



INNOVATIONS FOR SUCCESSFUL SOCIETIES

THE WOODROW WILSON SCHOOL OF PUBLIC AND INTERNATIONAL AFFAIRS

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Interviewee: Thulisile Madonsela

Interviewer: Tristan Dreisbach

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DREISBACH: This is Tristan Dreisbach with Innovations for Successful Societies. It is March 10, 2017 and I'm speaking with advocate Thuli Madonsela, the former Public Protector of South Africa. We are here in Cambridge, Massachusetts where she is currently a Fellow at the Harvard Advanced Leadership Initiative. So again, thank you so much for taking the time to speak with us. We appreciate it and we're really interested to hear about your story.

MADONSELA: *It is really a pleasure to speak to you, Tristan, and I'm encouraged that Princeton has an interest in what is happening in South Africa.*

DREISBACH: We certainly do. I want to start before you became Public Protector of South Africa. Would you brief us on your career up to that point in 2009?

MADONSELA: *My career, before becoming Public Protector, was mostly around legal advocacy and law reform. I briefly taught, but that was before I qualified with my first law degree. After getting my law degree or even just before I got it, I worked as a trade unionist and eventually was a legal adviser in that trade union movement. I had worked as a teacher temporarily before qualifying.*

Then I went from the trade union movement to work in industry very briefly as a legal adviser as contracts manager. After that I went into academia where I worked for about three and a half years at the University of Witwatersrand. Then I started as the intern of a research fellow and later was a researcher with some teaching responsibilities as well. Initially as an intern it was labor law and then later focused a lot on gender and the law.

Around that same time I was working as a civic activist assisting a lot of community members on issues of local governance, but at the same time because I was a lawyer, providing free legal advice on whatever matters they had to deal with be it detention without trial or arrests, or withdrawal of property unlawfully from people. It was things like that. Those were the kinds of cases I dealt with.

After I left the trade union movement, as I indicated I was a researcher for many years. Those were the same years I was involved in the drafting of the constitution and the local government transition until they moved to government at the invitation of Minister Dullah Omar to participate in a strategic planning process to inform the transformation of the justice system and collate that process of envisioning the future and assisting the department with the transition.

Then, left that planning unit and joined the department full time as a civil servant working mostly on issues of equity and strategic work. It was called the Transformation and Equity Unit. I left that unit to work on another unit, still in the Department of Justice as a contract person, involved in training the judges and magistrates on equality. We had just passed the Equality Act, I think. This was around 2001. It was a requirement that before judges were designated Equality Court Judicial Officers, they would be trained on equality and nondiscrimination primarily because everyone at law school had been trained on nondiscrimination mostly using new jurisprudence where you mostly have a formal notion of equality.

The approach in the South African constitution in the end was a substantive notion and it was important that we change the parameters through training and that was it.

After that I left to work in the private sector running my own research and training agency, providing legal advice, research assistance, training and publishing, again around justice reform and constitutional issues. I was invited back to the Department of Justice to be a full time law commissioner, sort of the executive commissioner, the commissioner in charge of the commission. I stayed for about three years until I was appointed Public Protector. I have been Public Protector for the last seven years. I completed my non-renewable term on the 14th of October 2016.

DREISBACH: Can I ask how you became involved in drafting the constitution? What led to that opportunity?

MADONSELA: *I had been involved for many years in constitutional dialog. The dialog started before the ANC (African National Congress) came back to South Africa. There were a lot of conferences, papers written and being part of Wits university a group of us there had been involved in that process for many years. When the ANC had its first draft which was called "Ready to Govern" and needed it to be reviewed, I was part of a team that reviewed that entire constitution. So that was long before we had the interim constitution and the final constitution.*

When the unity talks then started at Kempton Park I was part of the support team. I wasn't formally appointed but we provided research materials primarily to the women and our interests, of course, being mostly issues around the Bill of Rights and the issue of diffused state power but with additional safeguards. When the constitutional assembly then was constituted they appointed eleven constitutional experts to assist with the drafting process. I was fortunate to be one of them.

DREISBACH: So going back to your appointment as Public Protector, was that a surprise? Had you thought that that might be an opportunity that would come about? When that happened how were you feeling at the time when you were offered this position? How was that offered to you? How did you find out that you had this opportunity?

MADONSELA: *The nomination was a surprise. The appointment, itself, was not really a surprise because I had already seen all of the other candidates and realized that I had a fair chance. Of course, it was 50/50 because there were other candidates, but when I was nominated by South African Women in Dialog, it came out of the blue. The surprise element was also compounded by the fact that I had just been nominated for a position in the judiciary I think a year earlier. I was one of those that they didn't even dignify with a response.*

We were then told that if you hadn't acted as a judge, the unwritten rules of the Judicial Services Commission are that they don't even look at you. That is sad because the way the Constitutional Court operated and how it was able to make those groundbreaking decisions was because it had this opportunity to combine your ordinary lawyers, your career lawyers, with academics and the academics were able to think beyond what we take for granted.

When this one came I was rather unsure but I still prayed about it and accepted the nomination.

DREISBACH: Why were you unsure about it?

MADONSELA: As I indicated, I'd just been declined as a judge in a not so dignified way. You don't even get invited to interview. I suppose they get lots of applications or nominations. Their role is then that if you don't get a response you have to assume you didn't make it which is not really a good idea because what if your response got lost in the mail? That was what made me less enthusiastic. Perhaps less than enthusiastic is not an accurate depiction of how I felt. What I mean is I wasn't confident in the start of the process that I would get it. At that stage, obviously, I didn't know what I was up against. The second thing is they readvertised because the nomination process happened just before regime change.

DREISBACH: So you were nominated before the (Jacob) Zuma administration.

MADONSELA: Yes, before the Zuma administration and when the Zuma administration came they readvertised and I then wasn't quite sure that I would make it.

DREISBACH: You said that you were nominated by South African Women in Dialog, how did that process work? Do civil society groups nominate people to be considered?

MADONSELA: In the past it used to be civil society groups but because the constitution is silent about who can nominate, you can self nominate, your wife can nominate you. I've heard of people nominated by a friend. I think traditionally it is real institutions that nominate people. Again the National Assembly accepts any nomination. Then a committee, a multi-party committee sifts through all of the nominations and short- lists all of those who have a reasonable chance of making it. Then publishes those names to the public and invites comments from the public, interviews in an open forum with members of the public.

Then after they have those interviews that are open to the public, the committee traditionally only submits one name to the National Assembly after voting. In the vote, whoever is the top one they submit only that name to the National Assembly not three, as we know it in selection and appointments in companies. Then the National Assembly votes on that one name. You have to get 60% or more and whoever gets 60% or more is sent to the President.

Theoretically the President can say no, but he can't appoint whomever he chooses. He can send it back. You have just triggered my memory that it has always been said that I was appointed by the Zuma administration. That's true, but the nomination process had zero to do with the Zuma administration. Today is the first time I am recalling that in seven years, because the adverts happened before that administration came into power.

DREISBACH: So President Zuma was in a position where he could have said no but that would have started the whole process over again.

MADONSELA: Yes, but in South Africa, unlike many countries, we have discussed it in class here, the executive is constrained in terms of its ability to make decisions; it is not unfettered discretionary power. If he has to send it back he can't be irrational in doing so; he has to give cogent reasons for declining and if the National Assembly or a member of the public does not believe in those reasons as being cogent the measure can be taken to court.

DREISBACH: And that has happened, right? There have been decisions reversed because the appointment was seen as irrational?

MADONSELA: Exactly, that is how the constitution is structured—thank goodness.

DREISBACH: What were your thoughts about this Office of the Public Protector at the time you were nominated? Had you followed the work of that office closely? What were your general sentiments about that office and what it had been doing up to the point of your nomination to the position?

MADONSELA: *I had a lot of respect for the office despite the fact that towards the end Advocate (Lawrence) Mushwana had had a lot of negative media stories about the one decision he made on Petrol SA oil purchase money where money was given to the aides, or to somebody, who then gave all of the money to the ANC and the oil was not bought for Petrol SA. He hadn't handled that well. But in terms of everything else they had done I had been following it from Advocate (Selby) Baqwa on ethics, Advocate Mushwana around mostly administrative justice.*

When I came into the office it was at the time when the Hawks (Directorate for Priority Crime Investigation) had been doing a lot of work on corruption. I never, therefore, thought that the office would end up filling the gap on anticorruption. I had envisaged the office to be in a position to mostly deal with administrative justice violations and ethical violations. I didn't think at that stage that we would be doing a lot around corruption although I knew that we had the power to deal with corruption, but because we had a multi-agency approach in South Africa, and at that stage the lead agency had been the Hawks, if it wasn't the Hawks it was the Scorpions (Directorate of Special Operations). I had then thought that the Hawks in that way the successor entitled to the Scorpions would continue to be the go-to institution on corruption.

