



SOUTH AFRICAN PUBLIC PROTECTOR: PEOPLE'S WATCHDOG OR POLITICIANS' LAPDOG?

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ABSTRACT The Public Protector (Ombudsman) became the center of attention in South African politics. This research questions whether the Public Protector has played an expected role as an Ombudsman. Despite its importance, there are few studies on the office. This research is the first academic work to evaluate the office's role both empirically and comprehensively. It analyzes the Public Protector's activity by using annual and investigation reports released by the office. It finds four points: the successive Public Protectors have strengthened the office's operational capacity; the Public Protector mainly investigates small, non-political cases; ordinary citizens are the main complainants, except for politician-relating cases, and; while high-profile cases are controversial, the Public Protector success to resolve most cases. In short, while the Public Protector has secured ordinary citizens' interests, it has failed to correct the allegations of politically high-profile people. Thus, some reforms are required to keep a politically-biased person from office. While the study has some problems due to the issues related to the material on which it is based, this paper would lead to an enhanced understanding of the current South African politics and pave way for future research on the Public Protector.

KEYWORDS: Corruption; Ombudsman; Protection of rights; Public protector; South Africa.

INTRODUCTION

Those who observe today's South African politics cannot ignore the influence of the Public Protector, who has had a major impact on South African politics. In the Nkandla Gate, when former President Jacob Zuma was accused of wastefully using public funds for the renovation of his private residence, the Public Protector ordered him to refund the swindled amount (Public Protector 2014). Further, the largest scandal in South Africa in recent memory is the State Capture. The members of the Gupta family, alleged to have been involved with the State Capture, run various enterprises in South Africa and have close relationships with Zuma and his colleagues. The Guptas are also told to have improperly intervened in the public sphere and unlawfully gained public money for their businesses. As a result, the Public Protector ordered the establishment of an investigation committee (Public Protector 2016d), and the Judicial Commission of Inquiry into State Capture, commonly known as the Zondo Commission, was formed in 2018. Some scholars point out that the Public Protector's Nkandla Gate Report and State Capture Report affected the early resignation of Zuma in 2018 (Desai 2018). Therefore, it is evident that the Public Protector is a crucial actor in South African politics.

However, even then, the Public Protector is not publicly well-known. Figure 1 shows



the number of articles containing the phrase ‘Public Protector’ in the *Sunday Times*, the most circulated newspaper in the country. Until 2009, there were only a few articles on the Public Protector. In other words, citizens saw the phrase once a month or less in the media. Therefore, it has been an unknown institution to people. In fact, a survey report published by the Presidency in 2006 shows that 68.8% of the men and 72.6% of the women did not know about the presence of the Public Protector (South African Presidency 2006: 82). Nonetheless, the number of articles on the Public Protector has rapidly increased since the Nkandla and the State Capture scandals. The phrase ‘Public Protector’ has appeared almost every day in the media since the mid-2010s. Even then, for most citizens, the Public Protector is a suddenly appearing actor.

The Public Protector is an ombudsman institution. According to Kuye & Kakumba (2008), ombudsman institutions have the following characteristics: “they investigate complaints from members of the public against public authorities; they secure or recommend a redress for aggrieved persons, where complaints are found to be justified; and, they recommend improvements in systems, working practices and administrative procedures generally; or, if there are no systems, to recommend that there should be, in order to minimise the risk of the same mistakes being repeated” (Kuye & Kakumba 2008: 158–159).

This article questions whether the South African Public Protector has played an expected role as an ombudsman. Considering the definition of an ombudsman institution above, it investigates four questions. Firstly, whether the Public Protector has enough capacity to cope with its mandate? If the Office of the Public Protector lacks its operational capacity such as budget or human resources, it could not play the expected roles of an ombudsman. Secondly, who brings complainants into the Office of Public Protector? If it acts as an ombudsman, various actors in the public would bring cases to the Public Protector. Thirdly, what kind of cases are brought into the Office? If the Public Protector acts as an ombudsman institution, issues of cases would be also various. Finally, does the Public Protector succeed to resolve these dissatisfactions? If it does not redress complaints

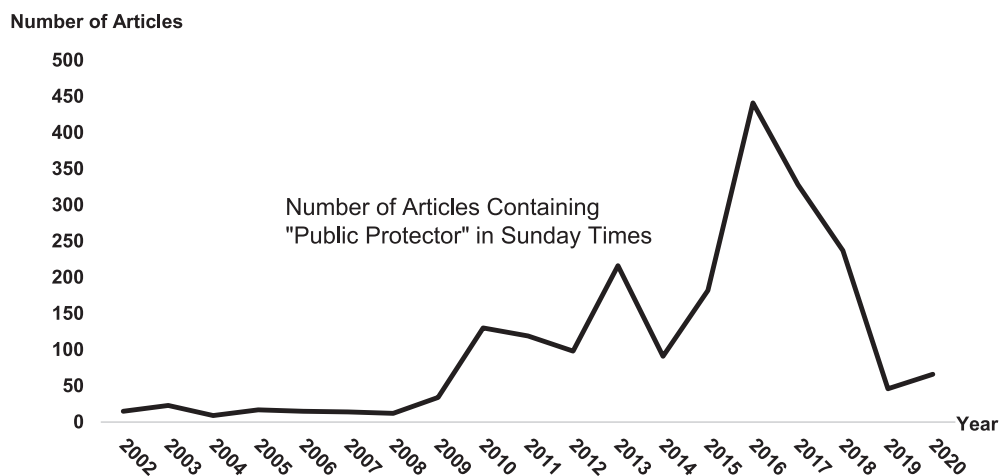


Figure 1 Number of articles on the Public Protector in *Sunday Times* (2002–2021).

Sources and Notes. The author uses Nexis Uni, a news database, to search the number of articles containing the word “Public Protector” in the *Sunday Times* (accessed on 30 April 2022). The author classified these articles by the published year. This graph shows the result.

in the public, the Office does not act as an ombudsman. Thus, its achievements should be measured.

Considering the importance of the Public Protector in recent South African politics, it would be meaningful to tackle the issues of what exactly the Public Protector's position entails and what the office does. Existing literature, however, does not provide comprehensive research on the Public Protector's action. Thus, comprehensive and empirical research on the office is required.

