



**A TOOLKIT FOR COMMUNITY MEDIA**





Copyright © 2016 by Corruption Watch  
 Content production: Kavisha Pillay, Jayshree Pather  
 Publication design: Imagenuity



**Corruption Watch** is a non-profit organisation launched in January 2012. We rely on the public to report corruption to us and we use these reports as an important source of information to fight corruption and hold leaders accountable for their actions. We do this through:

#### Communication

We provide a secure platform for reporting corruption, for anyone to safely share their experiences and observations and to speak out against corruption. Our communication channels include our website, call centre, WhatsApp number, social media, email and post.

#### Investigation

We investigate selected reports of alleged acts of corruption, in particular those that have the most serious impact on our society. We submit our findings to the relevant authorities to take further action, and we monitor the progress of each case. We work with various media organisations to fully expose the corruption uncovered through our investigative work.

#### Research

We gather and analyse information to identify patterns and hot spots of corruption. We prepare research reports on these hot spots to expose and find solutions to systemic corruption.

#### Litigation and policy advocacy

We engage in select litigation and policy advocacy to strengthen the legal environment for fighting corruption.

#### Mobilisation

We build campaigns that mobilise people to take a stand against corruption. Our campaigns involve the public, community groups and other civil society organisations.

## THE BUA MZANSI CAMPAIGN

In 2016, Corruption Watch launched Bua Mzansi (Sesotho for 'Speak up South Africa'), a nationwide public awareness campaign to highlight the upcoming appointment of a new public protector. The non-renewable seven-year term of our esteemed public protector, Advocate Thulisile Madonsela, ends on 19 October 2016. The aim of the Bua Mzansi campaign is to ensure that Advocate Madonsela's replacement is appointed in a transparent manner and the process is influenced by public opinion.

## CAMPAIGN OBJECTIVES

**AWARENESS:** our public awareness campaign will highlight the role of the Office of the Public Protector, its functions and responsibilities, as well as illustrate how the public can help to nominate candidates for the position.

**PUBLIC PARTICIPATION:** we will create avenues for people to participate in the appointment of the new public protector through new media technologies and traditional mobilising methods.

**TRANSPARENCY:** we will campaign to ensure that candidates are properly vetted, that they are qualified and suitable for the post, and that the entire process takes place in the public spotlight.

Community media plays an important role in achieving vast public engagement around the appointment of the new public protector. Public participation is a cornerstone of South Africa's constitutional democracy and through an awareness campaign, community media can ensure that the public is educated about the relevant procedures involved in appointing a public protector and mobilise its various communities to participate in the upcoming processes.





## THE HISTORY OF THE OFFICE OF THE PUBLIC PROTECTOR

During the multiparty negotiations that led to the country's first democratic election in 1994, it was decided that South Africa needed a Public Protector to establish and maintain efficient and proper public administration.

The Office of the Public Protector (OPP) was established in terms of chapter nine of the Constitution, which makes it one of the six state organs that support constitutional democracy. The others are the Auditor-General (AG); the Independent Electoral Commission (IEC), the South African Human Rights Commission (SAHRC), the Commission for Gender Equality (CGE), and the Commission for the Protection of the Rights of Cultural, Religious and Linguistic Communities.

These institutions are independent of government, subject only to the Constitution and the law, and report annually to Parliament. The Public Protector is an independent and impartial institution that is meant to provide a check on the other branches of government (the executive, the judiciary, and the legislature) in order to increase their accountability and responsibility to the public. The public protector is independent of government and any political party. No person or organ of state may interfere with the functioning of the public protector's office.

The Constitution regulates the appointment of the public protector, and protects the public protector against arbitrary removal from office by requiring the support of a "super-majority" (60%) in Parliament before the public protector can be removed. The public protector serves a non-renewable term of seven years.