DREISBACH: So you started this job not thinking that corruption was going to be your big signature item.

MADONSELA: *Absolutely. In the interview it was always seeing it as a refuge for the ordinary person fighting the mighty state on issues of administrative injustice.*

DREISBACH: This is a complex question, but looking at that time, if we focus on corruption even if you didn't think that was going to be your big issue, what did you see as the biggest corruption problems? How should we conceptualize them? When you were going into that office how did you look at the issue of corruption? What priorities did you set? .

MADONSELA: *The biggest issues around corruption at the time were primarily around the state procurement system. The cases that had been handled by the Scorpions and the Petrol SA matter that had been handled by the Public Protector had been around state procurement, vested interests, cronyism, nepotism, but also the question of overcharging for the state and payment for services not rendered which is something that had emerged in the Petrol SA case.*

DREISBACH: I think this office is very interesting because it is an ombudsman office, but it also has it seems different responsibilities than some ombudsman's offices in other countries. So with the focus on corruption, how should we understand what the authority and what the powers of this office are to deal with that issue? Is it just about investigation? What are the responsibilities of the Public Protector office?

MADONSELA: *The Public Protector office is an administrative accountability institution of last resort. On administrative justice and on corruption, the assumption therefore would be that there are other administrative accountability agencies, mostly inside the executive itself. It is only when those have failed that the Public Protector steps in and it is of last resort administratively. That doesn't mean there*

aren't other accountability mechanisms, there would be judicial accountability, political accountability, et cetera.

In terms of its role in administrative accountability, the agency of last resort has the power not just to investigate it has the power to ensure redress and to effect a systemic change. Those are powers that come from both the constitution and the Public Protector Act. It has powers also given by other acts including our Whistleblower Protection Act that is the Protected Disclosures Act. Using all of those, it has the preemptive power. In an ideal world, the Public Protector can do inspections like ombudsmen do in other countries just to find out whether your systems are fine, et cetera. But given the fact that the Auditor General does that in South Africa there is no pressure for the Public Protector to do that. But what I'm emphasizing is the proactive part, in that you can't measure the impact of the Public Protector only in terms of how many corruption cases they handled. In Singapore, the Anticorruption Bureau that is the counterpart to the Public Protector is measured also in terms of the decline of such acts, at least in institutions that have been dealt with by the bureau before.

DREISBACH: I see. That's a way to think about how to measure the progress, which in corruption is always a very, very difficult thing. But you think that one way to look at the effectiveness of these institutions is the overall decline so you look at declines in complaints that are filed?

MADONSELA: *Yes. There has to be a decline. In the entire system there should be a decline because others should look at what happened to their peers and stop themselves from wrongdoing in the long term. But certainly, ideally, there should be no repeat of similar conduct in the same institution. I must say that except for the SAPC (South African Pharmacy Council), the way we did major cases of contact failure, be it corruption or ethical violations, we never saw much recidivism as they would call it in criminal justice.*

DREISBACH: In terms of the independence of the institution and how it was legally set up and oversight and budgeting, how independent was it? What were some of the potential vulnerabilities to interference or withdrawal of resources and other things that can make institutions like this less independent?

MADONSELA: *Certainly. The institution is clearly independent. Actually my colleague from Namibia says these institutions have accidentally created a four-branch government because they are not part of the executive. They are not part of the legislature. They are not part of the judiciary, They are a branch of their own. If you look at the constitution, actually, Chapter 9 is a chapter on its own but the interesting thing is nobody has awakened to that reality. Even when it comes to protocol you find that they clump us with civil servants. So that's the essence of it. What was the question now? I've lost track.*

DREISBACH: In terms of independence and in terms of budgeting what are the vulnerabilities there?

MADONSELA: *So firstly, at least politically the vulnerability, the clear arms' length, independence is also reinforced by the fact that you can't be dismissed willy-nilly. I know there were attempts to dismiss me. There was even an attempt to create a commission of inquiry under pretext charges that I was a CIA (Central Intelligence Agency) spy and somebody went around telling editors they were going to create a commission of inquiry. But here is the deal. In the constitution the President has no power to create a commission of inquiry, only parliament can constitute a multi-party ad hoc committee to deal with those charges and*

God knows it was tried There were some charges and some committee did that. So it is a very difficult process to fire you. The vote this time can't be 60%. It has to be two-thirds majority for you to be dismissed. So that makes you fairly independent.

But what are the vulnerabilities? The vulnerabilities are around the new tendencies in the selection process that historically are set in the institutions that selected. Like it would be lawyers that selected. So we know what is the interest of that constituency and it is all open-ended. More recently there has been acceptance of nominations by ad hoc people so you don't really understand who really is behind those nominations.

DREISBACH: You're talking about nominating for your position?

MADONSELA: *Yes, for the position I had. More recently the trends are changing in that the nominating parties are no longer credible, only credible institutions. Because I do believe that whoever nominates you has expectations. People don't randomly wake up and decide, "I want to nominate you for this." Throughout my term women supported me a lot. I know that when women felt because of my thoughts so to speak, it left a bad taste in the women's leadership community. I still had to explain myself. So you have to understand that when people have nominated you they have expectations. So that is a vulnerability, especially when it is not clear who exactly nominated you. But then the budget thing is a bit of a vulnerability.*

In fact, in other countries, once you have budgeted you submit it, like in England. Once when your budget is submitted in parliament, your budget goes through, unless a technical assessment of your budget indicates that there are unjustifiable inclusions that you've made. With us, in the beginning there were increases to the budget. It was a defective budget structure because the institution was initially a branch of the Department of Justice, the Advocate General. Therefore its budget was a budget not for a tree but a budget for a branch. Then when the institution was changed into a tree of its own, in 1993, when the interim constitution was passed, there was no reassessment of the budget from day one to then look at creating an institution that needs its own roots and its own staff. Over the years Parliament kept saying we gave you 2% increase, 10% increase, 20%, but 20% is very little, is very little. More recently, in the middle of my term, as part of the backlash there was a clear attack on the budget. Without good reason the Justice Portfolio Committee said the increase in the budget was not justified without really pointing out what is wrong. But the very same justice before the committee now after I left, when my successor presented my annual report which would be everything written by me, the very same group said, "Yes, this budget needs to be supported." So that was prepared by me and she just presented it because of the change of the guard on the eve of my departure. So that is a bit of a vulnerability. I had spoken to the Minister of Finance that the best way, honestly I hope that this is one of the changes in the Public Protector Act, would be to have an expert committee that sits once a year, something similar to a commission that they have for the nomination of public officers. It sits once a year. It does a very clinical task and decides what is needed.

My suggestion was that the Public Protector submit a budget and then that kind of clinical, professional commission that has no politicians on it should assess it and if it is accepted it should be approved. I think going forward that needs to be done.

DREISBACH: What are some other challenges that you faced when you began working in this position? Did you anticipate a lot of political resistance or institutional resistance to the work you were going to do?

MADONSELA: *No, I didn't anticipate the kind of backlash that I ended up with. My predecessors had warned me that there would be fallouts but they thought that it would be personality issues like somebody calling you a twit as the first Public Protector was called or somebody walking away when you go to the VIP Lounge or refusing to share a car with you when they take you to the runway at the airport. Small things like that.*

I really didn't expect what happened—death threats, dead cat in front of my gate, accused of being a spy, attempts really to impeach me. Later, I was told that one minister did try to get Advocate Baqwa impeached, but President (Thabo) Mbeki refused to do it. The President had my back throughout openly and in quiet conversations until the Nkandla investigation.

DREISBACH: You said that initially you didn't think that corruption was going to be the big issue. When did you start to feel that this is something that you needed to prioritize?

MADONSELA: *It happened immediately. When we prepared our first strategic plan we prepared it at the end of 2009 and the emphasis was really on the so-called Gogo Dlamini [meaning "average Joe"] cases. You're just an ordinary person. During the following year in 2010 there was an influx of resource abuse cases or allegations of corruption. The main case that we did then was the SAPS [South African Police Service] leasing. That was the first battle actually.*

After that when people realized that we could work on those matters there were more cases referred to us on allegations of corruption. When we reviewed our strategic plan toward the end of 2010, we then ensured that we strike a balance between administrative justice and anticorruption. I think 2010 we restructured the Public Protector office in such a way that we had an anticorruption unit although we didn't call it that. We called it Good Governance and Integrity. Initially staff wanted us to call it anticorruption and we thought no maybe it is just better to call it good governance and integrity.