This study uses primary resources to examine the Public Protector's role. It analyses the annual and investigation reports of the Office of the Public Protector (OPP) available on its website. These have some problems, but they also contain a lot of previously unconsidered information. The author codes investigation reports and analyses patterns of the cases brought into the Public Protector's office.

The analysis brings four main results. Firstly, the successive Public Protectors have strengthened the office's operational capacity. Secondly, the Public Protector mainly investigates small cases. While there are politician-related cases, the number of them is small. Thirdly, the main complainants are ordinary citizens or the party concerned (people who are directly involved in the case). However, in politician-related cases, other politicians are the largest share of accusers. Finally, while high-profile cases are controversial, the Public Protector success to resolve most small cases.

This article has the following configuration. The first section provides a background and a brief history of the position of the Public Protector. The second section summarizes the existing literature on the Public Protector. Section three presents a research method. Consequently, the results are shown in the fourth section. The fifth section provides a discussion, concluding that, while the Public Protector is a 'watchdog for people', the office sometimes falls into the category of 'politicians' lap dog'. In other words, it plays the role of an ombudsman but has failed to check politicians as expected. To make the Public Protector a literal 'protector of the public', it would be necessary to reform the existing system to ensure the appointment of politically neutral people.

WHAT IS THE PUBLIC PROTECTOR?

This section provides background information about the Public Protector. It will summarize the Public Protector's brief history and constitutional mandates, personal profiling the four Public Protectors to date.

I. Background

The Public Protector is classified as an ombudsman who monitors public organizations to prevent harm caused by administrative mistakes or frauds. The office also investigates allegations and susceptions at the earliest to protect the interests of both collective and individual citizens. Originally founded in Sweden, ombudsman institutions are established in countries around the world (Bazana & Reddy 2021: 2).

The first South African ombudsman institution was the Advocate-General's office, set up in 1979⁽¹⁾ by Prime Minister P. W. Botha in response to the Information Scandal⁽²⁾ in the same year. Judge P. J. van der Walt was appointed as the Advocate-General and remained in the post until 1995, serving time as the 'Ombudsman', the title succeeding the name 'Advocate-General' (Rudolph 1983; Barrie 1995; Baqwa 2001).

However, the Advocate-General's office did not fulfil its mission as expected. Its

authority was limited to public financial fraud. Security issues were excluded from its jurisdiction. Moreover, some criticized the demanding a complete affidavit from complainants made it difficult to access the Advocate-General (Rudolph 1983; Dlamini 1993; Heyman 1993; Pretorius 1994). In addition, van der Walt was a 'part-time ombudsman' and continued to work as a judge of the Transvaal Court. The Advocate-General or the Ombudsman was his secondary role. He accepted only a few cases; the number of cases handled in 1980 was only 36 (Rudolph 1983; van der Merwe 1993). Thus, the Advocate-General did not act as an ombudsman as expected.

In 1991, the Advocate-General Act was amended, and the office was renamed the 'Ombudsman'. At the same time, its mandate was greatly expanded. The Ombudsman had the authority to investigate the government's maladministration and fraud, and any investigation was reported to the Parliament and the Minister of Justice, stipulated to take appropriate measures. According to an interview with van der Walt, more than 2,000 cases had been brought to the Ombudsman in the year after the amendment of the law. He also mentioned that people were seeking legal relief (van der Merwe 1993).

In the transitional negotiation process in the early 1990s, the Ombudsman office was promoted as a constitutional organization. This upgrade was realized because both the National Party (NP) and the African National Congress (ANC) found profits in the establishment of an ombudsman organization. The NP considered that the introduction of an ombudsman's office would guarantee the Bill of Rights in the new regime (Habib 2013: 45–46) and entrusted the South African Law Commission (SALC) with a discussion on the new constitution (Klug 2000: 84). Consequently, Charles Dlamini, a member of SALC, mentioned that lawyers in the commission discussed the expansion of the Ombudsman's mandate (Dlamini 1993).

The ANC also proposed the establishment of 'Ombuds' as an organization to enforce the Bill of Rights in its policy document, *A Bill of Rights for a New South Africa* in 1993 (African National Congress 1993). Further, President Nelson Mandela stated in his speech in 1996 that the Ombudsman was important for reforming the notorious bureaucracy under the apartheid regime into a new, reliable public organization for citizens.⁽³⁾

During the transition in the early 1990s, both parties evaluated the institution positively. As a result, both the 1993 Interim Constitution and the 1996 'final' Constitution upgraded the ombudsman institution into the OPP and gave it constitutional mandates.

II. Constitutional mandate

The 1996 Constitution founds the legal base of the Public Protector. It is one of the 'Chapter 9 Institutions' in Article 181 of the Constitution. These institutions are independent authorities, only subject to the Constitution and legislation.⁽⁴⁾ According to Article 182, the Public Protector is (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or inspected to be improper or to result in any improperly or prejudice; (b) to report on that conduct; and (c) to take appropriate remedial action. However, "[t]he Public Protector may not investigate court decisions" (Article 183 [3]). The Public Protector is appointed for a non-renewable period of seven years (Article 183) and should be a South African citizen who is fit for the mission. The parliamentary committee selects a candidate. When more than 60% of the members of the National Assembly support the candidate, the parliament recommends him/her for the post. Then, the President appoints recommended person as the Public Protector (Article 193, 194).

The Constitutional Court rules as per *Economic Freedom Fighters v Speaker of the*

National Assembly state that the Public Protector's remedial action is binding unless a court dismisses it.⁽⁵⁾ In other words, in principle, remedial action must be obeyed, and those who are dissatisfied must seek the services of a court.

The Public Protector Act 23 of 1994 regulates who is fit for the role of the Public Protector. According to Article 1A (3) of the Act, the Public Protector "(a) is a Judge of a High Court; (b) is admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or (c) is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified, lectured in law at a university; or (d) has specialised knowledge of experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or (e) has, for a cumulative period of at least 10 years, been a member of Parliament; or (f) has qualified any combination of experience mentioned in paragraphs (b) to (e), for a cumulative period of at least 10 years."

