



PUBLIC PROTECTOR
SOUTH AFRICA

Address by Public Protector Adv. Busisiwe Mkhwebane during a Stakeholder Meeting at the Eastern Cape Provincial government in Bhisho on Tuesday, May 16, 2017

Programme Director, Adv. Tom;

Premier of the Eastern Cape, Honourable P. Masualle;

Nkosi Ngwekasi of the House of Traditional Affairs

Director-General, Ms Mbina Mthembu;

HODs of various departments;

All councillors present;

Representatives of Chapter 9 and other constitutional bodies;

The Public Protector Team;

Members of the media;

Ladies and gentlemen;

I bring you warm greetings from the Public Protector family across the country.

I would also like to express a word of gratitude to you for braving these extreme weather conditions and taking time off your busy schedules to indulge me this morning.

I must hasten to offer an apology for any inconvenience suffered as a result of the last minute change of venue.

You may have noted on the invitation correspondences that I am on a road show called Public Protector Stakeholder Forum 2017, themed: “Broadening Access – Taking the Public Protector to the Grassroots”.

It is a multi-pronged programme, during which I engage in an unmediated dialogue with stakeholders including provincial executives, legislatures, mayors, senior civil servants, political parties represented in parliament and members of the public.

I use these platforms for self-introduction as the fourth Public Protector since we became a democratic country. I also take the opportunity to spell out my vision of the institution.

In addition, I establish stakeholders’ expectations from stakeholders while also granting them an ear regarding any issues of concerns relating to my office and the work it does.

The road show commenced in Johannesburg exactly three months ago. Since then, it has taken me all around the country, with pit stops in rural villages, small towns and gigantic cities alike.

These include Thohoyandou, Polokwane, Nelspruit, Ermelo, Bloemfontein, Thaba Nchu, Mahikeng, Madibogo, Pietermaritzburg, Ngilanyoni, Cape Town, Masiphumelele and Mqanduli.

I must say the reception we have received from all the provincial executives, legislatures, mayors, civil servants and members of the public we have visited has been warm and bodes well for cordial working relations in the future.

We are consolidating the issues we picked up during the tour and will soon provide a report back to the people of South Africa.

With only one province left to visit, the road show is now in the twilight of its span. A visit to Kimberley and Ritchie in the Northern Cape next week will mark the end of the road show.

Honourable Premier;

I have already been introduced and, besides, I am not so new anymore. I will then proceed straight to my plans for this office as articulated in what we have termed the Public Protector Vision 2023.

However, allow me to preface my input on that score with a brief look at our constitutional mandate for context.

The Public Protector is established by Section 181 of the Constitution to support constitutional democracy.

We get our mandate from directly from the Constitution, under Section 182, which provides that:

“182 (1) The Public Protector has the power, as regulated by national legislation –

(a) 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;

(b) To report on that conduct; and

(c) 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.

(5) Any report issued by the Public Protector must be open to the public unless exceptional circumstances, to be determined in terms of national legislation, require that a report be kept confidential.”

The additional powers that are referred to in Section 182(2) include the following:

- 1. The power, in terms of the Public Protector Act, to investigate, conciliate, mediate, negotiate, advise or do anything necessary to resolve disputes and rectify maladministration in state affairs and related matters, including abuse of power, abuse of state resources, unethical conduct and corruption on own initiative or complaints;**
- 2. The power to investigate and report on violations of the Executive Ethics Code under the Executive Members' Ethics Act;**
- 3. The power to investigate allegations of corrupt activities as envisaged under the Prevention and Combating of Corrupt Activities Act;**
- 4. The power to receive protected disclosures and serve as a safe haven for whistleblowers under the Protected Disclosures Act; and**
- 5. The power to review the decisions of the National Home Builders Registration Council under the National Protection of Housing Measures Act**

The best way to understand this mandate is to drop the legalese and see the vision of those that conceived this institution for what it is.

To achieve this understanding you need to look no further than that Constitutional Court judgment on the extent of the powers of the Public Protector in the EFF v Speaker of the National Assembly case.

Handed down by Chief Justice Mogoeng Mogoeng in March last year, the judgment read in part:

“The Public Protector is ... one of the most invaluable constitutional gifts to our nation in the fight against corruption, unlawful enrichment, prejudice and impropriety in State affairs and for the betterment of good governance.