DREISBACH: I see. That restructuring happened in 2010? So it was really response to the complaints that were coming in, the cases you were working on?

MADONSELA: *We always knew that we had to do anticorruption. So the restructuring was going to have good governance issues, however, as we said in our strategic plan. It was only in 2010 that we realized that there was an influx of these anticorruption cases. In other words it was part of our mandate but we were not going to put equal resources into it as we were going to do to administrative justice. In the end we had to put 50/50 resources.*

DREISBACH: In terms of the restructuring, what was the problem that had to be solved there? What was the deficiency in the structure that had to be improved through the restructuring?

MADONSELA: *Originally the Public Protector office had one investigation branch that primarily focused on the administrative injustice cases and then had one person who was the Special Investigation Unit, but it was only one person, and that created problems when you had an influx of cases and couldn't have one person.*

Secondly, the original structure did not have capacity at all in the provinces for handling corruption and ethics cases. These ones were always called special investigations and they always had to come to this one person's office. The restructuring made sure that we replicated the good governance and integrity unit which was an anticorruption province, but we restructured the office in three ways. We had a proper triage office. We created a triage office that we didn't have before, the triage was always done by the Public Protector. But as the cases were growing, with people knowing us more, we had to create systems that were not dependent on one person. We also had to create criteria for triaging cases. Then we created these three branches.

Part of the reason for creating the three branches was to make sure that these big cases don't swallow the small cases. We had three branches at that time: an early resolution branch, a service delivery branch, and then a good governance and integrity branch.

Later we restructured again when we found that some of the small cases grew into big cases. So we put the early resolution as a sub-branch of administrative justice and service delivery

DREISBACH: When you use the word triage in here how should we think of triage in terms of the work that the Public Protector's office does?

MADONSELA: *The triaging branch was called Intake Assessment and Customer Service. Its job was like in a hospital really. When cases are coming it looks at: Do we have jurisdiction? (We have a team. Initially we had an assessor, one individual assessor assess it.) Is it within jurisdiction? Does it have merit? Is there something to be looked into? Even if we have jurisdiction and it has some merit, are we the right institution, because we were the administrative accountability structure of last resort. Why not send it to the human rights commission, public service commission, independent police directorate, the Hawks or some other agency. So they would do that. If you're not in jurisdiction we refer you to the right place. If you are in jurisdiction but there is no merit, we decline. If you are in jurisdiction but there is somebody else that can help you better, we refer you to them and say, "We can have your case, but it is better handled by this other primary structure."*

If then you are in jurisdiction the last part of the triage process is that when you have decided you are in our jurisdiction and you meet all of the criteria for us to help, they have to decide which branch. Is it an early resolution matter, is it an administrative justice matter, or is it corruption, governance failure or ethics failure which goes to the Good Governance and Integrity?

DREISBACH: So all the cases that you receive, will they all come through that triaging process then or is there another mechanism for it to come to you?

MADONSELA: *The triaging process is not a receiving process. You have a unit that receives registry. All cases are received by registry and throughout the country there are registry units. It was 22 offices, but with limited resources we reduced them to twenty. There would be registries in all of those 22 offices. It is a different group of people that register all cases. Then they put them on an electronics system that goes to everyone—all key people—to see what came in. Then it goes to the triaging people. The triaging people triage it and then send it also electronically for all of us to see what their recommendations are. You can report back on the system to say, "I disagree." Again you do it openly. Your response will be seen in twenty offices when you said so-and-so case should not go in.*

That is the system. That is one of the things that I created, accountability and transparency on the team in terms of what is the criteria for accepting and what is the criteria for rejecting. What is also the criteria for distribution of the cases within the three branches which we then changed into two operational branches. The third branch was turned into a provincial monitoring branch.

DREISBACH: Is anybody allowed to submit a case to your office? Can this come from anyone or do they have to come from certain classes of people or types of people?

MADONSELA: *Anyone. You wanted to know what is the intake process. Anybody can report. It is again different from the ombudsman system in other countries. You don't have to say my rights have been violated. You also don't have a problem with jurisdiction to say this matter happened here in Cape Town and therefore it must be tackled here. Anybody can see wrongdoing happening to someone else and can report that matter. The staff or anybody in the Public Protector office can initiate an investigation. Of course it has to be approved by the investigator. Part of our strategy was that each staff member should initiate at least one investigation on their own. If you read the newspaper and you see wrongdoing. For example, one that we did of people being eaten by lions and leopards and the state refusing to provide money for the enclosure and to compensate them for some of the animals that were regarded as natural fauna of the area, was initiated by a staff member. A staff member could initiate again but typically we would not initiate corruption cases. That was for two reasons for me.*

One was I never initiated a single corruption case personally because those who were in Governance and Integrity had to initiate cases. For me there were two reasons we were not initiating. The main reason was because we had an influx of cases, it really was an academic exercise to initiate other things except the Gogo Dlamini cases. So the corruption cases I never initiated them. The Gogo Dlamini cases—if you read a story about somebody who hasn't been given their social security number or the equivalent of their social security number and therefore they can't have a job, they can't have a business, they can't have a passport—those are cases we would deal with.

I'm not saying we never initiate cases. I don't want to come across saying that because every staff member had a duty, every investigator had in their performance contract a requirement that they initiate and those who were responsible for good governance and integrity cases did initiate corruption cases. We couldn't then say you can't do this because it was part of their job description.

DREISBACH: I see. You talked a little bit about the functions of people on your staff. So when you came in did you have enough staff? Did you have staff with the right competencies and training? Tell me about the human resources you had to work with at the Public Protector's office.

MADONSELA: *There weren't enough staff members fully trained on thorough investigations. The tradition had always been the typical ombudsman where you inquire and if government agrees, you fix. If government disagrees, you close. That was in most cases. The expertise for investigations was in the Special Investigations Unit with limited people. There was only one person actually. So together we built on the competences that we had but we always had great human beings who were committed to finding the truth. So if I'm saying they may not have had the tools to dig, that doesn't mean there was no willingness to dig; it was just the methodology they were used to. They used to call it the ping-pong method. You*

write to government, the government says no, you send it to the complainant and you say government says this, please check and see if you agree. If the complainant doesn't come back you just close the file.

But part of the change was also the Mail and Guardian case which at the time I came in as Public Protector we were being sued or we were appealing that case. The final decision set out guidelines of what constitutes a proper investigation—open mind, finding the truth, not waiting like a court of law for the parties to provide information but actively seeking it. That part of the changes had to do with implementing the court requirements.

DREISBACH: What else did you feel you had to do to make this institution stronger or more effective in achieving its mandate?

MADONSELA: *It was creating systems. As I've indicated, the first part was training. We sent everyone for Sharpen –Your -Teeth training.*

DREISBACH: Sharpen -Your -Teeth?

MADONSELA: *Sharpen- Your- Teeth training that was being offered by my colleague from Ontario, Canada. Everyone trained on Sharpen- Your- Teeth. It also had all voluntary, ongoing training. I also created a standard operating protocol. It is a long document from the beginning of an investigation right to the end just to make sure that everyone doesn't go according to instinct.*

DREISBACH: So there hadn't been an SOP (Standard Operating Procedure) before that?

MADONSELA: *No. There was no standard operating procedure. There were guidelines but they were very, very broad guidelines, investigation guidelines. The triaging also—there was no instrument on triaging. We created an instrument for everyone to understand the same criteria on what comes in, what goes out and where do you send the ones that you disagree. The emphasis was creating systems, training and to embolden, particularly developing leadership development, getting everyone to see themselves as a leader and galvanizing staff around a purpose-driven organization. We went through a process which was facilitated by one of our companies, Alexander Forbes, for free, pro bono, around turning yourself into a purpose-driven organization because we felt an approach that says we investigate improper conduct doesn't really talk to the "why" part. Basically it was really that we came up with a statement of what is our purpose: that we protect the public from improper conduct by investigators. In other words, the investigation had to have a purpose. It wasn't just an endless process because the other thing that we changed, that is a success story because there was a lot of resistance, but the system was such that as an investigator you get your reward if you close the highest number of cases and I'm afraid when the new Public Protector, who had been a staff member in the previous system, came they closed a lot of cases. So staff members would close for any reason. They would close because they wrote to the complainant and they didn't respond. They closed because government didn't respond. They closed because government didn't submit documents. There were so many reasons for closing. That's why we did the standard operating protocol. In the process there were a lot of injustices. In one case now, they paid the guy more recently. Part of it was paid just before I left and some of it was paid about two weeks ago. That case was closed in 2001.*

DREISBACH: In 2001?