III. The profiles of the four public protectors

Since the enactment of the Public Protector Act in 1995, four Public Protectors have been appointed; Selby Baqwa (term 1995–2002); Lawrence Mushwana (term 2002–2009); Thuli Madonsela (term 2009–2016); and Busisiwe Mkhwebane (2016–current).

They are all specialists in law. Baqwa is a lawyer who served as the chairperson of the National Association of Democratic Lawyers and on various committees during the transition era (Sarkin 1998). Mushwana has served as a magistrate and attorney (Office of Public Protector 2004: 8). Madonsela was involved in the drafting process of the 1996 Constitution as an advocate. She also drafted important bills, such as the Equality Act in the Ministry of Justice (Ajam et al. 2019: 118–119). Mkhwebane obtained a lawyer qualification and started her career as a public prosecutor (Ajam et al. 2019: 154–155).

However, it is said that all four Public Protectors have some ties with the ANC. As mentioned above, the National Assembly nominates the Public Protector. The ANC can select a favorable candidate because the party has secured the absolute majority in the National Assembly since 1994. Indeed, the political affiliations of the Public Protector have been problematic since the establishment of the post. The NP and the Inkatha Free Party (IFP) resisted Baqwa's appointment to the post because, as they argued, Baqwa's attitude in the transitional era was biased toward the ANC (Sarkin 1998). Mushwana had been a member of the ANC and served as a vice-chairperson of the National Council of Provinces, the South African Senate, just before his inauguration in the post (Office of Public Protector 2004: 8; Mubangizi 2012: 312; Bazana & Reddy 2021: 202). Madonsela participated in the United Democratic Front during the late 1980s. It is said that Madonsela could have been an ANC candidate in the 1994 election (Ajam et al. 2019: 118–119). It was said that Mkhwebane was a favorable person for President Zuma and supported by the Presidency. She was appointed as the Public Protector in 2016. Thus, it is said that Mkhwebane is close to the faction of Zuma, the President at the time (Bazana & Reddy 2021: 8–11).

Some Public Protector's decisions have been criticized that it has been biased toward the ANC. The Sarafina II Scandal of the Ministry of Health questioned Baqwa's political neutrality. In this scandal, Nkosazana Dlamini-Zuma, the Minister of Health at the time, was accused of paying production costs for a musical show from the budget allocated for AIDS measures. Baqwa pointed out that the expenditure was inappropriate but did not pursue Dlamini-Zuma's responsibility (South African Institute of Race Relations 1996). Mushwana's rulings were often advantageous to the ANC. The most infamous case under

his office was ‘Oilgate’. The scandal alleged that public money flowed into the ANC through the PetroSA, the state-owned oil company, and was used as a political fund for the 2004 general election. Mushwana did not conduct sufficient investigations into this, thus worsening the situation (February 2006; Naidoo P 2006). Some criticize that Mkhwebane makes negative and politically biased decisions against Zuma’s political rivals, such as President Cyril Ramaphosa or Minister Pravin Gordhan (Rabkin 2020).

Madonsela is the notable exception; Madonsela was politically neutral during her term as the Public Protector (Bazana & Reddy 2021: 2–3). Madonsela has kept an appropriate distance from the ruling party. She declared that she treated all parties neutrally and equally (Mbanjwa 2009). Opposition parties also recognized her as a politically neutral person (van der Westhuizen 2009). She sometimes ordered unfavorable decisions against the ANC politicians, such as ‘Secure in Comfort’ and ‘State of Capture’.

The four Public Protectors share two common characteristics, whereas Madonsela might be an exception. Firstly, all four of them are legal professionals. Secondly, they are all closer to the ANC. Except for Madonsela, the other three have made decisions favorable to the ANC, and are often questioned about their political neutrality. The media have even called Mushwana an ‘ANC Protector’ and a ‘toothless watchdog’ (Ensor 2008; Omarjee 2008). In short, the Public Protector’s post has been occupied by law professionals, but there are questions about their political neutrality, except for Madonsela.

LITERATURE REVIEW

What kind of academic analysis has been conducted about the Public Protector? Although existing literature is only a few, there are some roughly legal approaches and political analyses.

The legal approach scrutinizes the current system and the problems of the Public Protector from a legal perspective. Most research has discussed whether a remedial action is binding. They had considered that the Constitution naturally needed the legally binding power of the remedial action to fulfil the obligation of the Public Protector (Stu 2016). The problem was practically settled in the above-mentioned *EFF v the Speaker of the National Assembly* case by the Constitutional Court. However, after this ruling, some concerns have arisen regarding the Public Protector’s extensive power. The Public Protector not only conducts the investigation but also rules the decisions at the same time. Thus, some argue that the role’s power is extremely strong. Thus, as Brett (2020) argues, if a ‘politician’s lapdog’ occupies the office, constitutional rights would be eroded rather than protected.

There are also discussions on the Public Protector’s office in the current system. The procedure for nominating a new Public Protector, in specific, has ambiguities. Bazana & Reddy (2021) argue that the evaluation criteria for candidates should be further clarified. Another study insists that there is a lack of appropriate procedures and rules for the mission. Thus, there should be a clearer mandate for the Public Protector to prevent the abuse of power, in case a notorious person occupies the post (Theophilopoulos & de Matos Ala 2019).

Secondly, there is a political approach. In the analysis of the Zuma administration’s government, some argue that the Public Protector contributed to strengthening and protecting constitutional democracy (Naidoo V & Jackson 2009; Naidoo V 2013). In addition, some positively evaluate that the Public Protector prevents high-level fraud in the country (Mwanawina & Lekonyane 2015; Alence & Pitcher 2019), given the work of the Madonsela during the Zuma administration.

On the other hand, some studies concern the political bias of the Public Protector. As mentioned above, it has been criticized that ANC-affiliated people have primarily occupied the Public Protector's role, and thus, some of their reports are advantageous for ANC.

