



Event Review

Business Dinner with Adv Thuli Madonsela 16th of October 2013 at the JCC in Auckland Park

At a Dinner recently held at the Johannesburg Country Club in Auckland Park, Members of SwissCham Southern Africa – South Africa Chapter and their guests had the privilege of being addressed by **Adv Thuli Madonsela**, Public Protector of South Africa.



Thomas C Hippele, President of
SwissCham Southern Africa-South Africa Chapter

SwissCham President Thomas C. Hippele welcomed some 90 guests who had come to hear the Public Protector's message.

A special welcome the President extended to the Chargé d'Affaires of the Swiss Embassy, Mr. Heinrich Maurer, and to Mr. Thomas Zilk, President of the Austrian Business Chamber, as well as to Mrs. Antoinette Vermooten, CEO of Bayede Marketing (Pty) Ltd., sponsor of tonight's 7 Icons Wines.

After a delicious starter and main course, Thomas Hippele introduced the guest speaker, Adv Thuli Madonsela.

Advocate Thulisile (Thuli) Nomkhosi Madonsela, was appointed by the President as South Africa's third Public Protector in October 2009 after being recommended by Parliament following a hundred percent vote in her favour by all parties represented in Parliament.

A human rights and constitutional lawyer, equality expert and policy specialist with over two decades of post legal qualification experience, Advocate Madonsela holds a BA Law (UNISWA) and an LLB (Wits). Her postgraduate studies include partial LLM studies and legal courses mainly in the area of equality, administrative justice, legal drafting and public administration. She is also trained in Strategic Planning, Scenario, Project Management and has participated in several Executive Management and Leadership courses, including Women's Leadership Development.

One of the drafters of South Africa's post-apartheid constitution, Advocate Thuli Madonsela forfeited a Harvard scholarship to focus on her constitution drafting role as one of the Technical advisers who worked with National Assembly in drafting the current Constitution. She is co-architect of Justice Vision 2000, the National Action Plan on the Promotion and Protection of Human Rights, Promotion of Equality and Prevention of Unfair Discrimination Act, Employment Equity Act, Local Government Transition Act and has contributed to several other laws enacted to transform the SA legal system since 1994, including the Promotion of Administrative Justice Act and the Repeal of the Black Administration Act. She has also participated in several international forums and contributed to key international documents, including the Beijing +5 and WCAR Outcomes documents and several country human rights reports.

At the time of appointment as Public Protector, Adv Madonsela was the only full-time Commissioner in the South African Law Reform Commission where in addition to managing the Commission's entire programme, her specific projects included a Statutory Law Revision Project whose focus was constitutional alignment and

updating the law; and the Commission's project on the Review of the Interpretation Act. She is also a co-architect of several policies, including the policy framework that formed the basis of the Ministry for Women, Children and Persons with Disability. She has held various senior positions in government and civil society. Advocate Madonsela has been involved in human rights and civic activism since the early eighties.

She is a member of several professional bodies, including the South African Women Lawyers Association (SAWLA), African Network of Constitutional Lawyers (ANCL), Black Lawyers Association (BLA) and the Business Women's Association of South Africa (BWASA), Adv Madonsela regularly provides training and addresses conferences on equality and the other areas of her expertise. She has written extensively and her written works include journal articles, book chapters, books and other learning resources. Her key achievements in this regard include co-authoring a Bench Book for Equality Courts, Resource Book for Equality Court Clerks, SAWLA Legal Advice Handbook on Family Law and Related Matters and Handbooks on Gender Management and Gender Mainstreaming.

Not only does Adv Madonsela contribute to efforts of promoting good governance, respect for human rights and the upholding of the rule of law locally, she also does that at continental level through her role as the Executive Secretary of the African Ombudsman and Mediators Association (AOMA), a position she has held since April 2010.

Ladies and gentlemen, this event takes place a day after the 18th anniversary of the Public Protector, it has been a special day for us, and given us an opportunity to reflect on 18 years of this office. It was also yesterday the anniversary of my appointment to the office as Public Protector.

Four years ago I walked for the first time into the office on the 15th of October. It is a great honour to stand here before you. . It tells us that you are interested in what is happening in this country, and for that reason I applaud you for your interest in the country's governance issues. This suggests that you are not apathetic to your environment. It also suggests that you subscribe to the idea of the interconnectedness of our fate as humanity.



Adv Thuli Madonsela,
Public Protector of South Africa

Today is also special to me; or rather the event is special to me and many other South Africans. We all know that in a few months we will be reaching our 20 years anniversary as a constitutional democracy. The 27th of April 2014 is around the corner and we will be celebrating 20 years of democracy. We are, accordingly, presently in a celebrative and reflective mood as a nation but we are also in the mood to reflect, reflecting on the journey we have undertaken as a country on what we have achieved. I believe that people from all walks of life in this country have a stake in good governance and its impact on democracy. They accordingly should also be afforded the platform and space to interrogate these issues and make their voices heard in an unmediated fashion. There are many platforms in this regard and tonight is one such occasion.