MADONSELA: *Yes. He came back under Mushwana (Public Protector before Madonsela). It was closed. He came back under me. We looked at it. But it was cases like that that showed the reasons for closure was so somebody could say, "I investigated 30 cases." If you look at it you'll find that they investigated none, not a single one. They just wrote a letter or they closed it after the investigator retriages it and writes back to the complainant and says your matter is not in our jurisdiction. So we stopped those things. The investigator would close it and claim it is a completed investigation but there was no fact finding. There was no work. There was no input. But those were the people who get 90% and the people who at the end of the year when you are giving rewards get the most rewards.*

There was a lot of sadness in the system because those who were doing real investigations would close the least files because they would wait, they would write, they would push. Government would say no, you have no jurisdiction and they would write back and say there is. Whereas these others would say, "If government says we have no jurisdiction, close it."

DREISBACH: So did you change the way those rewards are offered?

MADONSELA: *Yes but that created a lot of sadness. We worked on it for many years but it was one thing that when I left had still not been resolved because I understood on the one hand we wanted people to be rewarded for substantive work but the problem of not having enough people was getting in the way. If you said to me I have to close a reasonable number of files but I have to do a lot of digging in them then some of these cases needed more than one person on the case. The second problem was we created a supervisory structure. In the past, even though investigators had different ranks, nobody supervised any one. It was a very weird arrangement. You'd be a chief investigator, this one is a senior investigator, this one is an investigator. We created two more layers, a training investigator and an assistant investigator, but everyone would be dealing with cases. The new system was like in a law firm. If you are a partner you supervise those below you. If you are a professional assistant you supervise the law clerks. But here is the problem. We had something called OSD—Occupational Specific Dispensation. Some of the juniors make more than the seniors because of the way the OSD was implemented wrongly by the Department of Justice, because of that confusion about whether we're part of the Department of Justice or not.*

Because of that it created a lot of sadness. If I'm supervising somebody else, I am a Chief Investigator, the Senior Investigator, but they earn more than me. Why must I take responsibility for their outcomes? That is something about why we are trying to ask for money so that we could review the system. I hope they do give the new Public Protector the money because that will always remain a source of grumpiness.

DREISBACH: To go back to the training you mentioned, the Sharpen-Your-Teeth training, tell me a little bit more about what the training was that was being given to people, what they needed to learn to become better at and more effective at their jobs.

MADONSELA: *Right. The training was about undertaking an investigation from triaging to report writing. What is a proper investigation? What would be the principals coming from the Mail and Guardian case and then, what is a successful investigation? What would be done for you to call it a successful investigation? What are the to-do's? Where do you start? Is it like writing a letter? How do you structure an investigation? How do you structure an investigation strategy? How do you prepare an investigation plan or we also instituted a requirement for you to have an investigation plan, not just advocate or deciding what to do at any time. With*

an investigation plan, how to identify weaknesses as early as possible? How to interrupt with government? When do you decide to have a hearing? When do you decide to have field work inspections and things like that? When do you use ADR, which is mostly in the administrative justice cases? We used ADR, Alternative Dispute Resolution. That is another issue that we introduced during my time—ADR. It is people sitting around the table to resolve the cases. In the past most of it was resolved through letter writing and that doesn't provide clarity but it also doesn't allow people to look each other in the eye and resolve it.

That was training around those things and training around the laws that guide us. Because in the past there was a tendency to use only the Public Protector not to realize that our powers come from the constitution and the Public Protector amplifies and regulates the exercise of constitutional power but also the Public Protector is not the only act we operate under but also the Executive Ethics Act, the Protected Disclosures Act. So that was the training. Sharpen-Your-Teeth was offered by the Canadians.

DREISBACH: Was this the Canadian Development Agency or the Canadian—?

MADONSELA: *Andre Marin, the Ombudsman of Ontario. Together with a team we created our own training module on conducting effective administrative investigations. This then followed the standard operating protocol. You have to make sure that your report is a communication tool that is clear, concise, accurate, professional and persuasive. That was the methodology that we worked together to create.*

DREISBACH: You mentioned not having enough staff. How many staff did you have and what do you feel is the number you need to get to to be able to fulfill your objectives?

MADONSELA: *By the time I left the staff was at about 370. In some states it was 400. But that includes trainee investigators because we introduced a level of training investigators. That is the total staff including registry people, your finance, your HR (human resources). That would make the investigation team about half of that. That is nowhere near the amount you need. This is the team that supervises the entire state, from local government in para state house to national government. It should be treated as a government department. It needs at least a thousand people.*

DREISBACH: Did the numbers change a lot while you were there? Were you able to increase that?

MADONSELA: *Yes they did. When I went there the staff was about a hundred and something people so the numbers did increase.*

DREISBACH: How were you able to get that increase?

MADONSELA: *Every year I got a substantial increase about 20% sometimes.*

DREISBACH: I know in 2002 there was an anticorruption strategy that the government put together. Did that have a real impact by the time that you took over? Was that anticorruption strategy a relevant thing and did the Public Protector's office factor into that at all?

MADONSELA: *Absolutely. We conceded our efforts to be part of the anticorruption strategy. Even when we trained on anticorruption we would firstly talk to the broader impact sought by the anticorruption strategy. After the national development plan was created we also would refer to Chapter 14 of the broader impact design.*

Also the training would then take into account that what we tried to do is not just clean up after corruption has happened but also to be part of agents of change to systematize a culture of noncorruption and a culture of nontolerance, of zero tolerance for corruption and a culture of supporting whistleblowers. As a result I think one of our success stories has been really the protection of whistleblowers.

DREISBACH: The investigators, are they all trained as lawyers? What is the background of your average investigator?

MADONSELA: *When I came it was 100% lawyers. Over the years we changed policy to include auditors, forensic investigators, policemen, et cetera because really corruption investigation for example has less to do with lawyering and more to do with the ability to investigate crime. Even the approach—we learned in the process that you can't approach a corruption investigation the way you approach an administrative justice investigation. You approach it the way you approach crime.*

DREISBACH: So different investigators would have different strengths then. So your forensic accountants would have specific skills where maybe a police officer had different kinds of investigation skills.

MADONSELA: Yes.

DREISBACH: So they were specialized. Different people were taking different kinds of corruption cases?

MADONSELA: *Yes, absolutely. The idea was to try and team them and say in each case you're going to bring in somebody with a policing expert once there are allegations of corruption and people are denying it. If you look at the last one we did, state capture, you needed somebody who had the ability to look for information without asking people for information. If I say, "Did you steal?" they would say, "I didn't steal", end of story. So that would be the standard approach in administrative investigating. But having said that, there was a methodology that we have increasingly agreed to about teaming people. But the limited resources did not always allow that to be done. I'm talking about the ideal. Not every team would have a forensic expert. In fact, most teams would not have. It is only the most very high stakes cases that we really insisted on teams that had these experts. There aren't many of those experts yet. We changed the policy very recently but then to execute it we needed more money.*

DREISBACH: And presumably for some of these bigger, larger-scale cases you can't just have one investigator doing that, you need a team.

MADONSELA: *It was always the team because everyone already has ten other cases, thirty other cases they're dealing with. It would delay the case again because each person is pushing thirty vehicles, but is part of pushing this vehicle and pushing that vehicle.*

DREISBACH: Tell me a little bit about the team you were working with. I know you don't have the authority to make all these decisions yourself. You're working with other people. Who is the most important within the Public Protector's office to help you develop new strategy, to help you make these changes and to help you make the institution more effective?

MADONSELA: *The most important authority is the Public Protector that is the only person who has authority. But in terms of the people to provide advice on what to do, it is the entire team. The chief executive officer becomes extremely important because*

that is your most senior administrative person and would advise on structural issues, on systems issues, on operational systems. But when it comes to content I relied a lot on senior investigators, the ones who had been there forever and then also on the input of colleagues. I've spoken about having done study-observation trips to Singapore, Malaysia, Holland, Sweden, UK (United Kingdom), Canada. Also Ethiopia, Uganda, Kenya, Botswana.

DREISBACH: You were really trying to go around the world to find ideas and look at other ways.