Academic research has also discussed the political neutrality of the Public Protector. Some criticize that the non-penalty for Dlamini-Zuma in the Sarafina II scandal was a positive bias toward the ANC (Camerer 1997; Sarkin 1998). In terms of 'Oilgate', Stu (2016: 168) criticizes that Mushwana's decision was biased towards the ANC. Further, Mkhwebane is believed to be under Zuma's influence. She has been conducting investigations and remedial actions for political purposes against Zuma's rivals, such as President Cyril Ramaphosa and Minister Pravin Gordhan. It has been pointed out that these attitudes are nothing but an abuse of power (Slade 2020).

Whilst existing research is suggestive, however, only a small part of the Public Protector's work is being considered. The legal approach provides legal or abstract discussions but lacks empirical analysis. On the other hand, although political analyses focus on the actual activities of the Public Protector, much attention is paid to a few politically controversial cases, compared to the large number of cases the office handles. For example, the office accepted 9,299 cases in 2020 (Office of the Public Protector 2021). Thus, logically, many cases and actions still need systematic and comprehensive analyses. Further, existing research does not reveal all of the Public Protector's roles and actions, and therefore, a more comprehensive and empirical investigation is required.

METHOD

I. On data and its limits

This article questions whether the South African Public Protector has played an expected role as an ombudsman. However, existing literature does not answer this question. They discuss the abstractive role or only focus on small, political cases. There should be other small cases. Thus, by examining all of the Public Protector's work, the question would be answered.

This study analyses annual and investigation reports published by the Office of the Public Protector (OPP) available on their website. The annual reports contain comprehensive managerial information on the office, such as the financial situation, human resource trends, the number of cases accepted and the overall performance of the OPP. It is published every year as a legally required obligation, based on the Public Finance Management Act 1 of 1999. Investigation reports, on the other hand, record information on a specific case. They contain information on the complaints, the background of the accusation, the way to conduct the investigation, its results and any remedial action.

As of March 31, 2022, annual reports from 2003 to 2020 and 388 investigation reports were available on the website.⁽⁶⁾ Practically, investigating staff in the OPP would conduct investigations and write reports. Since all reports are published in the name of the Public Protector, it can be said that the Public Protector authorizes a report and its remedial action.

Before the analysis, the materials' problems should be mentioned. There are, *inter alia*, three issues. Firstly, the annual reports lack coherent criteria or description methods for their contents, and so the information obtained from the annual reports is fragmented. Coherent information only regarding the budget, personnel and the number of cases the OPP handled is available. Secondly, there are only 388 investigation reports, which is significantly less than the total number of cases. Moreover, approximately 77% of the total are Mkhwebane's

Table 1 Number of investigation reports by year

Public Protector: Selby Baqwa							
Year	1996	1997	1998	1999	2000	2001	2002
Number of Cases	1	0	0	0	0	0	0
Public Protector: Lawrence Mushwana							
Year	2003	2004	2005	2006	2007	2008	2009
Number of Cases	0	0	0	3	4	6	7
Public Protector: Thuli Madonsela							
Year	2011	2012	2013	2014	2015	2016	2017
Number of Cases	2	9	5	8	10	11	19
Public Protector: Busisiwe Mkhwebane						Total	
Year	2018	2019	2020	2021			
Number of Cases	42	124	47	87	388		

Sources and Notes. Investigation Reports are available on the OPP's website. The author could download 388 reports on March 31, 2020. Then, the author classified them by the published year. The table shows the result.

reports (Table 1). Thirdly, the release criteria for the report are unknown, and it is not clear why only these are publicized. Therefore, it is doubtful that the published reports properly represent the entire duties of the Public Protector.

Although the data have such limits and issues, they contain a lot of previously unconsidered information. Since existing studies have discussed only a few cases, it is meaningful to study previously unanalyzed data. In addition, investigation reports provide dense information on individual cases, such as the content of the complaint and the accusation. Considering the limits of the data, it is inappropriate to declare that this study clarifies all the Public Protector's roles. However, it would answer the research question above. Moreover, the analysis would provide the Public Protector's role which is overlooked by existing studies.

II. Method and coding rule

This study analyzes the role of the Public Protector using the above two sources. Firstly, it uses the annual reports to confirm the rough sketch of the OPP. The annual reports provide information on the operational capacity of the OPP and the number of cases they proceed with. Secondly, this study analyses investigation reports clarifying the pattern and nature of the cases. Who are the complainants? What types of cases are brought into the OPP? Is there some pattern or relationship between the characteristics of the complainants and the matter? To consider these questions, this study coded the contents of investigation reports according to the following criteria.

Firstly, the author distributed the subjects of the cases into five categories according to the OPP's classification⁽⁷⁾: (i) Executive Ethics Enforcement; (ii) Improper or Dishonest Action/Corruption; (iii) Maladministration and Dispute Resolution; (iv) Protected Disclosures/Whistle-Blower Protection; and (v) Procurement Irregularities. The author then recorded the category of each investigation report.

In this article, the object of an investigation is classified into the following five types: (i) Politician; (ii) Central Government; (iii) Provincial Government; (iv) Local Government;

and (v) Other Public Entities. If an object was a politician, their parties were recorded as follows: (i) African National Congress (ANC); (ii) Democratic Alliance (DA); (iii) Economic Freedom Fighters (EFF), and (iv) Others.

This study also categorizes complainants into the following five types: (i) Party Concerned; (ii) Politician; (iii) Whistle-Blower; (iv) Public Protector; and (v) Civil Society. A complainant with a direct interest in the subject matter is classified as 'Party Concerned', while a complainant who is a Member of Parliament or a local parliamentary member is recorded as a 'Politician' with the associated political party. A complainant is recorded as a 'Whistle-Blower' if the person is a current or ex-employee of the subject organization. If an investigation was started by the Public Protector's own initiative, it is coded as 'Public Protector', and if a complainant was not classified above, they are coded as 'Civil Society'.

ANALYSIS

I. Comprehensive picture

This section shows the overall image of the role of the OPP. It reveals how the capacity of the OPP has changed, the kind of cases handled by the Public Protector and who brings the cases into the office.

1. Capacity

Annual reports reveal that the OPP's capacity has been improving; financial and human resources available for the office have been increasing since the early 2000s. The Office has also introduced new mechanisms to conduct more cases. As a result, it has strengthened its capacity to cope with service demands.