“The tentacles of poverty run far, wide and deep in our nation. Litigation is prohibitively expensive and therefore not an easily exercisable constitutional option for an average citizen. For this reason, the fathers and mothers of our Constitution conceived of a way to give even to the poor and marginalised a voice, and teeth that would bite corruption and abuse excruciatingly.

“And that is the Public Protector. She is the embodiment of a biblical David, that the public is, who fights the most powerful and very well-resourced Goliath that impropriety and corruption by government officials are.”

The lesson that we draw from this judgment is essentially that those that gave birth to this constitutional democracy had the foresight to discern that, with the inherent social inequalities in the country, there was always going to be a need for equal access to justice. And to level the playing field between the haves and the have-nots, they created this institution.

In a different time, members of the public would have had no choice but to dig deep into their pockets in order to litigate as a way of holding their leaders to account.

Now, with the advent of our constitutional democracy, which ushered-in a regime that saw the birth of institutions such as the Public Protector, members of the public do not need to have hundreds of thousands of rands in order to hold their leaders to account.

This is in line with my vision as reflected in this roadshow’s theme: “Broadening Access – Taking the Public Protector to the Grassroots”.

I envision the Public Protector as a stronghold and a place of refuge for the poor and the marginalized. I see a Public Protector that is an avenue for justice in disputes between the people and the state.

At the core of this vision is the need for this institution to be accessible to all people, in particular those at the bottom end of the food chain or at the grassroots, as it were.

The two offices that we have in this province, here in Bhisno and in Mthatha are a drop in the ocean and inadequate to respond to the needs of the people of this province, all 6.5 million of them.

While we wish to have presence in all communities, we have accepted that this is practically impossible because the fiscus is not a bottomless pit and we have to share the little resources at government's disposal with other competing necessities.

Fortunately, other organs of state and stakeholders do have presence in all the areas that we want to penetrate in order to reach the grassroots.

As such we resolved to leverage relations with those stakeholders. I am in talks with the Ministers of Justice, and Cooperative Governance and Traditional Affairs.

The end goal is to emerge out of these discussions with Memoranda of Understanding that will make it possible for us to make use of Magistrates Courts, municipal offices and Traditional Offices to be accessible to those living in the margins of society. No agreements have been reached yet. Negotiations are still underway.

Whenever I say this people get alarmed and start worrying that our independence will be compromised. Let me assure you Honourable Members that due care will be taken to insulate us from external influence. The plan is to have our own officials stationed at those service centres so as to ensure that our independence remains intact.

We further recognize that without awareness, access is nearly impossible. This is why we will engage in continuous public awareness programmes. We believe that radio is, by far, the most effective medium through which we can reach the grassroots; more so if it broadcasts in indigenous languages. We will use stations such as Umhlobo Wenene and community radio to reach more communities.

All these will be in addition to normal community outreach activities, including face-to-face, unmediated interactions between myself and the people.

Focusing on extending services to the grassroots must not be misconstrued as meaning we will turn a blind eye to corruption and related maladies taking place higher up in the public sector. That would be wrong. We will tackle such conduct with equal vigour because it is our belief that corruption steals from the poor, the very section of the population located at the grassroots.

We want to empower communities to know their rights and freedoms. An empowered nation is an active society that is aware of the avenues it has at its disposal to demand, peacefully, what they are entitled to.

We believe that the people, who voted you in office, must interact with you throughout the term of any particular administration. The idea is for complainants to exhaust internal remedies first before approaching us. This is why we are encouraging organs of state to establish internal complaints resolution units or sector-specific ombudsman institutions, some of which we have helped establish. These include the Health, Tax and Military Ombudsman. Only when people have been to such institutions and gotten no joy should they come to the Public Protector.

It is of paramount importance that these internal complaints resolutions mechanisms be established. Such interventions can only show people that theirs is a caring

government that has their best interests at heart. We all know that when people get disillusioned with the state they resort to extra-judicial means to get themselves heard. We do not condone violence but it is a reality.