MADONSELA: *Most of them were not really observation trips where you just were going to ride a plane. We have an African Ombudsman and Mediators Association and international office. If you're going there for some other reason you include an observation trip. Namibia was also one of those. So in terms of who made the decision, it would be the Public Protector.*

DREISBACH: What authority did you have to make decisions about restructuring unilaterally?

MADONSELA: *All authority. The Public Protector has the same authority as a minister. He or she is described under the Public Protector Act and the Public Finance Ministry as the executive authority. So you have exactly the same power but of course in terms of the intellectual input that goes in you leverage everyone's knowledge but you make the final decision. That is why you need an experienced person because if you are going to have a variety of staff—the staff might say let's do it this way. If you're going to override them you need to know better.*

DREISBACH: We're very interested in how different agencies and different institutions cooperate. So it seems that the Public Protector is in a lot of ways very independent. You have your own investigators. You have a lot of your own capacity although you said you would have liked more. What other kinds of institutions were you working with, the SIU (Special Investigating Unit) or were you working with other investigators in different institutions? What kinds of partnerships did you have to foster to make sure you're fulfilling your goals?

MADONSELA: *We never worked with the investigators in other institutions simply because of the independence requirements, except on one case when we did work with the SIU. We did work with the SIU on the police investigation cases. As soon as there was politics in the other institutions we decided not to work with them. We went with the SIU when Willie Hoffmeier was still in charge there and it was the go-to institution when it came to corruption investigations. At the time they were the go-to institution when it came to investigating ten irregularities. They had been doing it for years. They also had expertise on computers, on data mining and things like that. Over time my choice afterwards was to insource expertise from outside which was then rejected by government and my successor yielded to that to her own peril, because the law gives the Public Protector the power to use anyone. You could even use an international expert if you wanted to. You're really like a minister. You can do whatever you want.*

DREISBACH: To get someone who has been an adviser, how exactly would that work?

MADONSELA: *You could hire a person as an adviser. You could hire a person as a consultant. The only restriction at the moment is that if you are going to hire somebody as an adviser they have to work for you full time. I suppose it is to avoid conflict of interest if they're working for you and working for some other institution.*

DREISBACH: I see. Is that something you were able to do often or did the government resist?

MADONSELA: *It was towards the end I did it. The government cried about it, but government had no authority to tell me how to structure the investigation. The auditor general uses experts and government has never complained. The majority of the auditor general's team are people from outside.*

DREISBACH: You brought up the auditor; did you have a relationship with the auditor because it seemed like the Auditor General is an institution that could have information that would be helpful for you because they understand how institutions work. They understand where is money being lost, where is there potential evidence of corruption.

MADONSELA: *We would collaborate in terms of acquiring sourcing information from the Auditor General, from the Inspector General of intelligence, if the matter involves intelligence or from any institution and also from investigative journalists. These would be quiet conversations based on our bilateral agreements. The institution has bilateral agreements with all of these other institutions. We had hoped to do joint investigations. I think in some of the bilateral agreements we agreed on joint investigations, but the acts did not really provide real room for joint investigations. We discovered that when we did that joint investigation with the SIU on the SAPS leasing cases, it was called Against the Rules. In the end we had to write a report. In other words then, to have joint investigations you'd have to create more empowerment in the legal mechanisms that allow for a multiagency report. I do know that before I came there was a multiagency report. We also did a multiagency investigation although not a multiagency report, when we were asked by one of the provinces, northwest, to investigate a corruption case.*

DREISBACH: Did you work with civil society groups at all? Could they be useful?

MADONSELA: *Yes, mostly Corruption Watch. In terms of the promotion of Access to Information Act we together brought forward a case. But if you work with all of them, but managing expectations, if for example, a civil society agency is investigated and they bring to you a file and say here is a complete investigation, there is often an expectation that you can then just sign and issue a report. Unfortunately we couldn't do that. We would use that as a resource, but we still needed to do our own investigation.*

DREISBACH: I see. What kind of relationships did you have with prosecutors or the police or attorney general? Once you have the reports who are you working with to ensure that these reports yield real action and that something comes out of them?

MADONSELA: *We had unstructured relationships with police, not with the NPA (National Prosecuting Authority), because in terms of the act—once the Public Protector investigated she can refer the matter to the police for investigation. In all instances where we had referred a matter, not for investigation but for prosecution, there was never resistance. With the change of guard after Menzi Simelane left, when we had been working towards a cooperative agreement, in fact, Menzi Simelane, when he was the NPA director, he actually felt that to prosecute a person after the Public Protector has issued an administrative report that says they're guilty, would be much easier.*

DREISBACH: A lot of the work is already done for you.

MADONSELA: *Exactly, but also there is already public moral suasion in favor of the finding. But after he has written to the successes, there has been a lot of political issues about let's meet, let's proceed, let's attend to a cooperative agreement. Menzi left*

before we could write a written document. We had that understanding, sharing of information and also it was his view, in fact, that if we call it first it will make it easier for him to prosecute it.

DREISBACH: So if you make that judgment, “In our opinion this party is guilty”, then it should be pretty easy for the prosecutor. Did that relationship become more difficult after Menzi Simelane left?

MADONSELA: *We didn't have a solid relationship. We just didn't have any relationship, any meetings, because the NPA, the National Prosecuting Agency has been in a state of flux ever since Menzi Simelane left.*

DREISBACH: So once you have a report what are the next steps? You can't just issue it out there. You talked about taking it to the Prosecuting Authority. I think a really important thing is the public moral suasion you mentioned. Tell me a little bit about the strategy there. How are you appealing to the public to get support for the cases? Does that vary between different kinds of cases?

MADONSELA: *It is part of the training, actually, in Sharpen-Your-Teeth and in our own training materials, including the standard operating protocol Communicating to Influence Change. What do you communicate? How do you communicate in the report in such a way that you get the necessary public support for it and support of the institutions that have to act?*

What we would do with the institutions that have to act, and often it was Treasury, and Treasury was involved in every decision that we made about a lot of the changes, including to keep procurement at 10 million. I mean after 10 million, Treasury must be involved. It was my decision. But what we do is before we issue the decision, we would meet with the institution concerned to say, “This is the direction we are going. Would you be amenable to help?” So that they don't just find themselves being issued with a report that says, “Do this.” We learned, because I think one of my first times I said to someone, “Do that” and they came back and said, “But we're not the ideal—”. Not in a mean way, but in a way it is just going to create clumsiness in the provisional report. So we had these quiet conversations.

It would be the same thing with the NPA. The idea was to meet with them although after Menzi left we couldn't get those meetings. The idea was before we put it in the report that we want you to prosecute, we would take you into our confidence around the emerging picture as to what is the end and say, “We are going to ask you to do this, would you please do it?” I think the success of the Public Protector is the use of soft power. Even though the constitutional court eventually confirmed that the institution has had power, it successfully, the last seven years, was leveraging soft power and only calling upon hard power as a last resort.

Talk about the auditor general, we would see some matters and say, “Look into this, but quietly give us back the information”. The Inspector General of intelligence and things like that.

DREISBACH: So you're emphasizing *quietly* because you want to have a behind the scenes understanding.

MADONSELA: *Not nefarious though.*

DREISBACH: You just don't want this to be a public matter. You're asking the auditor general for this. You want to silently gather information and not to give it to the public until it is something that needs to be taken to the public.

MADONSELA: *They would also ask us for information. If we've been dealing with a matter, the Auditor General would write to me or request a meeting to say that we understand that you've been looking this. It has come into our radar. We don't want to go in parallel paths. Can we share information?*

Part of the reason we work with institutions such as SIU is to avoid appearing to be reviewing your decision without knowing what you uncovered and why. It was also better that we get the documents from you, the information from you. If our findings are going to be different, they are not in such a way that they try to undermine an institution that has looked into this matter, but as a way to explain our different approach.

DREISBACH: You brought up the Treasury and now this newer office that Kenneth Brown (Chief Procurement Officer) had led. Can you go into a little more detail there, because I'm interested in that institution, about how that relationship worked? I guess anything involving procurement, the Treasury is the ministry involved. Tell me a little bit more about that relationship and what it was like working with Treasury and working with Mr. Brown.

MADONSELA: *We had a great relationship with them but mostly around policy reform that then went into Treasury regulations, one of them, for example, being titling, the amounts that could be decided upon by organs of state on their own. Also drawing to their attention issues that were of concern to us and cross referral of investigations. At times when we didn't have money, towards the end of the report where we feel that we've scratched the surface and we see that there is more beneath the tip of the iceberg and we'd like them to investigate, we'd meet with them in advance and say, "If we ask you to do this, will you do it?" The Competition Commission, also, when we came across something that needed their attention, I would request a meeting, talk to my colleague and then make the necessary referral.*

DREISBACH: So between the Competition Commission and the Treasury that is really covering most of the procurement issues that are happening. Are there other ministries you'd find yourself working with a lot or communicating with in similar ways?