## ROLES AND RESPONSIBILITIES

The Public Protector was set up in terms of South Africa's Constitution to investigate complaints against government agencies or officials. The Public Protector has wide-ranging powers, with jurisdiction over all organs of state, any institution in which the state is the majority or controlling shareholder, and any public entity as defined in section one of the Public Finance Management Act (PFMA).

The Public Protector has the power to investigate any level of government or public entity for misconduct such as maladministration, abuse of power, unfair conduct and unlawful enrichment, and any breach of the ethics code that applies to the executive branch of government. This mandate makes the Office of the Public Protector a crucial corruption-fighting body in the public sector as it aims to ensure that the government fulfils its mandate without fear, favour, or prejudice.

### Who can the Public Protector investigate?

The Public Protector is independent of government or political parties and can investigate:

- Government at any level. This includes central and provincial government, state departments and local authorities.
- Any person performing a public function. This includes anyone performing any official duty which affects South Africans, for example a state employee such as a policeman or an electoral officer.
- Corporations or companies where the state is involved, for example Eskom and Telkom.
- Statutory councils, for example the Human Sciences Research Council or the Council for Scientific and Industrial Research.

### What can the Public Protector investigate?

The Public Protector is tasked with investigating improper prejudice suffered by the complainant or another person, for example as a result of:

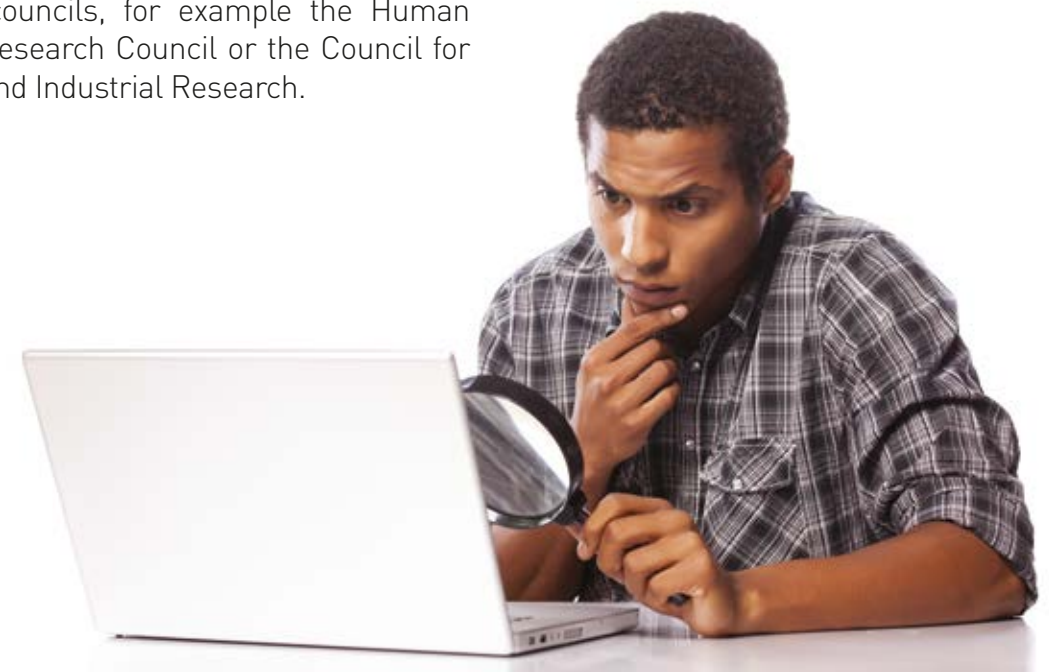
- Abuse of power
- Unfair, capricious, discourteous or other improper conduct
- Undue delay
- The violation of a human right
- Any other decision taken, or situation brought about, by the authorities
- Maladministration
- Dishonesty or improper dealings with respect to public money
- Improper enrichment; and
- Receipt of improper advantage.

### What won't the Public Protector investigate?

Complaints outside of the Public Protector's mandate include:

- Judgments by judges and magistrates, including sentences imposed by them
- Private acts by individuals
- Private companies; and
- Doctors or lawyers who are not working for the state.