In the early 2000s, the capacity of the OPP was not ideal. In the 2004 Annual Report, the OPP argues that it confronts fiscal constraints. Due to fiscal constraints, it cannot attract and employ qualified staff (Office of the Public Protector 2005: 18). Obviously, the Office lacked capacity; its budget was R50 million in 2003; the OPP had only 151 permanent staff (Office of the Public Protector 2004).

All four Public Protectors have vigorously tried to improve the OPP's capacity. The Public Protector Mushwana persuades the Treasury and other related Ministries to allocate more budgets for the Office (Office of the Public Protector 2005: 18). In 2010, the Office faced a serious resource shortage. Madonsela vigorously negotiated with the Treasury and other Ministries to get more budgets (Office of the Public Protector 2011: 82). Due to her effort, the Office obtained much more resources in the next year. Whilst the Treasury grant for the OPP was only R3 million in 2010, the Office obtained R15 million as a Treasury grant in 2011 (Office of the Public Protector 2012: 96).

Indeed, the OPP's budget and personnel have increased. The OPP's budget was R50 million in 2003 (Office of the Public Protector 2004). It has increased by more than seven times to R367 million in 2020 (Office of the Public Protector 2021). This increase may coincide with the overall budget expansion of the government. The government's expenditure in 2018 is 10 times higher than that of 2003 (National Treasury 2008, 2019). Anyway, the Office secures more fiscal resources than before. Given that the ratio of labor costs has remained constant at about 60% to 70%, it can be observed that the budget for investigation costs and other purposes has also increased during this period (Figure 2).

The ratio of staff increase in the OPP exceeds that of the overall government. Although the number of the OPP's staff was only 151 in 2003, it gradually increased to 336 in

2020. The vacancy rate has stably remained at about 5% throughout the period (Figure 3). The total number of national public employees in South Africa was 338,867 in 2003 and 417,467 in 2020 (Statistics South Africa 2009; National Treasury 2020). In other words, the number of the OPP’s staff has increased more than 2 times, while overall government personnel have increased only 1.23 times.

The Office has also introduced some mechanisms to conduct and finalize more cases speedily. One the example is ‘early resolution mechanism’, introduced in 2009. The mechanism uses means such as mediation and recommendation for solving typical cases or urgently required matters (Office of the Public Protector 2010: 40). However, only the

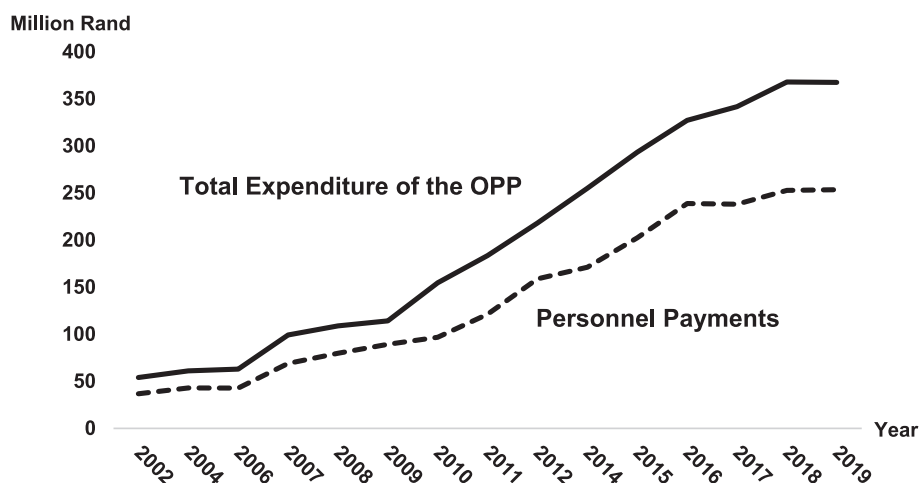


Figure 2 Budget of the Office of the Public Protector (2003–2020). Sources and Notes. The data is based on *Public Protector South Africa: Annual Report*, which is annually published by the Office of the Public Protector on its website. The author collects and plots data on the Office’s budget in annual reports.

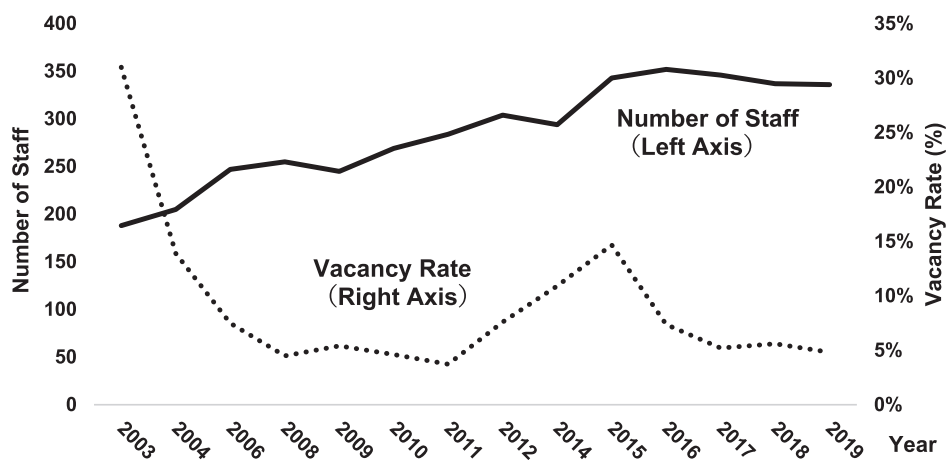


Figure 3 Number of staff and vacancy rate in the Office of the Public Protector (2003–2020). Sources and Notes. The data is based on *Public Protector South Africa: Annual Report*, which is annually published by the Office of the Public Protector on its website. The author collects and plots data on the number of staff and vacancy posts in annual reports.

