



PUBLIC PROTECTOR
SOUTH AFRICA

Address by Public Protector Adv. Busisiwe Mkhwebane during a Stakeholder Meeting at the Free State Provincial Legislature in Bloemfontein on Thursday, March 16, 2017.

**Speaker of Free State Legislature, Hon. M Qabathe;
Deputy Speaker of the Free State Legislature, Hon. S Mbalo;
The host, Hon. Premier E S Magashule;
Chair of Chairs, Hon. J Ramokhoase;
Deputy Public Protector, Adv. Kevin Malunga;
All members of the Provincial Legislature present;
All Executive Mayors present;
All Chapter Nine Institutions Representatives;
All Municipal Managers present;
All State Organs officials present;
All Civil Society structures present;
Members of the media;
Public Protector Team;
Distinguished guests;
Ladies and gentlemen;**

Good morning!

I am on a nationwide tour of provinces, which began on this day last month in Gauteng. This roadshow sees me spending at least two days in each province.

In the two days, I engage in conversations with key stakeholders including the legislature, the executive, senior civil servants, political parties, and the public.

The content of the dialogue centers on the posture that this independent constitutional institution called the Public Protector will or should take between now and the year 2023 when my term of office lapses.

I also make use of the opportunity to introduce myself to these stakeholder groupings as the new person at the helm of the institution while promoting public awareness about its existence and role in our constitutional democracy.

But, Hon. Speaker, this is not a one way street. An equally important aspect of this blitz is the feedback that we get from stakeholders on their fears and concerns because, naturally, with every leadership change comes questions and uncertainties in the minds of people.

I deemed it fit and critical for me to engage in such conversation as I commence this seven-year journey during which I will be this country's fourth Public Protector since the dawn of democracy.

I, therefore, would like to thank you for the warm welcome and for taking time off your busy schedule to hear what we have got to say.

Honourable Premier, in African culture, protocol-speaking, a chief's residence is always the first stop for any visitors wishing to hold talks with people in a village.

So, thank you, for opening your doors to us and for giving us blessings and granting us a license to engage with your people.

I wish to preface my input this morning with a brief outline of our constitutional mandate as a way of contextualizing my central message.

As the Public Protector, we are established by Section 181 of the Constitution, along with five other institutions, 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 chief guardian of our Constitution, the Constitutional Court, summed up the Public Protector's reason for existence in the following passage – extracted from the court's groundbreaking judgment in the case of the Economic Freedom Fighters and others vs the Speaker of the National Assembly and others – as follows:

“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.”

What the court was telling us here is essentially that those that conceived and gave birth to this constitutional democracy were visionaries.

They knew that, with the inherent social inequalities in the country, there was always going to be a need for equal access to justice. To level the playing field between the haves and the have-nots, they created this institution.

In another time, members of the public would have had no choice but to litigate or wait five years for the ballot in order to hold their leaders to account.

We all know that litigation does not come cheap. And so, in that proverbial David vs Goliath situation, the state enjoyed an advantage in that it has the money. The public didn't.

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 need not have money in order to hold their leaders to account.

Although this is an important point to make and to remember as we commemorate Human Rights Month, it is also something that we should keep at the back of our minds all year round.

Honourable Speaker;

This idea of a Public Protector as a place of refuge for the poor and the marginalized, and a cost-effective avenue for justice in disputes between the people and the state, goes to the heart of the posture that will characterize my leadership of this institution over the next seven years.

At the core of my vision is the need for this institution to be accessible to the people at the bottom end of the food chain, the grassroots.

It is common cause that all our 19 offices across the country, including the one on Nelson Mandela Drive at Engen House here in Mangaung and the other on Mampoi Street in Phuthaditjhaba, are located in urban areas.

This is not necessarily bad because it places us closer to the corridors of power, where we should seek and obtain answers on behalf of the people.

However, advantageous as this might be, it has to be counter-balanced with the constitutional injunction for the Public Protector to be accessible “to all persons and communities” as envisaged in Section 182(4) of the Constitution.

The Constitution states unequivocally that we MUST be accessible to all persons and communities. That this is a non-negotiable is crystal-clear.

But we do not have the financial muscle to have offices sprouting in every community. The government, however, does have presence in all the areas that we want to penetrate in order to reach the grassroots.

It is for this reason that I have commenced crucial 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.

I must hasten to say though, that, as part of these arrangements, we will have our own officials stationed at those service centers to ensure that our independence is not

compromised.

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.

The people of this province will be hearing a lot from us on linguistic public broadcaster platforms such as Lesedi FM and Motswedding FM. We will also reach the audience of commercial radio such as O FM as well as community-based stations, including Motheo FM, QwaQwa FM and Mosupatsela FM.

To paraphrase the later former President Nelson Mandela, we prefer that our messages go to the people's hearts rather than their heads, which is why we will put emphasis on engaging communities in their mother tongues.

All these will be in addition to normal community outreach activities, including face-to-face, unmediated interactions between myself and the people such as my meeting with the people of Thaba Nchu at Barolong Hall tomorrow.

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.

The Mangaung Metro, for example, needs its own Ombud Office to serve as the first line of service delivery complaints resolution. Only when people have been to such institutions and gotten no joy should they come to the Public Protector.

I cannot over-emphasise the importance of establishing these internal complaints resolutions mechanisms. Such interventions can only show people that theirs is a caring government. We all know that when people get disillusioned with the state they resort to extra-judicial means to get themselves heard.

This often results in a devastating destruction of public property and, sometimes, loss of life as we have seen in the case of Andries Tatane, who was killed during a confrontation between a protesting community and riot police in Ficksburg five years ago.

Honourable Members;

My office deals with just over 2 000 cases a year in this province; the majority of which are municipal service delivery matters such as RDP housing and incorrect billing for services.

We also receive a lot of complaints relating to undue delays in the processing of applications for Compensation claims, a variety documents that are issued by Home Affairs and court appeals.

We strive to resolve complaints expeditiously. On average, we conclude 200 cases per month in this province. For us to be responsive and to provide justice to the public without delays, 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.

To this end, I would like to bring to the attention of this house the fact that we experience serious problems when we deal with organs of state such as the Police, Roads and Transport Department and the Matjhabeng, Mantsopa and Maluti-A-Phofung Local Municipalities.

We have even had to subpoena Maluti-A-Phofung because all our attempts to get answers from functionaries at the municipality had failed. This is not something we do often. Although we do carry a big stick in the form of 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 the hard powers. We could escalate to the level of Parliament, which may summon the state actors concerned to appear before it and explain their reluctance to comply. We could also go to court to enforce our decisions.

In lamenting poor cooperation from the few organs of state I have mentioned, let me equally give credit where it is due and hail Setsotso and, Mohokare Local Municipalities, the Mangaung Metro and the Departments of Human Settlements and Cooperative Governance and Traditional Affairs as the shining examples of how to respond when we come knocking. Other organs of state should emulate these examples.

In wrapping up, Honourable Speaker, a lot of things have been said about me and what some people believe my office has become.

I would like to say to the people of this province, through Hon. Members here, as the people's representatives that, I, with the team by my side, pledge 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 – Judge Selby Baqwa, Adv. Lawrence Mushwana and Adv. Thuli Madonsela – worked hard to build this institution from ground up.

I realize that, as a result of their immeasurable contribution, I have inherited a well-oiled institution that has become a beacon of hope for our people.

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