South Africa's Public Protector has extensive powers of investigation and can conduct investigations on his or her own initiative – although this must happen within the framework of the Public Protector's jurisdiction, as found in the Constitution and the law. The public protector may also report, and has the power to take appropriate remedial action. It is noteworthy that no other chapter nine institutions have this power.





## SNAPSHOT OF SOUTH AFRICA'S PUBLIC PROTECTORS



### SELBY BAQWA 1995 - 2002

In 1995, Nelson Mandela appointed Selby Baqwa as South Africa's first public protector.

His qualifications include a B Juris from the University of Fort Hare, an LLB from the University of Pretoria and a Masters in Business Administration from De Montfort University in the United Kingdom.

Baqwa has been praised for his contribution to establishing the OPP and raising awareness of the institution, its mandate and services. In his term, Baqwa established regional offices in all nine provinces with a staff complement of over 200 employees. Baqwa also expanded the investigative skills capacity of his staff and initiated an outreach programme that sent investigators into various communities to raise awareness about the OPP and its functions.

Although Baqwa built a firm foundation for the OPP, his bias towards certain individuals in the governing party damaged the credibility of the institution in its early days. A good example is the first major corruption controversy in post-apartheid South Africa that emerged when tendering processes were flouted in the production of the musical *Sarafina II*.

In 1996 (during the Mandela administration), then minister of health, Nkosazana Dlamini-Zuma, was accused of misusing public funds and misleading Parliament, and the Public Protector was called on to investigate. Baqwa came under scrutiny for placing the blame on a mid-level official in order to shield Dlamini-Zuma from any serious consequences. For more information on Selby Baqwa's term in office visit [www.corruptionwatch.org.za](http://www.corruptionwatch.org.za)



### LAWRENCE MUSHWANA 2002 - 2009

Lawrence Mushwana was appointed public protector in 2002 by former president Thabo Mbeki.

He obtained a B Juris degree from the University of South Africa. He also attended the University of Zululand where he obtained two legal diplomas and later an LLB degree.

His appointment was met with public criticism because opposition parties were concerned that he would be biased towards the ANC (he had previously served as deputy chairperson in the National Council of Provinces) and that would taint the independence of the OPP. Despite these concerns, Mushwana received the 60% vote needed in the National Assembly and he was subsequently appointed as the second public protector.

Mushwana significantly expanded Baqwa's outreach programme and provincial offices began sending two investigators into small towns and townships up to four days a week. He has also been credited for creating remedial actions for investigations.

Several cases show Mushwana's alleged bias towards certain ANC leaders. In 2004, he deemed the appointment of Robert McBride as the Ekurhuleni Metro police chief as above board, despite the fact that McBride was unsuitable for the post and did not have the relevant experience and qualifications.

The impression of soft findings continued with the 2005 Oilgate scandal involving the then deputy president Phumzile Mlambo-Ngcuka. Mushwana was investigating allegations that Mlambo-Ngcuka (while she was minister of minerals and energy) had influenced Petro SA to advance payment to a private firm, Imvume Management, and that Imvume had made payments to a company that belonged to her brother. This created a conflict of interest.

Mushwana's report found that the OPP could and needed to do nothing about this outrageous abuse. A court subsequently ordered the Public Protector to undertake a full and proper investigation. For information about Lawrence Mushwana's term as public protector, visit [www.corruptionwatch.org.za](http://www.corruptionwatch.org.za)





## THULI MADONSELA 2009 – 2016

Public protector Thuli Madonsela ends her term in October after seven years as the head of the institution. She is best known for her prominent corruption investigations, which have led to major court cases and the dismissal of high-profile politicians.

She graduated with a BA in Law from the University of Swaziland in 1987, and an LLB from the University of the Witwatersrand in 1990. In 2015, Thuli Madonsela was awarded an honorary Doctor of Laws degree from the University of Stellenbosch. She was further awarded another honorary doctorate in law from the University of Cape Town.