Honourable Premier;

I was in this province last month in Mqanduli, King Sabata Dalindyebo Local Municipality, where I heard from the municipality. The following is a summary of the complaints the people there brought to my attention:

- ***Poor ambulance services that are characterized by delays;***
- ***Rampant crime as a result of poor policing and lack of feedback in murder investigations;***
- ***Lack of sanitation, provision of water, poor roads infrastructure, provision of RDP houses in Rhadebe and a road connecting the village with Mqanduli;***
- ***Delays in the payment of pensions for deceased civil servants;***
- ***Problems with workman's compensation for deceased civil servants who died in line of duty (Public Works)***
- ***Lack of a healthcare clinic in ward 23;***
- ***Incomplete RDP houses in Makhenkesi township used as hideouts for criminals, the houses need to be completed;***
- ***Taverns that open 24 hours, resulting in fights and crime, people are dying at these places every weekend;***
- ***Problems with the processing for application for social grants;***
- ***The plight of families whose houses were destroyed by a natural disaster;***
- ***No market stalls for street vendors, the environment not conducive for local economic activity;***
- ***Lack of sporting facilities;***
- ***No electricity in about 22 houses, meter boxes have been fitted but they are not connected to the grid;***
- ***Deductions of airtime and electricity credits from social grants;***
- ***Service failure from the Road Accident Fund;***
- ***Lack of farming infrastructure;***
- ***Youth unemployment;***
- ***Shortage of teacher and nurse;***
- ***Lack of bursaries from the municipalities;***

- **Poor consultation by councillors; and**
- **The inadequacy of the Expanded Public Works Programme stipend.**

We have begun processing these complaints, writing to the various complainants to acknowledge receipt of their grievances and indicating to them that the matters are being assessed for jurisdiction and merit.

Going forward we look forward to working with the provincial administration to get all of these matters resolved. We come in not as an enemy of the government but as a resource that government can use to better itself by being responsive to the needs of its people.

This brings me to the contagious issue of government's cooperation or lack thereof with our processes. The Eastern Cape provincial government generally cooperates with the Public Protector. There are just a few bad apples whose conduct could tarnish your good name.

Those are the Departments of Health and Education. Along with the Department of Human Settlements and the Nelson Mandela Bay Municipality, these two departments are non-responsive and do not cooperate with our processes.

The lack of cooperation by the Department of Health, which leads the pack of the bad apples, hampers our attempts to resolve complaints on conditions of service, especially matters of pensions.

Whenever we enquire, we do not get responses. If we do get the responses, we find that the information is not useful and it tends to be thin on detail. We experience similar problems with the Department of Education.

To a lesser extent, the Department of Human Settlements and the Nelson Mandela Bay Municipality also give us problems. This frustrates our efforts to resolve contractual issues with businesses constructing RDP houses in the province.

We strive to resolve complaints expeditiously because we believe that "justice delayed is justice denied". However, for us to be responsive and to provide justice to the public without delay, we depend on cooperation from organs of state.

The duty on the part of the state to cooperate is not merely a demand from us. It is a constitutional imperative. Organs of state have a duty, in terms of Section 181(3) of the Constitution, through legislative and other measures, to assist and protect the Public Protector to ensure the institution's independence, impartiality, dignity and effectiveness.

Often we find ourselves having to subpoena organs of state when our attempts to get answers from state functionaries come to naught. This is not something we do often. Although we possess powers to subpoena people and documents, to order search and seizures and to issue contempt orders, we prefer to engage in a friendly way.

Only when this friendly approach fails to yield the desired results do we use our hard powers. We can also escalate non-cooperation to the level of Parliament, which may summon the state actors concerned to appear before it and explain their reluctance to comply. We may also go to court to enforce our decisions. All these are options of last resort.

As I conclude, I would like to say that, I, with the team by my side, pledge to do my work in the spirit of ensuring that this institution lives up to its constitutional mandate. I recognize that those that came before me worked hard to build this institution from the ground up.

I realize that, as a result of their immeasurable contribution, I have inherited a well-oiled institution that many of our people look to for administrative justice and remedial action.

For these reasons, I shall not take for granted the mammoth task that rests on my shoulders. I pledge to exercise my powers and execute my functions impartially, without fear, favour or prejudice.

In doing this, I will be guided by and subject only to the Constitution and the rule of law.

Thank you.

Adv. Busisiwe Mkhwebane

Public Protector of South Africa