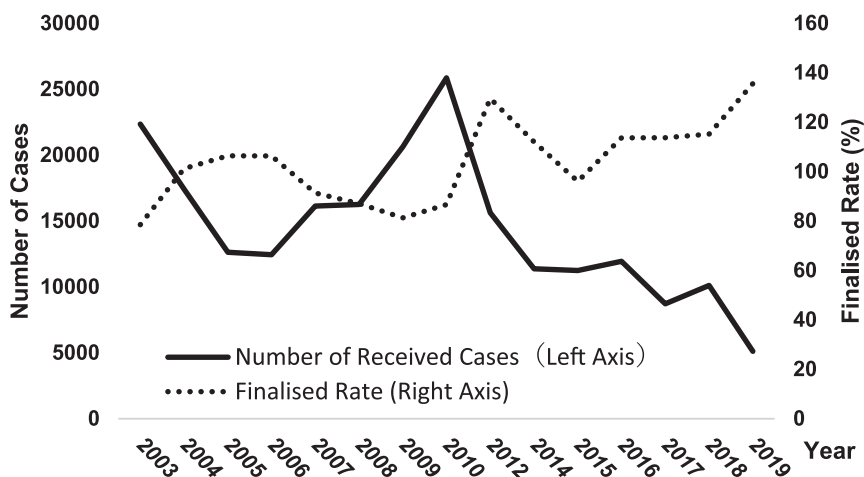


Figure 4 Number of cases and finalized rate in the OPP (2003–2020).

Sources and Notes. The data is based on *Public Protector South Africa: Annual Report*, which is annually published by the Office of the Public Protector on its website. The author collects and plots data on the number of cases investigated by the Office in annual reports.

annual reports for 2009 and 2010 contain the number of early resolution mechanisms. According to them, the early resolution mechanism resolved 5% and 10% of the total cases in 2009 and 2010, respectively (Office of the Public Protector 2010: 40, 2011: 45).

These advances have improved the number of cases being processed by the OPP. Immediately after Baqwa occupied the position, in 1997, the Office handled only about 20 cases per month while it monthly received 200 to 300 cases (South African Institute of Race Relations 1997). Further, at the start of Mushwana's term, the number of annual treatments per investigator was 111 (Office of Public Protector 2004: 10–11). It is considered that such a burden was relieved to some extent due to the increase in personnel and budgets described above.

Indeed, the OPP currently solves more cases. It accepts, on average, 10,000 to 15,000 cases per year. The complete rate is calculated by dividing the number of cases finalized by that of the total cases brought, and the figure is gradually improving. Since 2010, the complete rate has remained constant at almost 100%. Thus, it can be concluded that the Public Protector now has the capacity to respond to its demands (Figure 4).

As clear from Figure 2 and Figure 3, the number of staff and budgets have increased throughout all their terms. Whilst the early resolution mechanism began in Madonsela's term in November 2009, she had just occupied the post in October 2009. Thus, the mechanism was probably prepared in Mushwana's term. Further, Mkhwebane has continued the mechanism.

Thus, it can be said that all four Public Protectors have made efforts to solve the cases sent to OPP genuinely, appropriately and as early as possible.

2. Overview of the investigation reports

Figure 5 summarises the overall data for the 388 investigation reports.

The shares of categories are as follows. The largest share was that of Maladministration and Dispute Resolution, which constituted 64% of all samples. Executive Ethics Enforcement comprised 14%, Improper or Dishonest Action/Corruption occupied 7% of

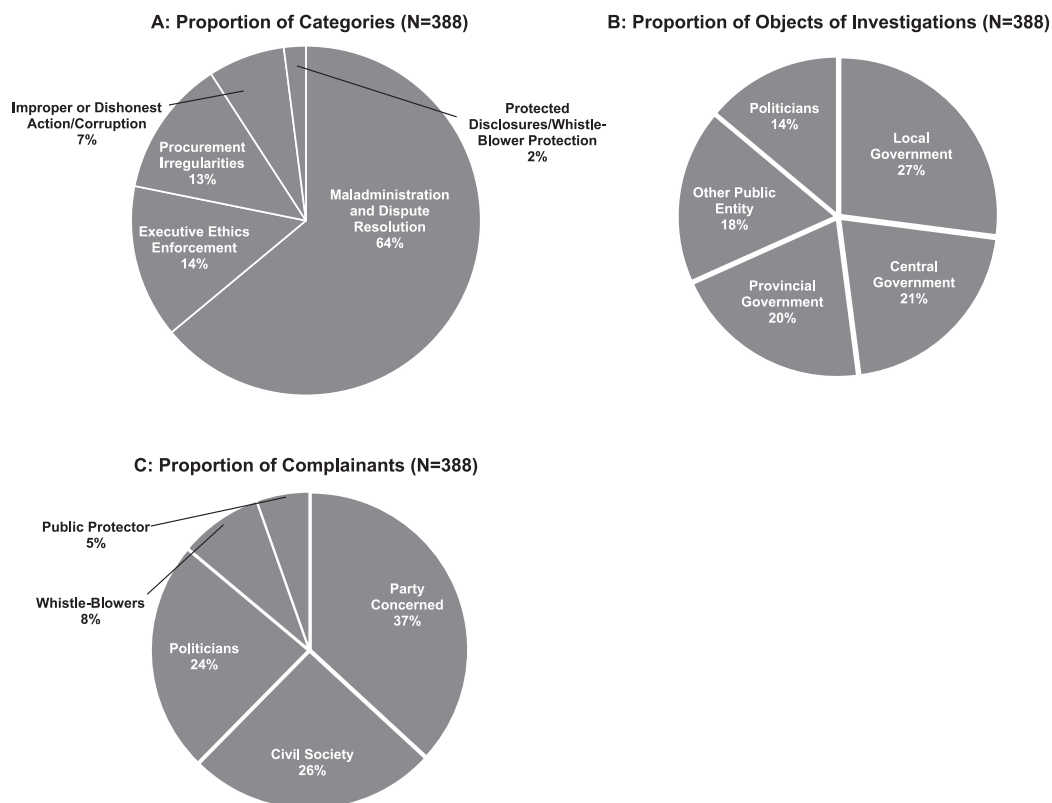


Figure 5 Comprehensive information of the Investigation Reports.

