



**Address by Public Protector Adv Thuli Madonsela on the occasion of a
National Stakeholder Forum at the South African Reserve Bank**

29 March 2010

**Programme Director,
Deputy Minister of Justice and Constitution Development; Mr AC Nel,
Chairperson of SCOPA Mr Themba Godi
Chief Whip of the FF+; Dr CP Mulder,
Chief Whip of the IFP; Mr Bongikosi Dlamini,
Member of Parliament; Mrs Natasha Michaels,
Member of Parliament; Ms Lolo Mashiyane,
Deputy President of the UDM; Mr Ntopile Kganyago,
Deputy President of the AZAPO; Mr Strike Thokoane,
Secretary General of the FF+; Mr Piet Uys,
Secretary General of the ACDP; Mr Raymond Tlaeli
ANC NEC Member; Mrs Hunadi Mateme
Chairperson of the CRL; Rev Wesley Mabuza,
Directors General and Other Senior Managers in Government,
Representatives of Parastals
Leaders Representing Civil Society,
Members of the Media,
Deputy Public Protector; Adv Mamiki Shai,
Ladies and gentlemen;**

Thank you for honouring this event with your presence. I hope I am not being presumptuous if I attribute your taking time off from your busy schedules to the fact that you attach importance to this constitutional institution and the value of dialogue in a vibrant democracy.

Today is meant to be the final step in the stake holder consultation process that commenced in December last year when my office sent a draft of our proposed 10 year vision, Public Protector Vision 2020 and Medium Term Strategic Objectives for my office. This was followed by Provincial Stakeholder Consultative Forums and Community Outreach events that kicked-off in Gauteng at the beginning of February 2010. Due to planning challenges, the Mpumalanga events will take place shortly after today, specifically on Tuesday and Wednesday 30-31 March 2010.

Before going further I'd like to thank all the organizations and persons that have contributed to the final Public Protector Vision and Strategic Plan through responses to the draft circulated by my office in December 2009 and/or participating in the provincial consultative process. Those that saw the December draft will note the difference between that version and the enriched version we have distributed here today. Thank you once more. You give true meaning to the Sepedi (Northern Sotho) proverb that says "Bopedi Bobolaya noga" which literally translates to "Two people kill a snake". The message is that collective action defeats challenges that are difficult for one person.

As specified in the invitation, we have since finalized Public Protector Vision 2020 and Medium Term Strategic Plan. Part of the purpose of our meeting today is to share the final version with you as we launch the implementation process. For this purpose the Strategic Plan is included in your package. We also seek to share with you the outcomes of the provincial consultative process with special attention given to our observations regarding key service delivery challenges in the provinces.

The National Consultative Forum also seeks to provide a platform for dialogue and reaching consensus on the cooperation required from organs of state in terms of section 181(3) of the Constitution to ensure the effectiveness, efficiency, responsiveness and independence of the Public Protector. We further seek, particularly from civil society, ideas and offers of assistance to optimally meet our constitutional obligations, particularly regarding accessibility to all persons and communities

Many of you may be asking if it was really necessary to review the vision and strategic objectives.

When I was considered for this position one of my undertakings was to ensure that the Public Protector becomes an institution of choice for all those that feel wronged by state conduct or the acts or omissions of public authorities. I specifically used the metaphor of an umbrella to communicate the ideal I had for this important creature of our Constitution. When I was asked if the Public Protector needed more powers to discharge its constitutional mandate effectively, my answer was that it was important to exhaust existing powers of the Public Protector first.

With this in mind I used the strategic planning process, which was in progress when I took office, to work with my team to scrutinize the constitution and other mandate conferring laws to ascertain precisely what the institutional mandate is.

The mandate analysis process confirmed what we already know that the while the Public Protector is one of many institutions whose role is to strengthen and support democracy. It also confirmed that this Constitutional Institution has the most general mandate among the institutions established under Chapter 9 of the Constitution and commonly referred to as Chapter 9 Institutions. The powers and functions of the Public Protector 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.

Regarding the precise powers and functions of the Public Protector, one of the revelations was that the mandate of the Public Protector transcends investigating and recommending. 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.. The Public Protector must be accessible to all persons and communities

Two days ago I listened to a lawyer stating, on national television, that the Public Protector is a toothless dog because it can only recommend. Incidentally he had and was waving the very same Constitution that says the Public Protector must “take remedial action”. How he and others have restricted the powers to “Recommending” when the Constitution (Section 181(1)(c)) specifically enjoins the Public Protector to “take remedial action” baffles me.

