



**Ministry Justice and Correctional Services
Republic of South Africa**

**Minister Lamola Address on the 25th Anniversary of the Office Public Protector
28 October 2020 Wednesday Delivered Virtually**

Speaker of the National Assembly in the Parliament of South Africa, Ms Thandi Modise.

Inaugural Public Protector and current Judge of the High Court of South Africa, Gauteng Division, Justice Selby Baqwa (in absentia)

Public Protector of South Africa, Advocate Busisiwe Mkhwebane;

Former Public Protector, Professor Thuli Madonsela;

Deputy Public Protector, Advocate Kholeka Gcaleka;

Former Deputy Public Protector, Advocate Mamiki Goodman

Programme Director, in 1992, the African National Congress envisioned an institution that will safeguard the rights of citizens in a free and democratic South Africa. In the ready to govern document, the ruling party resolved that an independent office of the Ombudsman will be created to investigate allegations of partisanship in the allocation of resources,

maladministration and corruption. This led to the establishment of the Office of the Public Protector as we know it today.

Speaking on the importance of this institution, our first democratic President, Tata Nelson Mandela said, [open quote] ***“We were mindful from the very start of the importance of accountability to democracy. Our experience had made us acutely aware of the possible dangers of a government that is neither transparent nor accountable. To this end, our Constitution contains several mechanisms to ensure that government will not be part of the problem; but part of the solution.”*** [close quote]

He went further to say [open quote] ***our Public Protector's Office is not only a critical instrument for good governance. It also occupies a central place in the transformation of the public service by, among other means, rooting out the arrogance, secrecy and corruption so rampant during the apartheid years.*** [close quote]

It is against this background that I have great pleasure to celebrate a milestone of this very important institution in our constitutional democracy, the office of the public protector. COVID-19 has robbed us of the privilege of physical interaction, but our resilience and commitment to advance and engrain the values of our Constitution in our communities and in the corridors of power, call upon us to celebrate this very important office in our Constitutional order.

For just over a quarter of a century, South Africans from all walks of life have seen and felt the text of our Constitution coming to life because of this office. Professor Thuli Madonsela provided a beautiful but simple analogy which in my mind best explains the influence of this constitutional office.

In her analogy Professor Madonsela deftly argues that the Public Protector is very much like the Mkhadazi amongst the Venda regents.

She whispers sage advice in the corridors of power. Whilst at the same time playing a pivotal role to ensure that community morals are not trampled upon by the ruler of the day.

As many here on this platform maybe aware, the Constitutional Court in its first certification judgment said the Public Protector is an office modelled on the institution of the ombudsman, whose function is to ensure that government officials carry out their tasks effectively, fairly and without corruption or prejudice.

Indeed, as our Constitution matures, this office becomes more critical in that development. Whilst the department of justice and the justice system as a whole's primary consideration is access to justice, I have no doubt that the office the Public Protector amplifies this. It is an important conduit of social justice. I recall in particular, a case which also involved pensioners in Venda.

The former homeland had resorted to privatising the pension scheme, apparently in order to protect the retirement income of members of the Venda Pension Fund.

The affected pensioners were not paid. Information and documents provided by the complainants reflected appointment date back as far as 1950.

The pensionable service for the employees was only calculated from 1993, after they were forced to exit the system in 1992.

In a report from the public protector titled "Equitable access to social security," the office of the public protector made it clear that "***the payment of compensation is not a matter of charity but a requirement of justice to redress a wrong,***".

It is becoming increasingly clear that our state needs to institutionalise ethics, and the office of the public protector has played a critical role in this regard. Moreover, in instances where government departments fail to meet the basic expectations of citizens, it is this office that exerts the credibility of the Constitution to ensure that social justice prevails.

Ladies and Gentlemen:

I have no doubt that the office of the Public Protector is an engine of constitutional development. As we celebrate the 25th year of our Constitutional dispensation, we must acknowledge that, it is this institution along with the judiciary that has kept the constitution afloat. To put it simply, this office has played a critical role in restraining the abuse of state power.

The power of the office lies primarily in the fact that its remedial actions are encouraged to be flexible in seeking to resolve complaints which have merit and where the public protector finds systematic problems, it is important to propose legislation to alleviate them.

Unfortunately, there is an increasing trend where courts have become a frequent arena for the Public Protector. This is something that should concern us all as it has direct impact on the efficacy of the office.

I say this candidly because like I said earlier, social justice is a critical component of our democracy and it can be achieved without the acrimony of a court trial. Our courts should really be an avenue of last resort in all settings.

We owe to our Constitution to ensure that this office succeeds as our Mkhadazi, the sage words of wisdom cannot be allowed to disappear into thin air, or resolved only by way of costly trials. Of course, not everyone will agree that the advice dispensed is the best advice, especially when the stakes are high, but that is precisely where the highest level of rationality must prevail. That way our constitution, the will of our citizens and social justice prevails.

In Conclusion, South Africans from all walks of life yesterday commemorated the life and times of one of our finest leaders, Oliver Reginald Tambo. He would have celebrated his 103rd birthday. Tambo as an architect of our freedom, fought against injustices, abuse of power and violation of human rights. This is a mandate that the office of public protector has ably advanced over the years. In remembrance of the struggles of Tambo and other leaders, the public protector should through the confines of our constitution, continue to address and resolve the damaging impact of violations of citizens' rights by those in authority. Such action will help to quell the hostility displayed towards this important office in our constitutional democracy.

We wish the office of the public protector well in its endeavours and we salute all those whose resilience have contributed to the success of this office. From the inaugural public protector, Justice Baqwa, Advocate Lawrence Mushwana, Professor Thuli Madonsela and the incumbent public protector, Advocate Mkwabane. As this office marks a milestone, remember that our people look up to you.

I thank you!