I would, therefore, like to express my office's gratitude to the domestic chapter of SwissCham Southern Africa, a key player in the facilitation of trade relations between South African business and its counterparts in Switzerland, for inviting me to speak here this evening.

The movie *Invictus* talks, among other things, about former President Nelson Mandela's fondness of William Ernest Henley's poem, *Invictus*. The last stanza in the poem says:

***"It matters not how strait the gate,
How charged with punishments the scroll.
I am the master of my fate:
I am the captain of my soul."***

While it talks about a person, I believe that applies to us as a nation. As we reflect on 20 years of democracy, we are proud of our achievements. We have weathered many storms primarily because we believed that we deserve a better nation, partly because of our indomitable spirited optimism and partly because our nation is built on a strong foundation, a Constitution respected and emulated by many nations.



One of the pillars of our Constitution is the rule of law. Good governance is also a subtext of our foundational values that include public accountability, transparency and integrity. The pillars of public accountability include institutions established under Chapter 9 of the Constitution. One of these is my office, the Public Protector.

Former Chief Justice, Sandile Ngcobo, said the following:

“The importance of the role of the Public Protector or Ombudsman is especially clear in many countries throughout Africa, where there is often a desperate need for basic human needs such as food, drinking

water, health care, housing, education and social security. Our countries cannot bear the improper allocation of government resources. Having a Public Protector, or Ombudsman, with a mandate to investigate and publicly report in government administration is essential.”

And lastly, former Deputy Minister of Justice Mr Andries Nel said the following:

“One of the decisions that we made as a nation at the dawn of our democracy, during the Multi-Party Negotiating Process in 1993, was to accept a package of thirty-four Constitutional Principles with which the transitional Constitution and all subsequent Constitutions would have to comply. Constitutional principle XXIX provides for the independence and impartiality of a Public Service Commission, a Reserve Bank, an Auditor-General and a Public Protector which shall be safeguarded by the Constitution in the interests of the maintenance of effective public finance and administration and a high standard of professional ethics in the public service.”

For purposes of providing context to the issues I will raise later in this address, allow me to lay the foundation by an outline of the Public Protector’s constitutional mandate.

The Public Protector is established under Chapter 9 of the Constitution by Sections 181 and 182. Section 181, which I will paraphrase in order to single out the Public Protector out of the six institutions covered thereunder to support constitutional democracy, states the following about the Public Protector:

The Public Protector is independent, and subject only to the Constitution and law, and must be impartial and must exercise its powers and perform its functions without fear, favour or prejudice; Other

organs of state, through legislative and other measures, must assist and protect these institutions to ensure the independence, impartiality, dignity and effectiveness of the institution;

No person or organ of state may interfere with the functioning of the institution;

This institution is accountable to the National Assembly, and must report on its activities and the performance of its functions to the Assembly at least once a year.

Section 182 (1) zooms-in on the Public Protector mandate as follows:



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.

The Public Protector has the additional powers and functions prescribed by national legislation.

The Public Protector may not investigate court decisions.

The Public Protector must be accessible to all persons and communities.

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.

Six out of a total of 16 pieces of legislation from which the Public Protector draws additional powers and functions as referred to in section 182(2) of the Constitution, are as follows:



Maladministration Mandate under the public Protector Act 23 of 1994. It includes abuse or unjustifiable exercise of power, capricious, discourteous conduct, improper or unlawful enrichment or receipt of any advantage; acts and omissions that result in improper prejudice. It also includes power to make findings.

Enforcement of the Executive Ethics Code in terms of the Executive Members' Ethics Act 82 of 1998.

Shared Enforcement of the Prevention and Combating of Corrupt Activities Act 12 of 2000.

Safe Harbour for Whistle-blowers under the Protected Disclosures Act 26 of 2000.

Review decisions of the NHRBC in terms of Housing Protection Measures Act 95 of 1998.

Resolve access Disputes under the Protection of Access to Information Act 2 of 2000.

The Public Protector is one of our country's multiple avenues set up to help members of the public gain access to justice, in particular when their complaints involve the conduct of the state. Other avenues may include the courts and tribunals. Of all these avenues, the Public Protector is unique in that, unlike courts, for example, people do not need financial muscle and a time-consuming, sophisticated process to vindicate their rights against the state. And if what my colleague in Namibia says is anything to go by, Section 182(4) of the Constitution, which I referred to earlier, gives people the right to the Public Protector's services.

Any person in the country is eligible to receive our services, which come free of charge.