In the internal strategic conversation, there were arguments that the devil may be in the legislation that seeks to give content to the Constitution. In this regard, two key statutes that define the mandate of the Public Protector were thoroughly scrutinized.

These are the:

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

The Public Protector Act, specifically section 6(4) thereof, highlights the following powers and functions:

- Investigate alleged improper or prejudicial conduct by the state, with various forms this could take outlined.
- Resolve any dispute and rectify any act or omission regarding the conduct of the state through mediation, conciliation, negotiation or any other expedient or appropriate means.
- Refer matters for prosecution, where appropriate and refer or recommend to another body better suited to attend to redress
- Resolve disputes arising from the Promotion of Access to Information Act through mediation, conciliation negotiation, advice and using any other expedient or appropriate means.

We especially noted that the Public Protector Act’s reference to reporting is not necessarily as a medium to convey a recommendation. Section 8(1) of the Act states:

“ The Public Protector may, subject to the provisions of subsection(3), in a manner he or she deems fit, make known to any person any finding, point of view or recommendation in respect of any matter investigated by him or her.”

It is important to note her that the wording in the Constitution and the Public Protector Act differs from the wording of the Constitutions or statutes that establish traditional ombudsman institutions in other countries, where the powers are clearly restricted to recommending. In fact even then I have discovered that the powers of each Ombudsman differ from country to country.

Let us now examine the Executive Members' Ethics Act. This Act specifically restricts the mandate of the Public Protector to investigating, reporting and recommending. It is also important to note only the President, a Member of the National assembly, a permanent delegate of the NCOP in respect of a Cabinet Member or Deputy Minister and a Premier and a Member of the Provincial Legislature, in respect of a MEC, may instigate an investigation by the Public Protector under this Act. This differs from the Public Protector Act where any member of the public or state representative may approach the Public Protector with a complaint or an allegation and where the Public Protector may on his or her own initiate an investigation without being approached. The other difference is that under the Public Protector Act any state actor's conduct may be scrutinized, including all levels of government and state funded entities.

The report of the Public Protector in terms of the Executive Members' Ethics Act must be submitted, with recommendations, to the President within thirty (30) days, who in turn has to submit it to the National Assembly or the NCOP (If it involves a Premier) with comments and an indication of action taken or to be taken, within 14 days. If the matter involves an MEC, the appropriate actor is the Premier.

The Public Protector's mandate is further extended and elaborated by other laws, including the Promotion of Access to Information Act 2 of 2000, the Prevention and Combating of Corrupt Activities Act 12 of 2000, the Special Investigations and special Tribunals Act 74 of 1996 and the Protected Disclosures Act of 1996 and the Housing Protection Measures Act 95 of 1996. A full list is provided in the distributed copy of the institutional Strategic Plan and the booklet my office has just published on legislation regulating the work of the Public Protector. It is again clear from many of these statutes that the role envisaged for the Public Protector transcends investigating and recommending.

Having reached consensus on the mandate we then tweaked the institutional vision and strategy in line with the adjusted understanding. The outcome is Public Protector Vision 2020 whose key provisions are the following:

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.

Core Values and Principles

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 Public Protector's work and interface with the public and state organs is anchored on the eight Batho Pele Principles and the institutional core principles of:

1. Accountability;
2. Integrity; and
3. Responsiveness.

Strategic Objectives

1. Strategic Objective 1: Accessible to and trusted by all persons and communities;
2. Strategic Objective 2: Prompt remedial action;
3. Strategic Objective 3: Promotion of good governance in all state affairs;
4. Strategic Objective 4: An Efficient and effective organization;
5. Strategic Objective 5: Optimal performance and service focused culture

The key shift in the strategic thrust of the Public Protector involves a move towards a complainant centric and outcomes focused approach. While investigating remains a key function, it is one of many and a means to an end. We see the office's role as primarily to support and strengthen democracy through ensuring state accountability and prompt remedial action for each administrative wrong while effecting systemic change towards enduring good governance.

Specifically, the first three strategic objectives focus on service delivery by the Public Protector whereas the last two seek to leverage systems and people to achieve the outputs, outcomes and impacts necessary for the realization of the first three strategic objectives in pursuit of the long term vision.

