day to day in this and other provinces involve delayed action or services. Most of the complaints in this regard involve. SASSA grants, ID applications and RDP houses. Occasionally we get a matter involving a delayed land claim.

It also does not matter wether the conduct complained about affected you personally or you are just a concerned observer. For example my office has received a number of complaints from third parties regarding tender irregularities in various parts of the state in this province. As we speak, I've just assembled a team to undertake this task. I've also initiated talks with the Auditor General with a view to conducting a joint investigation that will combine the investigation of specific complaints with a systemic investigation into the handling of tenders in this province.

Programme Director,

Let me quickly run through the vision I referred to earlier, the strategic priorities that seek to achieve the vision and the institutional changes we are already implementing in pursuit of the mandate, vision and strategic objectives.

The vision regarding what we seek to become as an institution and which we refer to as Public Protector Vision 2020 has the following key provisions:

Vision

A trusted, effective and accessible Public Protector that rights administrative wrongs and consistently acts with integrity to ensure fair, accountable and responsive decision-making, service and good governance in all state affairs and public administration in every sphere of government.

Mission

We strengthen constitutional democracy in pursuit of our constitutional mandate by investigating, rectifying and redressing any improper or prejudicial conduct in state affairs and resolving related disputes through mediation, conciliation, negotiation and other measures to ensure fair, responsive and accountable public sector decision-making and service delivery.

Values

1. Independence and Impartiality;
2. Human Dignity;
3. Equality;
4. Ubuntu;
5. Redress;
6. Accountability;
7. Integrity;
8. Responsiveness;
9. Transparency;
10. Justice and Fairness.

The key shift in the vision lies in the recognition of the fact that the mandate of the Public Protector transcends investigating and reporting. As can be seen in the above direct extract from the Constitution, the Public Protector is constitutionally directed to take remedial action. Furthermore, the Public Protector Act outlines the powers of the Public Protector as including investigation, conciliation, mediation, negotiating, and advising and taking any appropriate action to achieve remedial action for any improper or prejudicial state conduct. In fact we can safely regard the Public Protector as the CCMA of administrative justice, among other things.

Ladies and Gentlemen,

I now quickly turn to the matter of the operational changes we are making to reposition this institution for optimal achievement of the constitutional mandate, the strategic objectives and ultimately, the vision.

Firstly, we are giving priority to the constitutional injunction regarding ensuring accessibility to all persons and communities. Plans include expanded outreach activities, incorporating more radio, a Public Protector Good Governance Focus Week, and a forward looking plan for additional regional offices. We have established and are in the process of rolling out an Intake and Early Resolution Unit. Since we established this unit, cases are resolved more speedily with some resolved within a day or two. The idea is to resolve urgent and uncomplicated complaints within a day and up to three months.

We are also working on rules under the Public Protector Act that will outline mechanisms for case handling and the regulation of conciliation, mediation and negotiation activities. This will also cover compliance measures such as subpoenas, which will help us deal with those that ignore our inquiries thus prolonging the agony and suffering of many complainants, particularly those seeking urgent relief on matters such as social grants and pension funds.

We are also strengthening our skills and task specialization. This reduces the time it takes to handle cases and enhances the rigor or thoroughness of each investigation. The move towards specialization has also had the effect of lightening the workload on each investigator since an investigator can now approach a public authority on a batch of similar cases rather than one case at a time. Our changes include the establishment of a Governance and Integrity Unit to support the enforcement of the Executive Members' Ethics Act and other activities that focus on promoting good governance and integrity.

We further plan to undertake systemic interventions in addition to the standard systemic investigations. The additional value of systemic interventions lies in working collaboratively with a public authority to identify the systemic governance and administrative gaps within its internal operations that breed ongoing service delivery failures and/or maladministration.

Ladies and Gentlemen,

One of the key reasons we are meeting stakeholders is to leverage stakeholder relationships to enhance our institutional performance. For those in government, our key need is cooperation when we ask questions. It is a constitutional duty of every state organ to assist and protect the Public Protector and other Constitutional Institutions "to ensure the independence, impartiality, dignity and effectiveness of these institutions." (s181 (3) of the Constitution) We will also rely on your cooperation for systemic interventions.

For the rest, the key assistance we need is that you help us market the services of the Public Protector and, where appropriate, allow us to use your platforms to reach out to all our people. Of course we also rely on all of you to give us candid feedback on our services and to alert us to matters of state conduct that we need to be investigating and correcting. This is particularly the case with the media.

I again assure you of my personal commitment and the commitment of my entire team to work diligently with all stakeholders, while vigilantly guarding our independence, to promote public sector decision-making that is anchored on accountability, integrity and responsiveness. We also seek to contribute meaningfully to the realisation of the country's development goals, including commitments regarding the achievement of the global Millennium Development Goals (MDGs).

Thank you

**Public Protector of South Africa,
Adv T N Madonsela**