Her legacy will undoubtedly be prominently associated with her *Secure in Comfort* report which found that President Jacob Zuma had unduly benefited from upgrades to his Nkandla residence that were not security-related.

Her findings prompted opposition parties to adopt the slogan “pay back the money”, arguably one of the most popular slogans in South African politics during Zuma’s second term. Long after she leaves office Madonsela will be linked with the epic saga of Nkandlagate.

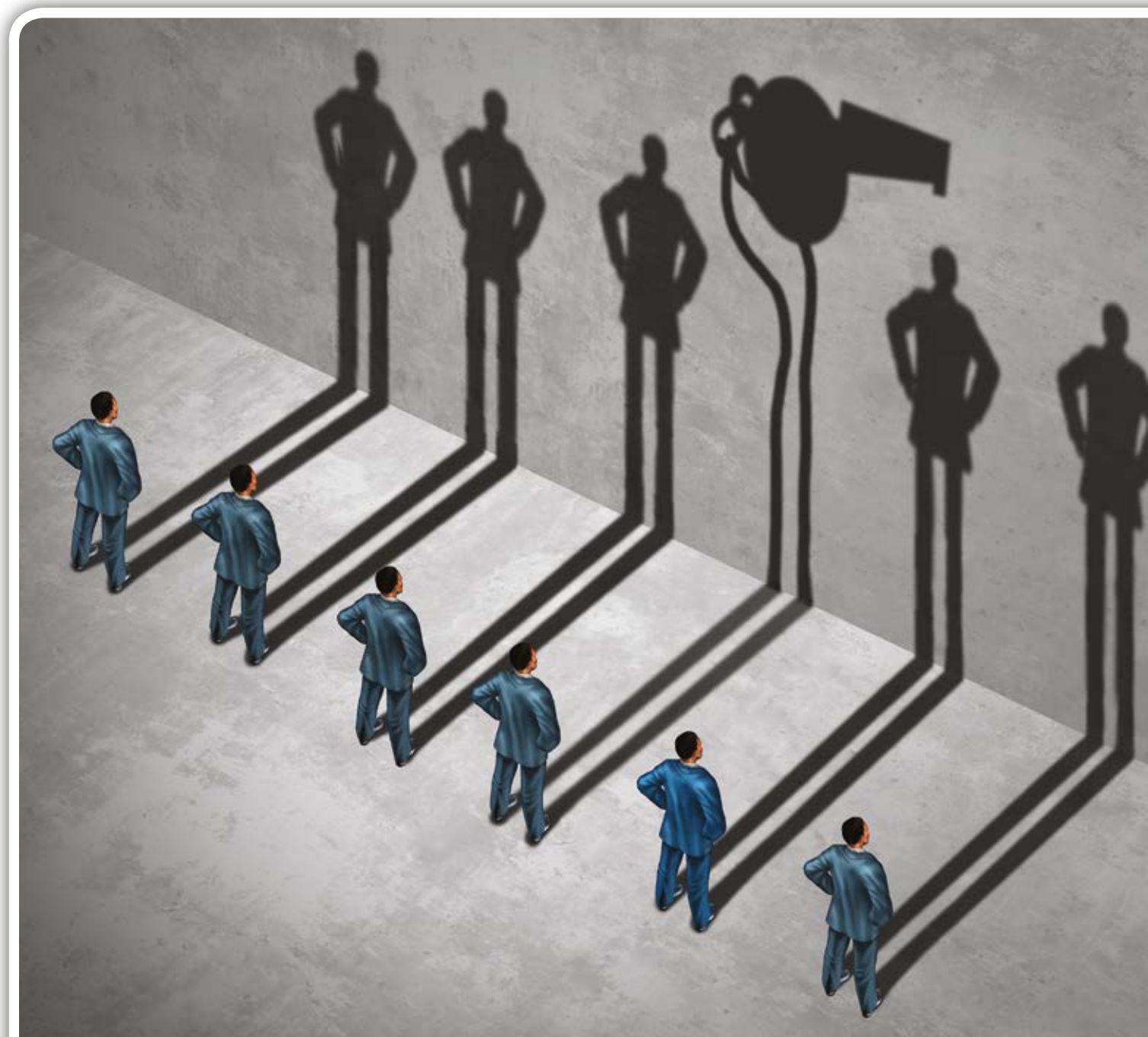
Two important rulings have confirmed the power and scope of the Public Protector during Madonsela’s term:

