



OFFICE OF THE CHIEF JUSTICE
REPUBLIC OF SOUTH AFRICA

SPEECH: NOTES ON THE OFFICE OF THE PUBLIC PROTECTOR
8 SEPTEMBER 2016

INTRODUCTION

It is for me a very special and unprecedented privilege to be part of the Inaugural Truth and Justice award by the Law Society of South Africa to the first recipient of the award, Adv. Thuli Madonsela, in her role as Public Protector.

1.

The Office of the Public Protector, as with the other five Chapter 9 institutions was established with the purpose of strengthening our Constitutional Democracy, to promote the rule of law and to ensure proper separation of powers.

2.

One of the main objectives of the Office of the Public Protector must be to ensure good governance in order to instil trust amongst the general public that corruption and maladministration in state and public entities will be exposed and dealt with appropriately. The Constitution and the law cannot be used as instruments to suppress the truth. You need not be learned or educated to tell the truth or to decipher what is the truth and what is lies.

3.

The Office of the Public Protector is now a trusted institution in our democracy. It therefore necessitate that the person heading the Office of the Public Protector be a person of high moral integrity and one with impeccable legal knowledge to enable the institution to provide civil society with the only mechanism, other than costly private litigation, of ensuring that government acts lawfully, guided only by the Constitution and the law.

4.

As is stated by our Chief Justice, Moegeng Moegeng, in the ground-breaking Constitutional Court case of ***Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v***

Speaker of the National Assembly and Others dealing with the power and duties of the Office of the Public Protector after a long debate in public and government spheres' the court said: *“The Public Protector is one of the most invaluable constitutional gifts to our nation in the fight against corruption, unlawful enrichment, prejudice and impropriety of State affairs and for the betterment of good governance. For this reason, the fathers and mothers of our Constitution conceived of a way to give even 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 Public Protector is one of the true crusaders and champions of anti-corruption and clean governance.”*

5.

The Public Protector must operate impartially and has to exercise her functions without fear, favour or prejudice which entails that the Public Protector is expected to be independent and not to be guided or influenced by politicians, the governing party, business elites, the police or even the very public whom it is created to protect. This was elevated by our

Constitutional when stated that the Office of the Public Protector is not to bow down to anybody.

6.

When you study law you concentrate mainly on the legal principles. However, in applying the said legal principle and exercising your duties as a lawyer, Judge or Public Protector you must do it with courage, without fear, favour or prejudice and be independent. Carrying out what I said, in my view requires the balancing of knowledge of the law and, in my view, some instinctive moral intelligence. The two should be synchronised. You cannot make a great decision if you have poor information or low moral standards. Legal practitioners have a duty to give life to our Constitution by challenging in our Courts anything that undermines our democracy.

7.

Our Public Protector managed to make independent sound decisions. She has the dexterity of a tight rope walker tilting, adjusting her moves carefully and she reached her goal which seemed impossible.

8.

My Sister, you knew you were watched and scrutinised, that there are critics and sceptics and that there will be noises to increase anxiety. Some tried to intimidate you but you ignored all negatives and focused on your mandate. In the mist of such adversity, you sidestepped the dangers presented and pursued your goal of protecting the public.

9.

CONCLUSION

The late Honourable Chief Justice Mahomed in an article in the South African Law Journal of 1998 defined the qualities of a Judge as follows:

“...Conspicuous among them are scholarship, experience, dignity, rationality, courage, forensic skill, capacity for articulation, diligence, intellectual integrity, and energy. More difficult to articulate, but arguably even more crucial to that temper, is that quality called wisdom, enriched as it must be by a substantial measure of humility and by an instinctive moral ability to distinguish right from wrong and sometimes the more agonizing ability to weigh two rights or two wrongs against each other which comes from the consciousness of our own imperfection...”

10.

Our Public Protector has got the qualities mentioned above. When I looked at the list of shortlisted applicants for 6 (six) positions of the Judges in the Gauteng High Court I thought I would see your name, but I hope what I have just said would inspire you to seriously consider applying when vacancies are advertised.