Sources and Note. The data is based on 388 investigation reports released on the OPP's website. The OPP classifies reports into five categories. Table A shows the detail. The author codes the Objects and complainants of each report following the coding rule explained in the METHOD section. Table B and C summarises the detail.

all cases, Public Procurement Irregularity took up 13% and Whistle-Blower Protection comprised 2% of all the cases.

The Public Protector does not order any remedial action in 85 cases (21% of all the samples). In those cases, the Public Protector does not find enough evidence nor illegal action. Some report informs that a dispute was solved between complainants and the public organs before the OPP's investigation.

As previously mentioned, there is no coherent information on categories in the annual reports themselves. However, the 2015 report contains partial information. According to it, 85% of the cases fell into the category of maladministration, 14.3% were outside the jurisdiction, and other cases, such as corruption and Executive Ethics Enforcement, occupied less than 1% of all cases (Public Protector 2016a). Therefore, the investigation reports released by the OPP represent the overall tendency of cases brought into the office, except for corruption and executive enforcement, which are a little underrepresented in the reports compared to the author's survey.

Figure 5 shows the information from the investigation reports. In terms of the object of investigation, not a specific department stands out. Looking at the complainants, the 'Party Concerned' category is the maximum at 37%, followed by 'Civil Society' and 'Politicians'.

The surveys based on the incorporation of Whistle-Blower and the Public Protector are a few. The projects handled by OPP have various government departments, but most of them are brought in by concerned parties or members of the civil society.

II. Details of the investigation reports

There are several relationships between the complainants and the issues. Table 2 and Figure 6 summarize the complainants by category. They reveal that the share of complainants differed from one category to another. Firstly, most complainants of the 'Executive Ethics Enforcement' category, which accuses high-ranking politicians, were politicians. In other words, politicians accused other politicians. Secondly, about 50% of the maladministration cases were brought by the 'Party Concerned' category. Some 'Politicians' and 'Civil Society' parties, such as labor unions and civil society organizations, also supported victims of maladministration. Thirdly, inappropriate acts and frauds were accused by various actors, such as the 'Party Concerned', 'Civil Society', and 'Politicians'. As will be described later, people unfairly treated in procurement or recruitment processes often complained.

1. Public protectors as a means of political struggle

Politicians seem to use the Public Protector as a means of political struggle. Table 3 summarizes the number of cases investigated by the OPP and brought into the Office by political parties. DA, the official opposition, most vigorously brings cases to the Public Protector. On the contrary, the ANC is the most accused party. However, that is not surprising because the ANC is the ruling party throughout the country except in the Western Cape province.

Western Cape presents an interesting phenomenon. In Western Cape, the DA is the ruling party, while ANC is the opposition. Of the six cases brought in by the ANC, five are against DA politicians in the province. On the other hand, the DA, which actively brings various matters to OPP, does not send the allegations to the OPP in Western Cape, where it serves as the ruling party.

Thus, politicians' accusations against other politicians have a clear partisan bias. Stu

Table 2 Number and proportion of complainants by categories

	Maladministration and Dispute Resolution	Executive Ethics Enforcement	Improper or Dishonest Action/Corruption	Protected Disclosures/ Whistle-Blower Protection	Procurement Irregularities	Total	Total Share (%)
Civil Society	65	4	7	0	22	98	24.87
Party Concerned	130	0	10	6	8	154	39.09
Politicians	26	50	8	0	8	92	23.35
Public Protector	14	2	1	2	3	22	5.58
Whistle Blower	17	0	4	0	7	28	7.11
Total	252	56	30	8	48	394	
Share (%)	63.96	14.21	7.61	2.03	12.18		100

Sources and Notes. This table is based on the OPP's investigation reports. Investigation Reports are available on the OPP's website. The author could download 388 reports on March 31, 2020. The author codes the Objects and complainants of each report following the coding rule explained in the Method section. Six reports overlapped with other categories.

