

SA Public Protector and Swedish counterpart compare notes

Public Protector, Thuli Madonsela, hosted her Swedish counterpart, Chief Parliamentary Ombudsman, Elisabet Fura, during a roundtable discussion on the role of the ombudsman on 7 October in Pretoria. The Dean of Law at the University of South Africa, Professor Rushiella Songca was also part of the discussion.

Ms Fura, whose country was the first in the world to establish the ombudsman more than 200 years ago, addressed the roundtable on the topic: 'The Role of an Ombudsman in Ensuring Accountability in a Democracy – Lessons from Sweden.'

The aim of the discussion was to present an opportunity to deepen the understanding of the different roles that ombudsman institutions play in their countries based on those countries' laws.

Ms Fura said that she is one of four ombudsmen in her country and that her office deals with at least 7 000 cases a year. Ms Fura explained that, like her South African counterpart, she –

- has a maladministration jurisdiction;
- reports on her office's activities to parliament;
- publishes her investigation reports;
- uses moral persuasion or persuasive power to ensure compliance with decisions; and
- can refer her reports to parliament for implementation of decisions.

She also said that her office conducts visits to police stations, hospitals and prisons.

Ms Fura explained that her office also acts on complaints brought to them by the public. She added that it does not act on complaints filed anonymously, but that if an anonymous complaint has been filed, that has some weight, her office will take on the case and treat it as its own initiative.

Ms Fura said that the Swedish ombudsmen, although independent from parliament, cannot carry out investigations into politicians. This is in contrast with South Africa as Ms Madonsela does have such powers.

Ms Fura said: 'When we look at complaints filed over government offices, we really try to tread carefully and not cross the line and be political'. Ms Madonsela said her office dealt with cases in a similar way, even when they involved politicians, her office 'tried not to play politics,' she said.

Ms Songca said that although there was clear legislation on the powers of the public protector, there were still issues with the public protector's role.

Ms Fura said while there were other state agencies conducting oversight in areas that were within her jurisdiction, her office's findings carried more weight and were considered 'extraordinary'.

She said the decisions of her office were just recommendations and not legally binding, and that she counted on the persuasive power of her reports to get government and parliament to act on them.

Ms Fura said the Swedish government appreciated the work of her office and funded it appropriately when financial requests were made. In contrast, Ms Madonsela said the biggest challenge her office had experienced was access to funding.

To conclude the discussion, Ms Madonsela expressed gratitude to her counterpart and said that she was happy that her Swedish colleague, who is also a board member of the International Ombudsman Institute, had clarified that the powers of ombudsman institutions vary from one country to the next, depending on the law, cultural and historical context of each country.

'This is why you cannot say to us "why do you not act like a normal ombudsman?", as some have previously said to me,' she said.

Ms Madonsela said one thing to take away from the discussion was the fact that there could never be a blanket approach to the concept of ombudsmanship as each ombudsman exercised powers given to them by the constitutions or laws of their respective countries.

In South Africa, she said, the Constitution gives her the power to investigate alleged or suspected improper conduct, report on that conduct and take appropriate remedial action.

Ms Madonsela further said that the Public Protector Act 23 of 1994, which introduces the word 'recommend' for the first time, is worded in a manner that clearly shows that a 'recommendation' is one of many options she can pursue during and after an investigation to 'rectify maladministration'. She reiterated that her office's interpretation of the constitutional power to 'take appropriate remedial action' is consistent with the wording of the Public Protector Act and the constitutional dialogue that preceded the establishment of the office and pronouncements made by successive South African presidents since democracy.

The Public Protector added that her office, in line with s 39 of the Constitution, which guides interpretation of the Constitution and laws, understands 'take appropriate remedial action' to simply mean do what you consider appropriate in each case to fix the problem you have found. Ms Madonsela warned that should her office be seen as unable to assure justice, some may resort to extra judicial means to exact accountability from those who exercise public power as the court route is expensive and generally more onerous for ordinary justice seekers.

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