- The Supreme Court of Appeal held that the findings made by the Public Protector cannot be ignored (unless they are later set aside by a court in a review process) in the case between the Democratic Alliance vs. the SABC in 2015. It also ruled that other institutions also cannot put in place a parallel process to the Public Protector’s investigation, and then claim that the findings of their processes trump the findings of the Public Protector.
- On 31 March 2016 the highest court in the land, the Constitutional Court, found that the rulings of the Public Protector were binding and could only be set aside upon judicial review. The court declared the actions taken by the president and the National Assembly as inconsistent with the Constitution and invalid, and ordered the National Treasury to quantify the amount the president must personally repay to the fiscus as a result of non-security related features at his homestead in Nkandla. This was after two years of denials that the president was bound by the report or was required to pay back anything as well as fierce attacks by

members of the governing party for her report. In one extreme instance she was even accused of being a CIA spy. During the Constitutional Court hearing Zuma’s lawyers conceded that he was bound by the findings of the Public Protector. This was a vindication for Madonsela and a very important victory for the OPP and the country’s democracy.

These unique powers show the importance of the Public Protector. This importance is not just about the individual holding office (although this can obviously make a big difference), but rather about the Public Protector as an on-going, permanent institution that plays a crucial role in making sure that public power is exercised properly.

Other high-profile cases the Public Protector has handled include the dismissal of Bheki Cele as national police commissioner in 2012. A report by the Public Protector found that he was involved in improper conduct and maladministration when the police entered into a R500-million lease for a building in Pretoria. Gwen Mahlangu-Nkabinde, the minister of public works at the time, was also accused of maladministration and lost her position in a 2011 Cabinet reshuffle. For information on Thuli Madonsela’s term in office, visit [www.corruptionwatch.org.za](http://www.corruptionwatch.org.za)





## RADIO DISCUSSIONS AND VOX POPS

1. The Office of the Public Protector has been in existence for 21 years. Has it been effective in its mandate as an anti-corruption institution?
2. At a community level, has the OPP been accessible to the needs of the community?
3. What are the issues that affect your community that need the Public Protector's attention?
4. Have you reported any issues to the OPP? What has been your experience?
5. Lawrence Mushwana's political affiliation tainted the independence of the OPP. Does the new public protector need to be free of political allegiance in order to safeguard the institution? What additional safeguards / mechanisms need to be put in place to ensure the independence of the OPP?
6. Thuli Madonsela's term in office focused on many high-profile cases such as the Nkandla saga and issues at state-owned entities like the SABC, PRASA and the Post Office. However many feel that the real bread and butter issues that cripple our society have gone unnoticed. What type of issues should the next public protector focus on?

## APPOINTING A NEW PUBLIC PROTECTOR

In terms of the Constitution (Chapter 9), the public protector is appointed by the president of the country, based on the recommendation of the National Assembly. The public protector must be a South African citizen who is suitably qualified and has a reputation for honesty and integrity.

The appointment process is led by a committee of Parliament that reflects the proportional representation of all political parties in the National Assembly. About six months before the appointment is to be made, Parliament issues a public notice calling for applications/nominations for the post of public protector.