The shift in the vision and strategic thrust has entailed a review of our operational arrangements and priorities, particularly to align these with the strategic objectives and the values.

This process is already underway. Some of the changes were implemented even before the Strategic Plan was finalized. Measures in this regard have included and will continue to incorporate:

1. Reduction of case turnaround times through an early resolution interventions with emphasis on our ADR powers (Conciliation, Mediation and Arbitration) to resolve administrative disputes and secure administrative action where appropriate. In the year that is about to end, we also developed and implemented a plan that sought to resolve all matters reported or initiated before 31 December 2009. Large numbers of cases have been resolved through ADR as a result. Towards the end I even dispatched the Deputy Public Protector to go and assist provinces that were at risk of missing the target significantly. A report on all the settlements she engineered within 2-3 days while in each province is being prepared. Among the success stories, is the case of a simple rural

family that through the intervention of my office got its relative exhumed and transported for reburial at state expense as remedial action for improperly giving the relative a pauper's funeral due to failure to liaise properly with the family.

2. Early Resolution Unit establishment and roll out which involves setting aside non-complex matters mainly those involving delayed decisions or non responsive state organs when complainant enquires about specific applications or services such social grants, Government Employee Pension Fund Payments, ID/Passport/Citizenship/refugee status applications, UIF benefits and Workers compensation and as individual municipal service queries. This has also significantly impacted on turnaround times.
3. Specialised units and Individuals, involving splitting investigators into thematic units with each investigator principally focusing on one or two areas of work and institutions. This has also reduced turnaround times significantly since an investigator is now able to approach a state organ with a batch of cases rather than different investigators approaching different matters on similar matters all the time. Specialization also fosters command of relevant law and specific area nuances.
4. Special Attention to Governance and Integrity matters, where changes include establishing a unit that focuses on matters involving governance and integrity, including providing support to the Public Protector on the Executive Members' Ethics Act .The good governance and integrity promotion includes systemic interventions that involve working with organs of state to identify internal governance and administrative failures or weaknesses that breed bad service delivery or habitual improper conduct by public officials or, in some cases, public office bearers.
5. Skills, Knowledge and Values Alignment, which has kick-started with a National Symposium on Aligning the Case Handling with the New Vision held on 26-7 March 2010. It also involves our cooperation with other African Ombud institutions on training starting with an institute that is in the process of establishment at the University of Kwazulu Natal. It has also involved producing a booklet of laws regulating the work of the Public Protector
6. Business Systems Alignment, which incorporates a review of allocation of resources and delegation of powers.
7. Development and Implementation of Public Protector Rules as envisaged in the Public Protector Act, to standardize timelines, subpoenas ADR procedures, contempt orders and all mechanisms that the Act puts at the disposal of the Public Protector to expedite complaint resolution and compliance with process requirements by organs of state. Compliance with timelines is critical for turnaround times, which in turn are critical for bread and butter matters,
8. Strengthened Stakeholder Engagements through MOUs, Service Level Agreements and other measure to leverage relationships for support, which includes enhance compliance with enquiries by organs of state and collaborative ventures with other constitutional bodies or watch dogs, with legislatures and with appropriate community entities.
9. Enhanced Public Outreach Activities, which includes more use of community radios and newspapers, use of all public offices to distribute marketing materials and holding A Public Protector Good Governance Week, annually. More mobile outreach services/clinics will continue and the process of establishing additional regional offices is on track, subject to financial support from government.

The issue of accessibility to all persons and communities is of great concern to me, more so because this is a constitutional stipulation (section 182). The Public Protector is currently far from being accessible to all persons and communities. In the fiscal year 2009/10 the Public Protector office received 12 435 complaints that were classified as falling within the Public

Protector's jurisdiction. You'll agree with me that this is not reflective of the demand for resolution of administrative disputes or wrongs relating to state conduct.