MADONSELA: *Local Government, local government because there was a lot of need for the minister to follow up with municipalities whether money is needed or whether compliance is needed. Premiers (the head of government of one of the nine provinces) when there was a problem that local government is not complying with certain things that we've agreed to or that we have directed, we would request the intervention of the premier. We had cooperative agreements with virtually every state, a bilateral agreement. The idea was to have a bilateral agreement with everyone but some were tardy in arriving at an agreement. Then the bilateral agreement would regulate our relationship with everyone.*

We'd call up on a premium. We'd call up on a minimum. In terms of the departments, local government, I think we met with them a lot about changes that we needed them to support especially traditional authorities with land offers. Which other ministry? Justice. We had a very good cooperative arrangement with the courts and it worked well in terms of a systemic solution to files getting lost in court. We got a lot of cases coming to us with delays in courts or allegations of fraud in terms of the issuing of some court orders like in divorces, fake divorces

so to speak. We were collaborating with them to sort it out. That also involved having conversations with the chief justice.

DREISBACH: I would like to ask about a few things that we're interested in. We're looking at these things in different countries. One is the role of asset declaration. It is a problem that a lot of countries have. Maybe they'll have something where certain officials are supposed to make asset declarations, fill out forms and turn them in. The problem that we see in so many countries is that nothing really happens with those. They just sit in a file drawer.

In South Africa, I believe the requirements for people to fill these out are actually broader than in most countries I looked at. There are a lot of people who are supposed to fill out these forms. From your perspective are these useful at all? Do you have access to them? Is there anything you can do with these forms?

MADONSELA: *They are very useful, but you've touched on something extremely important because the Public Protector enforces that law, although those files are kept in the presidency.*

DREISBACH: You enforce that law?

MADONSELA: *Yes, it is a sole agency to enforce. But I think towards the end we were hiring somebody to be in charge of that. You need somebody to go and check those even without a complaint and make sure there has been proper compliance. What we discovered last year is that they had changed the amount for declaration. I think it used to be 300 Rand, but now is a different amount but without changing the Act, without changing the code. They were doing something unlawful but without intending to. They just thought, "Okay, this amount was decided years ago". The Rand value has changed and therefore we need to.*

If you go back to the resources, the idea is to have a unit in the Public Protector office that can, firstly, just before people do wrong things, work with the presidency office to advise them about their compliance responsibilities. But two, have an instrument for the management of conflict of interest. They have spoken now. They signed those things. Nobody then goes during a tender to then come back and go. This is a dynamic presidency and the oversight agencies are cooperative.

For example, there were a lot of allegations against the Minister for Social Development in Sasa, but nobody checked what are her declarations versus these things. I think going forward you might have a unit in the Public Protector or it needs to be taken out of the Public Protector and they should have an integrity commission.

DREISBACH: Are you able to look at those declarations whenever you want? In some countries we say that you need a court order to do that.

MADONSELA: *Any time. No, no, the Public Protector is under the Act. The Executive Members Ethics Act has the authority to look into that and to enforce it and to direct compliance.*

DREISBACH: So would it ever happen that you would, on a suspicion, look at the asset declarations and that would help spark an investigation or that would be substance for investigation? Do you have instances where those were particularly useful sources of information?

MADONSELA: *It should have been, but as I'm saying we only inspected them when there was an investigation. We never really had a system. I think going forward the Public Protector should arrange to look at those once a year. I think we sent that to the DTM and the President when we met with him. The Public Protector has a standard. At the moment though there is no restriction. Any day you say, "I want to look at them" they can either bring them to your office or you go there because, by law, you are the only one who has the right to enforce compliance.*

DREISBACH: This is a problem I've seen in so many different countries is that often these forms just end up sitting there and either because of the law or just because of capacity issues, they're not used as an effective source of information as they could be.

MADONSELA: *In South Africa, they're very useful. For example, in the last state capture investigation that I was doing, State of Capture, there was information we found from those files which was then included in the report or in the questions to the President. "We found this. Tell us who is paying for this house. Tell us who is paying for this and what is the arrangement." But they are used but your point about a proactive approach with ways that can trigger an investigation is something we're thinking about and it is a resource question.*

DREISBACH: Have you done much work on codes of conduct? That is another thing we're interested in in different countries because codes of conduct will play different roles in different countries including the enforceability of those. Do they have legal backing?

MADONSELA: *The South African ones, all of them have legal backing. The one we are enforcing, you know, all of the cases with the President, from the very first innocuous one that I did in 2010 where there was violation of the Executive Ethics Code. In parliament, a violation of the code had sanctions. In cabinet, a violation of the code had no sanctions. One of my remedial measures was that it should have sanctions and the cabinet adopted that.*

DREISBACH: I see, so they now have sanctions. Is that acted upon? Does that mean there could be criminal sanctions for someone who violates—?

MADONSELA: *At the moment, it is all civil, because it is an ethics violation. If it is criminal, it is the Prevention and Combating of Corrupt Activities Act that kicks in. In ethics it would be things that you do wrongly, but we can just see it was an ethical lapse. Once it borders on criminality it is the Prevention and Combating of Corrupt Activities Act that kicks in and is prosecuted.*

DREISBACH: We know in the public there was a backlash. How would you note the biggest obstacles that you faced either internally, in trying to restructure the Public Protector's office, or externally, forces acting on you that made it hard to do your job, or things that you had to negotiate to make sure that your work was successful?

MADONSELA: *I think internally, the challenge was financial in comfort zones. That people had as a way of doing things. What leadership training went through on creating a purpose-driven organization, did loosen up the comfort zones because it wasn't seen as an imposition by the top leader. It was our journey and I got a sense that everyone was on board. But when it came to the question of demanding more, the team felt that if you're going to demand more you have to pay more. "Give me more resources". I think that was a fair demand, but that was a demand the resources ahead were not allowing me to meet fully. We made concessions here*

and there, we kept patching up, but we were not able to meet that demand. It did create some problems as I indicated. That was the biggest problem internally.

But in terms of attitudes towards the investigation process there was no resistance. I mean once, in the early years, we went on this journey of envisioning what are we trying to do, what are we trying to achieve? The entire team was on board. My joy of working on that team was because there was excellent commitment to what we were all trying to do. But it gets messy in the middle as Rose Cantor, a Harvard lecturer, says. I think the messy middle for us is, "What's in it for me? I work hard. Can you give me more people? Can I also get more pay?" That was the internal question. I think it was a fair demand.

The external thing. It was two things. Again I think it was the same problem, comfort zones. It was money and comfort zones. My demand for money came at a time when the country was being hit by a dwindling fiscal base amid equally demanding challenges. The health minister was one of those ministers we worked with very well. Apart from the politics of it, the early years was, "We'll give you a little bit more, but we won't give you exactly what you're asking for because as we are giving you more, we are actually cutting other people. We are not cutting anything from you."

At that stage it took years for the Minister of Finance to understand the connection about a tree and a branch. Even Parliament, I think it was the new PPB, they understood for the first time that actually even if you increase it, if you're increasing it for a branch when you are dealing with a tree, it doesn't make sense. That was the money thing.

Then the other thing was risk giving. The risk giving took a long time. I think I was a bit tardy in concretizing the new tools. For example, the quote/unquote "operating protocol", the long one, pro forma one only came last year. We only gave them guidance in 2010 after our first Sharpen-Your-Teeth training. We gave them guidelines. People think guidelines are just guidelines but even guidelines without training, without holistic training, I ended up concluding as the Public Protector, is that you need formal investigation training.

If you're a lawyer you leave law school understanding the law, but nobody then thinks you can just walk up and go through some orientation training and then you're a lawyer. There is a whole year or six months where you are taught how to be a lawyer. We had concluded with my team during a strategy conversation that you need professionalized training working with a university. There should be in life a profession called investigator.

DREISBACH: Interesting. A profession, not just a job.