The nominated candidates are shortlisted and public interviews of the applicants begin. The committee then recommends a candidate and forwards a name to the National Assembly. The National Assembly votes on the candidate recommended by the committee, who must receive a 60% majority vote. The recommended candidate's name is then forwarded to the president, who makes the appointment.

## REQUIREMENTS NEEDED TO BE APPOINTED AS THE PUBLIC PROTECTOR

In terms of section 1A (3) of the Public Protector Act, the public protector is required to have certain qualifications or work experience:

The candidate must be a South African citizen who is fit and proper to hold such office, and who -

1. Is a judge of a high court; or
2. Is admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or
3. Is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or
4. Has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or
5. Has, for a cumulative period of at least 10 years, been a member of Parliament; or
6. Has acquired any combination of experience mentioned in paragraphs (1) to (5) for a cumulative period of at least 10 years.

## THE PROCESS OF APPOINTMENT

In May 2016, Parliament established an ad hoc committee to appoint a new public protector. The committee consists of the following members:

### African National Congress

**Makhosi** Busisiwe Khoza (Chairperson)  
**Bongani** Thomas Bongo  
**Nkosiyakhe** Amos Masondo  
**Nicolaas** Jacobus Janse Van Rensburg Koornhof  
**Grace** Kekulu Tseke  
**Madipoane** Refiloe Moremadi Mothapo  
**Patrick** Maesela (Alternate)

### Democratic Alliance

**Glynnis** Breytenbach  
**Phumzile** Thelma Van Damme  
**James** Selfe (Alternate)  
**Werner** Horn (Alternate)

### Economic Freedom Fighters

**Julius** Sello Malema

### Inkatha Freedom Party

**Christian** Themba Msimang

### African Christian Democratic Party

**Steve** Swart

### National Freedom Party

**Sibusiso** Christopher Mncwabe (Alternate)

## RADIO DISCUSSIONS AND VOX POPS

1. Do you think being a Member of Parliament, as stipulated in the Public Protector Act, is a sufficient requirement to be considered for the position of public protector? How will this affect the independence of the institution?
2. The current ad hoc committee established to appoint the new public protector has allowed for extended public participation in the appointment process. Traditionally, public involvement was only permitted when nominating candidates for the post. The committee has decided to go over and above the procedural requirements stipulated in the

Public Protector Act and the Constitution, and has decided to publish the names and CVs of all the candidates who apply for the position, as well as allow for a time period where the public can comment on these names. Do you think the public can influence the decision on who is appointed as public protector? Should similar provisions be made when appointing other individuals to high profile positions?

3. What questions are important when interviewing potential public protectors?





# THE PARLIAMENTARY PROCESS

## 3 June – 24 June

Advertisement calling for nominations / applications is published. It will run for three weeks in print and broadcast mediums. The public have the opportunity to apply / nominate suitable candidates.

## 27 June - 1 July

The committee will publish the long list of names and provide the public with the opportunity to comment on and/or object to candidates

## 11 July - 15 July

The committee will convene to discuss and shortlist candidates

## 10 August

Shortlisted candidates will be publicly interviewed

## 31 August

The committee will present its report to the National Assembly, nominating a candidate for the position



## THE PROCESS OF APPOINTING A NEW PUBLIC PROTECTOR

### Introduction

**Corruption Watch** has launched a nationwide public awareness campaign to highlight the upcoming appointment of a new public protector. Advocate Thuli Madonsela's seven year non-renewable term as public protector comes to an end on 19 October 2016. Through the **Bua Mzansi** campaign, **Corruption Watch** seeks to ensure the next public protector is appointed in a transparent manner and is influenced by public opinion.

### Objectives

**Awareness:** our public awareness campaign will highlight the roles and responsibilities of the Office of the Public Protector, as well as illustrate how the public can help to nominate candidates for the position.

**Public participation:** we will create avenues for people to participate in the appointment of the new public protector through new media technologies and traditional mobilising methods.

**Transparency:** we will campaign to ensure that candidates are properly vetted, that they are qualified and suitable for the post, and that the entire process takes place in the public spotlight.