Contrary to popular belief, over 95 percent of the cases we deal with concern ordinary members of the public. This means that an overwhelming majority of the 37 770 matters that were on our caseload last year were complaints from "Gogo Dalmini", who is our ideal complainant. The cases include but are not limited to RDP housing, SASSA grants, IDs and birth certificates and basic service delivery matters. We also deal with conduct failure issues, including corruption and abuse of power and state resources, among other things.



We do not have jurisdiction over private entities and individuals. We also do not have the powers to review court decisions, nor to dabble in judicial functions.

Challenges facing the Public Protector:

Resources

Resources are our biggest challenge as I reminded Parliament again yesterday. When I put forward a request for additional funding to the tune of R35.3 million to the parliamentarians, I highlighted this problem of a bloated mandate that is disproportionate to the resources.



My office is funded to the tune of R199 million for this financial year. To be fair to authorities, our requests for an increase in the size of the slice of the national budget pie have over the years not fallen on deaf ears. We have come a long way since the office was allocated R16 million back in 1995. Obviously, the case load was not massive at the time as awareness about the service was still low. To a simple person, R199 million looks like a substantial amount to enable my office to operate optimally. But in reality, this is small change for an institution that has jurisdiction over more than 1000 organs of state, including government departments at national and provincial

levels, municipalities, parastatals and state institutions. Interestingly, one organ of state (SAPS) recently informed Parliament that it spent R204 million just on civil claims in the past financial year alone. That is over R4 million more than our annual budget!

We have 556 posts in our organisational structure. About 261 of the posts, or 47 percent, are not funded. We have a permanent staff complement of about 284, including investigation personnel, and 100 trainee investigators, who do a good job but require closer supervision. The hardest-hit component of my office in relation to understaffing is the investigative wing, where the point I made earlier about resources not being commensurate with the mandate is clearly demonstrated.

For example, the average Public Protector investigator carried the burden of up to 200 different cases last year alone. The situation was dire in Gauteng, Free State and Eastern Cape provincial offices, where each investigator juggled between 400 and 500 matters. This means, even if my staff, which works really hard, treating their jobs as a calling, were to finalise one case a day, including weekends and public holidays, they would still not finalise their caseload in a year.

Interpretation of the mandate

The Ombudsman as an institution is only 204 years old. In Africa, it's about 50 years old. In the country it is 18 years old. It is not surprising that we are having an uncomfortable conversation about mandate. As with the judiciary, and the other three arms of government, public accountability entails shared space. Where space is shared, contestation is not unexpected. The challenge is to manage the dialogue in a civil and mature way. I believe that is what I did in Parliament yesterday. Another issue is the status of decisions. The Constitution clearly says "take appropriate remedial action."



Occasional non-cooperation with investigations and non-compliance with remedial action

This is, in some ways, linked to the issue of interpretation of the mandate and jurisdictional issues. Often the few organs of state that give us a run-around when we ask questions tell us from an extremely ill-informed position that we don't have jurisdiction over them. Some have even told us to get lost and let an institution of their preference look into the allegations against them.

We strongly believe these challenges can be resolved and that the power of dialogue with the appropriate stakeholders is key in that regard. From our side, we will continue engaging with Parliament, the National Treasury and all organs of state in order to find a common ground on all these issues. However, it is equally important for civil society and the public at large to air their views on these important issues.



As I reflected on my first four years in office yesterday, I noted the achievements that we have registered to date. Between 2010/11 and 2012/13, we handled a caseload of about 84 749, finalising 53 311 cases in the process. I also noted the amount of work we have done to reveal maladministration trends that formed recurring themes in our investigations and findings. These include indifference, systemic service failure, non-compliance, corruption, overbilling, overcharging, false billing and scope creep in state contracts or tenders.

There has also been a significant increase in the number and complexity of complaints. There have been systemic administrative deficiencies, mostly relating to lapses in compliance. Indifference and systemic failures in services such as the RDP housing programme, administration of estates and municipal services have also been rife. In addition, there have been growing reports of corruption and tender-rigging.

There were, however, improvements in some service areas such as SASSA and ID matters, even though the issues surrounding the problem of duplicate IDs still persisted, posing a poverty threat to victims.

Going forward, we have identified the need to assist local government with policy development and training; the need for tightening the ethics regulatory framework and training; and the need for consistency in the application of disciplinary action. We must also deal with impunity. Without ending this phenomenon, no difference can be made. Regarding matters that affect my office internally, there has been a spike in the reach of services. There were increased productivity levels amid continuing challenges regarding balancing swiftness. As Mr Henley says in *Invictus*, it should not matter how strait the gate, how charged with punishments the scroll. We should be the masters of our fate and the captains of our souls. As I have already indicated, we have weathered many storms and will make it through stronger storms as a nation. As I close, Mr Hippele, ensuring a state that is accountable, operates with the highest level of integrity while being responsive to the needs of its people is a united front. No single institution will win this battle.



