



**Address by the Public Protector, Adv Thuli Madonsela on the occasion  
of the Stakeholder Forum at the Pinnacle Building in Nelspruit ,  
Mpumalanga**

*30 March 2010*

**Programme Director;  
MEC for Public Works Mr Clifford Mkasi (representing the Premier);  
Councillors;  
Heads of Departments present;  
Representatives of Chapter 9 institutions;  
Representatives of Political Parties;  
Traditional Leaders;  
Members of the media;  
Ladies and gentlemen:**

Let me start by extending my warmest greetings to you this morning and also express my appreciation to all of you for seeing it fitting to come and interface with us.

This is my second visit to this province. Most of you will remember that, early in February, I visited Siyathemba township in Balfour, where the community was up in arms over service delivery issues.

You may also be aware that I have been on the road for nearly two months, interacting with your counterparts elsewhere in the country as part of my stakeholder consultative forums.

To date, I have been to all other eight provinces and yesterday I met with national stakeholders in Pretoria. Our meeting this morning, therefore, marks the culmination of this consultative process.

The purpose of my meetings with provincial stakeholders 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.

At this juncture, Programme Director, I would like to briefly discuss the constitutional Mandate of the Public Protector to set the tone for our discussions this morning.

The Constitution establishes the Public Protector as one of six 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 and I quote:

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

Key pieces of legislation that gives the Public additional powers are the Public Protector Act, No 23 of 1994; and the 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.

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 in 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.

The complaint or allegation may involve a complex matter such as fraud, corruption, poor service delivery for a whole community or environmental degradation.

It also does not matter whether the conduct complained about affected you personally or you are just a concerned observer. For example my office also receives a number of complaints from third parties, which we investigate.

Like elsewhere in the country, my office in this province receives a lot of complaints regarding delays in the processing of applications for IDs, various types of social grants, low cost houses; and general service delivery issues, among other things.

It is in this province and a couple of others where we have seen communities resorting to violent protests in a desperate bid to get the attention of government. While we do not encourage such action, it shows that government is often not as responsive as it ought to be.

As I mentioned earlier, the case that immediately springs to mind is the demonstrations we witnessed in Siyathemba Township in Balfour early last month, where we subsequently visited the community together with the Minister for Cooperative Governance and Traditional Affairs, Sicelo Shiceka to give them an ear.

As I am speaking, a team of investigators from my office is busy with an investigation into allegations of maladministration at Dipaleseng Local Municipality in order to sort out the problems raised by communities and other interest groups there.

There is also a Ministerial Committee, which meets regularly to try and address the bottlenecks that hinder the effective and efficient delivery of services in the area.

We hope that all these measures will bring about relief to distressed communities.

Ladies and gentlemen;

While as the Public Protector, we have a general challenge of poor cooperation and non-response from state institutions when we ask questions relating to complaints, in this province the situation is better.

We have seen a steady improvement in response times from the time my office opened its doors to the people of this province in 2001. All this is possible because of the willingness of the Executive Authority to assist and Senior Management. We wish to encourage other state organs to emulate this exemplary leadership.

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**

- Independence and Impartiality;
- Human Dignity;
- Equality;
- Ubuntu;
- Redress;
- Accountability;
- Integrity;
- Responsiveness;
- Transparency;
- 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. Off course we also rely on all of you to give us candid feed- back 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**