A comparison between population statistics captured in mid-2007 and Public Protector Complaints in all nine provinces is summarized in the following:

PROVINCIAL POPULATION PUBLIC PROTECTOR INTAKE 2009/2010

1. Eastern Cape - 6.9-million (14.4%) 1 235
 2. Free State - 2.9-million (6.2%) 650
 3. Gauteng - 9.6-million (20.2%) 1 578
 4. KwaZulu-Natal - 10-million (20.9%) 1 285
 5. Limpopo - 5.4-million (11.3%) 1 643
 6. Mpumalanga - 3.5-million (7.4%) 709
 7. North West - 3.4-million (7.1%) 1 869
 8. Northern Cape- 1.1-million (2.3%) 524
 9. Western Cape - 4.8-million (10.1%) 812
- TOTAL

SOURCE: Statistics South Africa

In the new strategic plan we are doing all we can to strengthen existing efforts on ensuring accessibility to all persons and communities. However, to really give effect to this constitutional imperative, the number of our offices, our communications budget and the number of our investigators need to be frankly reviewed by government. We've made this point in the Strategic Plan submitted to Parliament and representations to the Organ of State that administratively houses the Public Protector.

Another important matter I wish to place on the table regarding organs of state is the need to cooperate with time lines when questions are asked and when remedial action is recommended or directed in line with findings of the Public Protector. A lot of the non-compliance undermines government's own progress towards the achievement of Millennium Development Goals As the vast numbers of matters we seek answers about involve bread and butter issues such as social grants, Government Employee Pension Fund Payments, UIF benefits, Workers Compensation and ID/birth registration applications. On the last matter I'm pleased that the Minister is addressing the systemic issues. With regard to service delivery matters non responsiveness is one of the factors fuelling civic action that is increasingly involving violent protest.

This takes me the key observations we made during the Provincial Stakeholder Consultative Forums and Community Outreach activities.

Whoever said that "If you don't know what your government is doing, you don't live in a democracy" could have easily had the situation in the provinces and municipalities in mind. What emerged as the biggest problem was the question of regular government accountability to residents, informing them about processes including reasons for certain decisions and progress on promises made during rare encounters.

It was also clear that most of our people do not know or care who does what in government. All that matters to them is that a service or resource or opportunity they need is not provided and the immediate target is usually Municipal Office-bearers such as ward Councilors.

But we also found serious service delivery deficiencies. Persistent challenges throughout the provinces included:

- Basic services that many of us take for granted, such as water, electricity, roads, hospitals, police stations and schools;
- Responsiveness and accountability of municipalities;
- Social Grants Management by SASSA and Social Development
- ID Management, particularly the phenomenon of duplicate IDs
- Management of Low cost housing
- Corruption particular in tenders and social grants.

My specific observation is that our people yearn to be engaged by those in government and that platforms for such engagement need to be created and sustained. A draft Executive Summary of the Provincial Stakeholder Consultative Process, which deals with matters in each province, has been prepared and will be forwarded to all of you shortly after this symposium.

As we were going around the provinces, we were received warmly. I'm particularly pleased with the pledges or statements of commitment regarding cooperation when my office asks questions, which we received from stakeholders such as the Premier of Free State, the Premier of Eastern Cape, the Premier of Western Cape and an MEC representing the Premier of Gauteng. Similar pledges or statements of commitment were received from certain members of provincial parliaments, mayors, municipal speakers and heads of various departments, the Special Advisor of a Premier and state institutions. We also received commitments regarding collaboration from fellow chapter 9 institutions, other constitutional institutions and statutory bodies.

Organs of civil society such as lawyers (Northwest and Western Cape) and CBOs committed themselves to work with the various offices of the public protector to pursue common goals, where appropriate and within the context of respecting our independence and impartiality. GCIS, the police, traditional leaders and some of the Premiers also offered their platforms for marketing the work of the Public Protector. I'm deeply grateful for this as it will go a long way to address the matter of accessibility to all persons and communities.

My approach in the provinces was to separate corruption matters from service delivery concerns. Service delivery concerns were immediately brought to the attention of the leadership of relevant state organs whereas corruption allegations led to the initiation of investigations.

As I conclude, Programme Director, I would like to thank all stakeholders who pledged their support for the Public Protector and offered to assist or co-operate.

I call on all the stakeholders gathered here this morning to also support my office as it implements its vision and strategic plan. My plea includes the media. The common person need not break something to get attention. We all have a role in ensuring that this institution fulfils its constitutional mandate and that its interventions contributes meaningfully to access to justice, particularly for rural and poor communities and to the strengthening of the rule of law and ensuring that the state is always accountable and operates with integrity and responsiveness to all our people.

I am confident that our deliberations this morning will yield all the envisaged positives. Think of the West African Proverb that says "If you think you are too small to make an impact, try

sleeping in a room full of mosquitoes”

Thank you.

**Public Protector of the Republic of South Africa,
Adv Thuli N. Madonsela**