This is why all of us, the state, the public, business, civil society and all other sectors of society must all play our part, the Public Protector concluded.

The **7 Icons Wines**, generously sponsored by BAYEDE! were introduced by Antoinette Vermooten, CEO of Bayede Marketing (Pty) Ltd., while dessert was served.

What is **BAYEDE!**? What are we about? Where did it come from? Where are we going?

After discussions between HM King Goodwill Zwelithini, Hansjürg Saager and Ben Vermooten the idea was born to create jobs in South Africa, to develop the first Royal Luxury brand for South Africa in an effort to elevate poverty and ignite small and medium enterprises. In honour of the 60th birthday of HM King Goodwill a new range of wines was developed called **BAYEDE!**

Bayede Marketing (PTY) Ltd was established to explore the development of other products and so Antoinette Vermooten and Franziska Saager joined the **BAYEDE!** team.



King Goodwill Zwelithini is the eighth reigning king of the Zulu nation under the Traditional Leadership clause of South Africa's Constitution. He was born in July 1948 at Nongoma in KwaZulu Natal, the eldest son of King Cyprian and his second wife, Queen Thomo. He was installed at a traditional ceremony at Nongoma in 1971. It is estimated that there are more than 12 million Zulus, the largest South African ethnic group, most of whom live in the province of KwaZulu Natal. Although the constitution makes the role of the king largely ceremonial, King Goodwill Zwelithini's most important role may well lie in his symbolising of community and solidarity of the nation. As custodian of Zulu traditions and customs, King Zwelithini closely follows the example of his mother, Queen Thomo, who commenced a beadwork project for job creation.

BAYEDE!



The origin of the word BAYEDE: Bayede! means "Hail the King", which is a Royal Zulu salutation dating back to the time of the great warrior King Shaka Zulu and was shouted to greet the King.

ROYAL WARRANT TO BAYEDE! A Royal Warrant is a mark of recognition to individuals or companies who supply goods or services of excellent quality to His Majesty the King. **BAYEDE!** may display the Zulu Royal Arms and the legend 'By Appointment' on their products, premises, stationery, vehicles and advertising.

BAYEDE! is committed to the highest standards of service and excellence and is the first "By Appointment" wine range for South Africa that reflects Royalty, Quality, History and Culture of South Africa. The official Royal Crest of the King of the Zulu Nation makes this a true Royal Brand.

The **BAYEDE! Wines** are a Royal Selection Wine range that is carefully selected by a team of experts using only the best quality wines of the Stellenbosch, Western Cape, Franschhoek and Paarl wine regions and are adorned by beadwork providing jobs in many rural areas of KZN and the Western Cape, and putting food on many table.

BAYEDE! Leather has developed the Royal Handbag collection. Ostrich and Crocodile leather are combined to create unique designs. Calf's leather is used to compliment Nguni, Springbok and Zebra for the Royal Handbag Collection.



BAYEDE! Clothing has developed a designer clothing range that reflects Royalty, Quality and Culture. The Designer clothing range is all manufactured in South Africa in an effort to ignite the dying textile industry. The shirts are mainly manufactured with free hand embroidery methods and some are also decorated by quality beadwork. The fabric that is used for the clothing range is mainly Rami cotton and Linen.

BAYEDE! Jewelry has formed a partnership with African Romance to develop the first Royally Appointed Diamond, gold and platinum jewelry range for the African Continent. Each piece of jewelry carries the official seal of HM King Goodwill Zwelithini. The Diamond range is laser engraved with the official Royal Crest and identified number. Only diamond and gold originating from South Africa is used and comes with a certificate of quality. The diamond and jewelry range can be viewed at African Romance outlet, O.R. Tambo airport, Johannesburg.



BAYEDE! Linen has developed the first "Royal Signature" bed linen range that reflects Royalty, Quality and Tradition.

The Love letter range was developed for Wetherlys for their luxury bed linen range and is manufactured in South Africa, Western Cape. This initiative is helping to ignite the textile industry in South Africa.

BAYEDE! Beadwork. Traditional Zulu beadwork helps to regulate behaviour between individuals of opposite gender. This exclusively feminine craft flows from females to males from designer/manufacturer to client. Young girls learn from their elder sister how to select beads according to colour and quality, and any finished products are discussed so that the initiate can grasp their social significance. Symbolic coding is influenced by factors such as the colour combination and arrangement, the use and nature of an object, and even by the deliberate breaking of these operating rules. Although the bead code is deceptively simple, utilising the basic geometric figure of the triangle, its meaning has to be interpreted since it incorporates social conventions.

BAYEDE! Stationary - New product development - corporate gifts

Hand crafted 18 carat gold plated pens manufactured of wild olive wood.



For further information, please contact: **Antoinette Vermooten**
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Daniela Maurer for
SwissCham Southern Africa-
South Africa Chapter



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