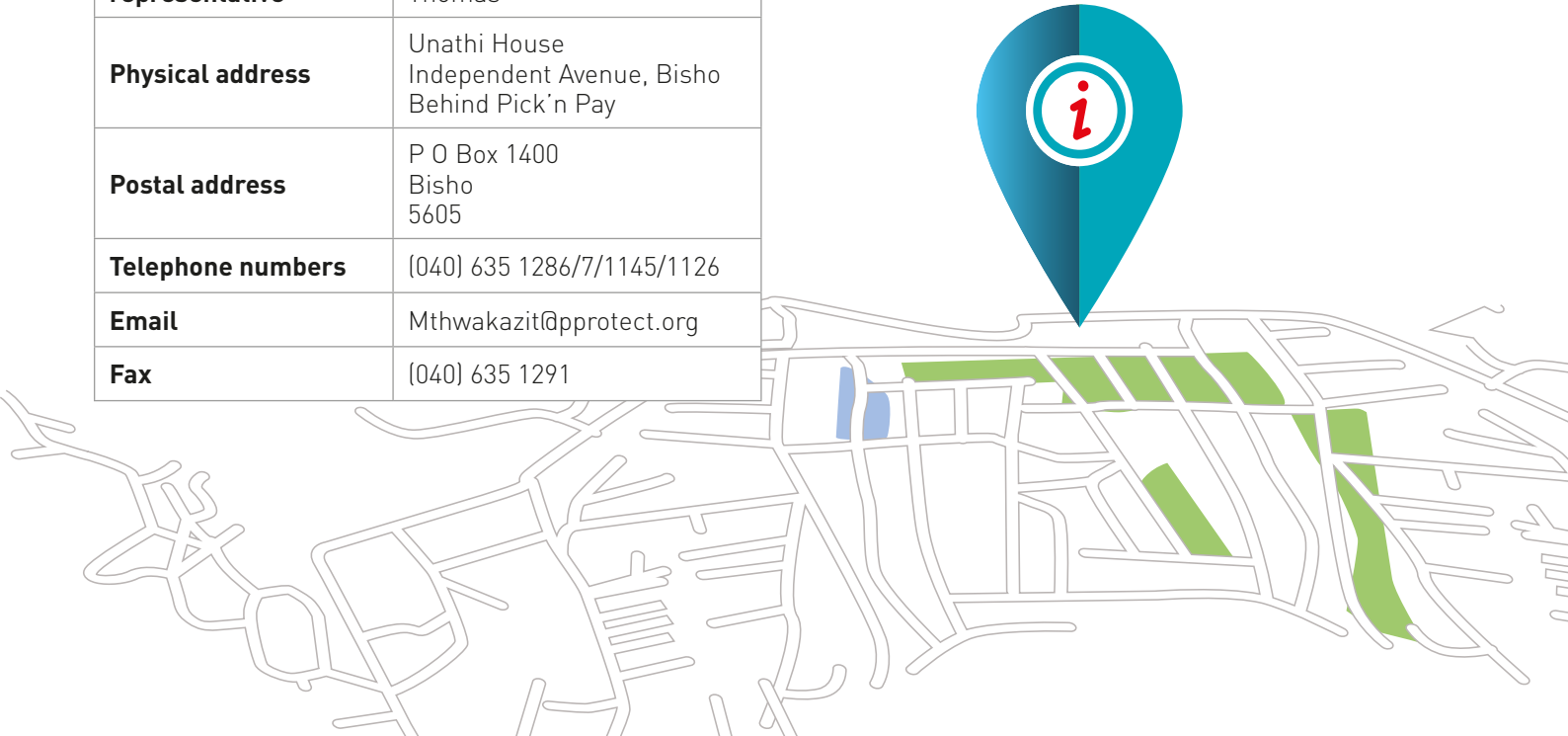




OFFICE OF THE PUBLIC PROTECTOR CONTACT DETAILS

National Office	
Postal Address	Office of the Public Protector Private Bag X677 Pretoria 0001
Physical Address	175 Lunnon Street Hillcrest Office Park 0083
Toll Free Number	0800 11 20 40
Public Protector contact details	(012) 366 7108 julietn@pprotect.org
Deputy Public Protector	(012) 366 7116 janed@pprotect.org
Media enquiries	kgalalelom@pprotect.org