MADONSELA: *Yes, a profession. You can go and be an investigator. In South Africa and as it is all over the world these administrative investigation bodies are mushrooming. This is one of the areas where I hope we can contribute to helping to professionalize the investigation profession and also to divide corruption investigator from an administrative investigator because these are two animals. So that was another thing that we discovered later. We would investigate using administrative investigation tools and waste a lot of time and stumble on the truth, stumble on things. Whereas if you structured your investigation from square one as a corruption investigation you would get there faster without going through the roundabout wrong way.*

By the time we did the last investigation, state capture, we had learned to do it differently. That's why people were up in arms, "You didn't do this, you didn't do this." They were holding us back on administrative investigations when that was a criminal investigation. They were saying somebody bribed a deputy minister to take over the position of a minister. That's a crime, that's not an administrative infraction. So that was done by training. That was the additional internal issue. So I would say it is comfort zone, it is money, resources and then training.

Of course introducing new systems takes a while, but eventually by the time I left I think the system itself was working like a well-oiled machine but it took some years. The first thing was the comfort zone and it was the money thing.

The comfort zone I would explain is in that there was an understanding that the Public Protector traditionally did not act like the Scorpions. When the Public Protector became like the Scorpions there was an attempt to give it the same treatment that the Scorpions would give it which was kill it. But in this particular case, it was maybe not kill the institution but subdue it through resources and through attacking the integrity of the leader.

DREISBACH: Is that coming from both the parliament and the executive?

MADONSELA: *No, it really never came from any specific quarter. It was faceless. There was the old statement by the ANC Youth League, the old statement by the ANC veterans, military veterans, but you see these people have power because they have the support of the executive. Some of them are in the executive. Parliament towards the end, yes, resisted giving me money and a significant number of people in the ANC benches became belligerent. At one stage the chairperson himself became belligerent.*

DREISBACH: Belligerent meaning—?

MADONSELA: *Combative. You would come there. You start with a heartwarming story that you think, okay, everyone will forget about you and just focus on this story. Was it last year, before the fees fall- out in the country, my opening story was about this young person who had been chased out of class that we investigated because his fees had not been paid by a government agency that was supporting him. We were talking about students sleeping in toilets—literally—at universities and then showing them how mal administration had been responsible for that and how we had handled this one case. It was a case we had handled successfully; it was a success story. The reaction was vitriolic.*

It got to a point where it wasn't clear to me what values bind us because your icebreaker is chosen with the assumption of shared values. If you're going into a situation where you have to negotiate with someone and you know it is going to get a bit messy in the middle but you normally start with unsafe space and you chose something that you think is a common thing, a shared value. I did that and it turned out that that too was not even a shared value.

DREISBACH: That showed that there was something going on, that something so innocuous would get that kind of response. What year was that? Was it recently?

MADONSELA: *Yes, it was 2015.*

DREISBACH: It seems that for these big cases like the state capture case, the case about Zuma's estate, the public outreach and the way you handled the media was very important. It seems it was something you took a lot of care in how you presented

that. Tell me about your strategy. It was really a lot about you as a figure that was talking to the public from this office. So tell me about how you approached that, what kind of strategy did you need and what did you learn about how the best way to interact with the media and the public?

MADONSELA: With the media, our approach was always to avoid attacking people, even when we presented each case. It was always to present it clinically in terms of the facts, in terms of the law, but also showing consistencies. In all of the media about Nkandla I would keep drawing back onto the cases like the ethics of staying in comfort with the Minister of Police, the Minister of Agriculture in the extreme and in cases just to show that there is consistency. We always ask what happened, what should have happened? Is there discrepancy? If there is a discrepancy does it constitute improper conduct and if there is improper conduct how do we remedy the situation? How do we place the people or a person as close as possible to where they would have been. That was one part.

The second part with the public was always, what's in it for the people. Whenever there was an issue of resource abuse, always drawing attention to the relationship between abusive forces and a child who may have died at a school at a long drop toilet, those toilets that are pit toilets. You understand, if we don't abuse public resources, we can deliver the constitution. It was always about keeping the public discourse around the constitutional promise, the stewardship of those in government and their responsibility to help deliver that, but always trying to show to the public that it is not about attacking people. Even when the media would try to draw me to a battle with some of the people who were attacking me, I tried not to enter into that, just to stick to what I did, why I did it and why it was the only way it could have been done as far as I know it.

And then from the public it was always also understand that for us we pitch our services at the level of the least advantaged of them. We created something that the public resonated with the notion of a gogo dlamini which is a grandmother of the family. People would write to us and say, I'm a gogo dlamini too. Basically it was always an understanding that it is a David and Goliath. Even in corruption there is something to be lost for gogo Dlamini people because the resources will not be available. Always at the end of the day the emphasis is on the law, nobody is above the law.

DREISBACH: Yes. Presumably for you personally, you weren't someone who was talking to the media all the time before you took this position. Was there a learning curve for you to learn? How do I deal with this attention? By the end you were a celebrity in your country. How did you deal with that? I think personally that is an interesting journey to go through.

MADONSELA: I had dealt with the media but not with this intensity. I had dealt with the media since I was a student at the University of Swaziland and was a member of the SRC [Student Representative Council]. When we had events I had at least a few media interviews. When I was a trade unionist I had articles published but not with this intensity.

I think the main learning for me for the media was don't say what the media wants you to say or what anybody wants you to say. Everyone is trying to extract their pound of flesh because they have a particular narrative that they want to push. I always respected that the media had a particular narrative. But in all my interviews I stuck to my own narrative which is not blaming, not attacking, just staying neutral about what are the facts, what is the law, what should we do about that.

The second thing that I learned, but after a few mistakes, was if the media gets it wrong don't issue a statement attacking them for getting it wrong. They see it as a professional attack or a professional loss of face. When I first came I did a few of those. My successor also attacked. For me, I wouldn't attack, I would just say you got it wrong. I wouldn't say you have an agenda; I would just issue a statement and say they got it wrong. They didn't like that but then it would just be a wedge between me and them.

I would quietly write to the editor and say we noticed this; this is what happened. Could you solve it and they would solve it. So I learned that. The last thing that I learned which is unfair for women but it is a reality of life, is with us women, unlike with guys, part of the focus when you go to a public event is what does your hair look like, what are you wearing. So it was always to try and look the part, not outrageous, but look the part so nobody ends up writing about your hair that was not in place. We discussed this with my team. There was a time when the ANC Youth League had a narrative that was very much concerned about my hair, my nose, with everything because with women people think everything is free. But again you don't engage with people. I never engaged back.

I learned working in public space to stick to the truth you know. When there are difficulties with narratives that have been perpetuated, speak to people. The other thing that I did with the media that I learned from Dullah Omer, we had a meet with the media approach. Meet the media was an idea of meeting all of them. At least every quarter go to their offices with staff, see those people, those humans who are breathing, find out what they look like, what considerations go into writing those stories. We found that it helped. It humanized them to us and it humanized us to them. I learned that from Dullah Omer.

In the end of course because we're busy, some of the visit it is just who is available, but the original approach was always to do a stakeholder analysis. We put people on red, yellow and green. The priority always was to visit the reds. In fact now with the foundation that I've just started I've asked the team please organize a meeting with ANN7 and The New Age.

DREISBACH: The stakeholder analysis, is that something you would do for every investigation?

MADONSELA: *No, just institutional positioning. Even with ministers the same thing. We do visits. That is why I never really had public spats with ministers. We did all of the stakeholder analysis and then would request for a cup of tea just to talk about what do we do, why do we do it and why do we sometimes seem to be doing something we don't think we should be doing? What are the constraints? That is what we did with a meeting. So the stakeholder analysis as I said, red would be a priority. After the state capture investigation, for example, I said to my foundation team, "We need to meet with these guys" because I have found that after speaking to people you get a sense of where do they come from. They also get a sense of where do you come from and you're never the same after those meetings. Of course you don't use the meetings to tell the media how to do its job. Neither is it an opportunity for the media to tell you how to do your job. It is about seeking to understand and be understood, that's all.*

DREISBACH: A couple more things. We're interested in how you set goals and how did you try to measure outcomes and progress toward goals. You mentioned that one thing was looking at acts of corruption being reported in institutions. Just tell me a little bit more about how you set goals and tried to measure your progress.

MADONSELA: *The goals for the institution were set from the point of view of a purpose and what are we trying to achieve. We would also use our strategic plan that would define our purpose, our vision, our mission and our strategic goals, our strategic objective. But it was always important for us to have goals in terms of outputs and outcomes because if you only have goals in terms of outputs you can have a lot of things that are produced but are changing nothing in terms of impacting people's lives and impacting systems. Ultimately all of it was rooted in Section 182 and Section 181 of the constitution that says the powers of the Public Protector to support and strengthen constitutional democracy by investigating. That one is important.*

I've noted for example right now that when they talk again they refer to the old one. They say we investigate. You see, if you say the powers of the Public Protector are to investigate improper conduct in state affairs you lose something big because those are not the powers of the Public Protector. You've got to start with the constitution. Your job is to support and strengthen constitutional democracy by investigating.