Provincial Offices			
Gauteng		Mpumalanga	
Provincial representative	Ms Winnie Manyathela	Provincial representative	Mr Botromia Sithole
Physical address	Lara's Place 187 Bree Street Corner Bree and Rissik Street Johannesburg 2000	Physical address	Pinnacle Building Suite 101 1 Parkin Street Nelspruit
Postal address	P O Box 32738 Braamfontein 2017	Postal address	P O Box 3373 Nelspruit 1200
Telephone numbers	(011) 492 2807 (011) 492 2493	Telephone numbers	(013) 752 8543
Email	winniem@pprotect.org	Email	botromias@pprotect.org
Fax	(011) 492 2365	Fax	(013) 752 7883
North West		Western Cape	
Provincial representative	Mr Sechele Keebine	Provincial representative	Ms Sune Griessel
Physical address	Public Protector's Chambers C/o Martin & Robinson Streets Mafikeng	Physical address	4th Floor 51 Wale Street/Bree Street Cape Town
Postal address	P O Box 512 Mafikeng 2745	Postal address	P.O. Box 712 Cape Town 8000
Telephone numbers	(018) 381 1060/1/2	Telephone numbers	(021) 423 8644
Email	sechelek@pprotect.org	Email	suneg@pprotect.org
Fax	(018) 381 2066	Fax	(021) 423 8708

KwaZulu-Natal		Limpopo	
Provincial representative	Adv Mlandeli Nkosi	Provincial representative	Adv George Mashaba Matimolane
Physical address	22nd Floor Suite 2114, Commercial City Building Durban	Physical address	18A Landros Mare street Polokwane
Postal address	P O Box 4267 Durban 4000	Postal address	P O Box 4533 Polokwane 0070
Telephone numbers	(031) 307 5300/5250/5251	Telephone numbers	(015) 295 5712 (015) 295 5699 (015) 295 5956
Email	Mlandelin@pprotect.org	Email	mashabam@pprotect.org
Fax	(031) 307 2424	Fax	(015) 295 2870
Free State		Northern Cape	
Provincial representative	Mr Sphelo Samuel	Provincial representative	Mr Mlungisi Khanya
Physical address	Suit Office 2nd Floor Standard Bank House 15 West Burger Street Bloemfontein	Physical address	4 Sydney Street Pretmax Building 2nd & 3rd Floor Kimberley 8300
Postal address	P O Box 383 Bloemfontein 9300	Postal address	P O Box 1505 Kimberley 8300
Telephone numbers	(051) 448 6185 (051) 448 6172	Telephone numbers	(053) 831 7766/8325381/2
Email	hamiltons@pprotect.org	Email	mlungisik@pprotect.org
Fax	(051) 448 6070	Fax	(053) 832 3404
Eastern Cape			
Provincial representative	Ms Nomsa Mthwakazi Thomas		
Physical address	Unathi House Independent Avenue, Bisho Behind Pick'n Pay		
Postal address	P O Box 1400 Bisho 5605		
Telephone numbers	(040) 635 1286/7/1145/1126		
Email	Mthwakazit@pprotect.org		
Fax	(040) 635 1291		



**ON AIR**







Report corruption to:



0800-023456



072 013-5569



Send a Please Call Me: 44666



[www.corruptionwatch.org.za](http://www.corruptionwatch.org.za)



@Corruption\_SA



[www.facebook.com/CorruptionWatch](https://www.facebook.com/CorruptionWatch)