At the end of the day, it is not just success in terms of the investigation, it is I'm impacting constitutional democracy. I can sit here and say maybe we were not 100% successful in the investigation, but I am 100% sure that in terms of strengthening and supporting constitutional democracy we made an impact in that, through our interventions, we brought the public to understand and be role players in public accountability. We got the executive to be pushed back in terms of some of the excesses and we strengthened constitutional democracy by ensuring that public power is exercised accountably and responsibly.

DREISBACH: It seems like a very important, relatively recent development, this court case that decided what the term "appropriate remedial action" meant. I'm interested in that because I believe it was opposition MPs who started the case initially. How were you involved in that case and did that make a big difference in what you were able to do now that you had that court case? Or was it just confirming something that you already believed was the case?

MADONSELA: *It confirmed what we were already doing but the impact was great in that it affirmed our right to do what we were doing. We always interpreted our powers in terms of the constitution which is to support and strengthen constitutional democracy by investigating improper conduct, prejudicial conduct in state affairs, reporting on that conduct and taking appropriate legal action. I always insisted, from 2009, that taking remedial action might mean ordering you to do something. It might also mean gentle suggesting you could do. It was a continuum, sometimes we would suggest, sometimes we would order. But after Nkandla then there was resistance to the ordering part and the court confirmed that we had the right to order. In that way it really eased a lot of the tensions. There was a narrative that was developing that was saying she's overreaching; she thinks she is a court of law. The court confirmed what we knew, that we don't have to be a court of law to order people to do something. I used to give an example of a traffic officer. A traffic officer orders you to do things; it doesn't have to be a court of law nor does it have to be senior to you.*

DREISBACH: What was your actual involvement in that case since the case was not initiated by you but was initiated by someone else? What was your involvement?

MADONSELA: *We were joined. When they sued the state, if you're a party who played a role who had a case to answer, you're joined and the DA joined us. If you are joined you can decide to abide and you can decide to get involved. With us, on this one,*

we were happy that the DA joined us because when the case started the DA also had a wrong interpretation of the constitution. So our decision to get involved was to just confirm that we have the power that is binding. We insisted on that. We had meetings with some of the professors that we saw as powerful. We engaged them quietly to say you're getting it wrong; you can't have three powers that are equal to two. This institution had two powers, the power to investigate and report before. It got a third power in 1996. How can the powers be the same as they were before the third power was given. We had those quiet conversations.

So ours was really to help. It was more like being a friend of the court to help clarify our powers. We understood that a wrong decision would debilitate our own operations.

DREISBACH: The interesting part of that story is that the President, himself, publicly changed his official position on this.

MADONSELA: *Yes, eventually he did.*

DREISBACH: I think you had said that you learned that he was doing that in a meeting with him.

MADONSELA: *Yes, I met with him just before that meeting, with his son. It was a cordial meeting. He explained that he had been misled by lawyers. He is allowing those lawyers to mislead him about this new one from state capture.*

DREISBACH: Are there specific legislative changes you think that need to happen to make this office more powerful? I know money and resources would be good. Are there other kinds of changes like that that can be beneficial?

MADONSELA: *Yes. You ask what else and it is the Act, it is at odds with the constitution, because the Public Protector Act preceded the constitution. Then there was a cosmetic attempt to align but not an intellectually informed alignment where you're saying, for example, the Act ends at the power to report. That is where it ended at the power to report before 1993. When the interim constitution was passed in 1993, it ended at the power to report.*

In 1996 the constitution included the power to take appropriate and legal action. There is no mention at all in the Public Protector Act of the power to take appropriate and legal action. So I think the constitutional court, to avoid imperiling the act, read the constitutional powers into the act. But it does need to be amended. I think the amendment should also deal with a little bit of regulating the interaction between the state and the public protector

DREISBACH: We talked a lot about different restructuring and changes to systems, could you walk me through the order in which this took place? It seems they were stretched out through your term. What was the first priority in terms of the restructuring and systems changes? Would you give me a rough sense of the order in which those things happened?

MADONSELA: *I think the first thing was to create a triaging unit. And those three branches. Earlier the resolution branch, That is what happened. It came later then to decentralize those to the provinces and make sure that the provinces could also investigate the special attention matters.*

The creation of tools such as the Standard Operating Protocol came much later which should have happened much earlier if I had thought about it. We did create

as soon as I arrived a guide. It was created after I attended my first Sharpen-Your-Teeth. That was in November 2009 or December 2009. I think the Standard Operating Protocol could have come earlier; it came last year.

The need to professionalize training was never really executed and it could have come earlier. The creation of rules under the Public Protector Act were created, but when they started pushing back against our powers we held back on those. That had an impact on public expectations. If we had had those rules earlier we wouldn't be having problems with people not knowing what are the steps in an investigation, a person saying, "This is not what I expected." Everyone would know the rules, what would happen when. Also not having the rules has created problems. The Public Protector is supposed to have shorter timelines than court. During my time I used to give them seven working days and they insist they wanted thirty days. They don't even take thirty days in court. But if we had rules we wouldn't debate about, should we give you two months just to respond to a twenty-page document? Should we give this one ten days? Because what is happening at the moment each person gets their own timeline although our internal standard operating protocol talks to what should be the number of days. But we did engage publically with those rules but we never operationalized them after the challenge to our powers.

DREISBACH: Just briefly your general impressions of how the institution has functioned since you left. What are your general thoughts about its performance?

MADONSELA: *I think it is functioning perfectly. It looks like it is functioning perfectly because the systems are the same. My only concern was the number of cases that were closed within the first hundred days. I just suspected that some of them were closed because an investigator would submit a request to close. One of the things we introduced in the system was cases that were called Special Attention Matters. Even though they are not done by the Special Investigation Unit and they're done by an investigator in the middle of nowhere, if it is a special attention matter, you can't close it without the Public Protector's signature. I am just concerned that people may have closed those cases without the Public Protector's signature or closed some without investigating. When it is a hard case it is human nature to want to close it.*

DREISBACH: To move it off your agenda.

MADONSELA: *Honestly there is always a good reason why you can close it. You can find one. If you're an investigator, having a Public Protector who is always finding a reason why a case should stay open if it involves a Gogo Dlamini or you it is frustrating, but for me I am looking as I see it. What is our purpose? I would say, if we don't investigate him, if government does wrong that is better than if we investigate and we close the report wrongly because once it has our stamp on it you're telling government we did it right. Whereas at least if they did it wrong all by themselves they still know that nobody has given them license. Again, I'm not passing judgment on investigators. I'm saying that if you're a complex matter investigator you should have at any given time no more than three cases. Having people sitting with fifty cases they would like to close 47. They're not bad people; they're just people who want to function in a fair world.*

DREISBACH: Finally tell us a little bit about what you're up to now. You're at Harvard in the Fellows' program here. Tell me about what you're doing here and what else you're up to. You said you had started a foundation. What has life been like since leaving the Public Protector's office?

MADONSELA: Since leaving the Public Protector's office I started with a team in South Africa a process of establishing a Thuli Madonsela Foundation. That has stolen a lot of my time since November last year. We finally have it registered and we finally have clear programs that we have conceptualized. It is really a democracy support foundation that seeks to empower people to make democracy work for all by deepening it and defending it with a view to ensuring that democracy is sustainable. It contributes to inclusive development and ultimately contributes to peaceful coexistence.

Our offerings are in the area of democracy dialogues, advocacy and access to information and advice, research and training on leadership. That is what I have been doing, primarily targeting young people. In the foundation the majority of people we're working with are young people. Our first offering will be a Democracy Festival on June 16th that is South African Youth Day.

Ultimately we're targeting beyond South Africa but the starting point is charity begins at home. That is what we've been doing. It is at the level of South Africa. I have also left-over speaking engagements across the globe.

The end of December I started here at Harvard, with the Advanced Leadership Initiative and have been having a fantastic time with great human beings, both staff and the good people who have similar circumstances. They have been at the pinnacle of their career in one way or another and they're looking for a new challenge that will tap into their advanced leadership level.

While we're here we also have an opportunity to interact with lecturers beyond the business school. I have been attending one course outside—Disability Law and Policy that has been fantastic.

DREISBACH: I appreciate you being so generous with your time and telling us this fascinating story and wish you the best in your future endeavors.

MADONSELA: Thank you.