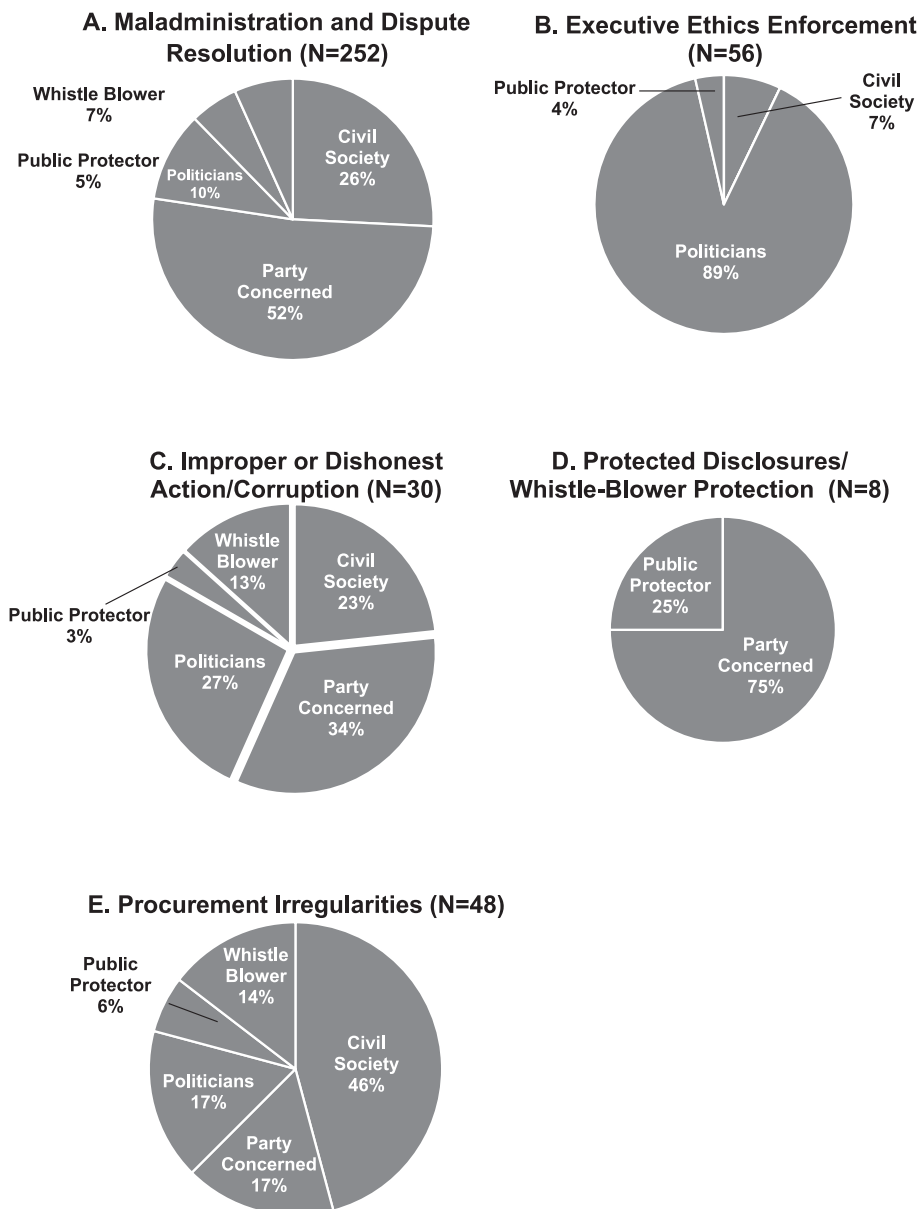


Figure 6 The proportion of complainants by category.

Sources and Note. The data is based on 388 investigation reports released on the OPP's website. The OPP classifies reports into five categories. Table A shows the detail. The author codes the Objects and complainants of each report following the coding rule explained in the METHOD section. Table B and C summarises the detail.

(2016) points out that the Public Protector's investigation has a 'naming and shaming' effect. Thus, politicians may be aware of this and use the system for furthering their political purposes.

2. Public protector's office as an alternative to administrative litigations

Many of the maladministration cases are brought by civil society organizations, such as labor unions and support organizations or the concerned parties themselves, and the issues are myriad.

For example, RDP house-related problems are often brought into the office. RDP houses are publicly provided low-cost housing. Some accuse municipalities or the provincial government of delaying providing or failing to register the title of RDP houses (Public Protector 2019b, 2021a). Citizens are also occasionally dissatisfied with basic services, such as electricity and water (Public Protector 2016e, 2021b). Some citizens complain that public organizations often delay their procedures (Public Protector 2016b, 2018d, 2021a).

In addition, troubles between the administrative staff and organizations are also brought to the Public Protector. Public employees or ex-employees accuse that their employers do not provide appropriate salaries or pensions (Public Protector 2009a, 2009b, 2016a, 2018b, 2018c, 2018e, 2019c). Further, some companies or businesspersons demand public entities to pay delayed or unpaid money for their services or goods provided (Public Protector 2018c, 2018d).

These problems may seem small to the administration on the whole, but they are serious problems for the parties concerned. For example, in a case in which a public employee died and his bereaved family had created documents without any omissions, they did not obtain the survivor's pension due to delays and mistakes in the processing by the public organization. Because of this, his minor child was placed in a poor condition (Public Protector 2015). Madonsela talks about a woman who became homeless because the public authority failed to provide her with an appropriate RDP house (Helen Suzman Foundation 2012: 11). While such cases are small, they are not trivial.

In general, the ombudsmen organizations solve such small but not trivial problems at the earliest. Though these issues may also be resolved in court, it is not always possible or beneficial for ordinary citizens. A trial requires specialized knowledge and a lawyer fee. It also takes time to finalize the trial. An ombudsman is expected to solve the problem while avoiding such complicated procedures (Dlamini 1993).

The four Public Protectors have been actively working on this issue and have actively protected citizens' interests as ombudsmen. When Madonsela occupied the position, she said, "We must make sure that the big, high-profile complaints do not dwarf these of the small person" (Naidoo P 2009). In these issues, successive Public Protectors have generally strived to relieve complainants, ordering appropriate remedial actions. In 2016, the follow-up programme was launched to monitor the implementation of the remedial action. In 2017,

Table 3 Number of politicians' accusation against other politicians

	Bring into the OPP	Number of Cases Accused
African National Congress (ANC)	6	41
Democratic Alliance (DA)	29	7
Economic Freedom Fighters (EFF)	11	0
Other Parties	7	2
Total	53	50

Sources and Notes. This table is based on the OPP's investigation reports. Investigation Reports are available on the OPP's website. The author could download 388 reports on March 31, 2020. Following the coding rule explained in the Method section, the author coded the political parties of accused politicians and complainant politicians. DA and EFF collaboratively bring three cases into the OPP.

during Mkhwebane's term, all remedial actions were completely followed up (Office of Public Protector 2018: 48). Thus, all four have fulfilled their missions as ombudsmen in these small projects.

3. Correcting small-scale frauds

Small frauds in recruitment or procurement processes are brought to the OPP by various actors including the parties concerned. The phrase 'Party Concerned' in these cases refers to those who originally could be beneficiaries in the procedure. For example, a person who applies for a public post is sometimes unequally treated by the authority and fails to get the job (Public Protector 2019e, 2019g). Or, a company could not be awarded a tender due to corruption or inappropriate action in public procurement processes (Public Protector 2018a, 2019h). The parties, in such cases, claim that they should have been hired and accuse providers of wrongdoing. In some cases, some public employees report fraud or irregularity in the workplace when dissatisfied with the lack of skills of their irregularly or inappropriately appointed colleagues (Public Protector 2016c, 2019a, 2019f).

These claims are often highly accurate. In cases of procurement, delivery price and corporate score are recorded. On the other hand, recruitment requires appropriate qualifications or experience for the post, especially for a managerial one. The party concerned often finds that the recruited person or company has been fraudulent when confronted.

As an example, there is a case in which a local government recruited sewerage a management technician. The advertisement for the post required a person who had an engineering degree and specialized experience related to engineering. The complainant who applied for the post was a professional engineer with a degree in engineering but was not recruited. Instead, a person with an unusual engineering degree was recruited. The complainant accused there should have been some fraud. The investigations by the Public Protector revealed irregularity (Public Protector 2019d).

Such local illegal and inappropriate actions are highly accurate, and in almost every case, the Public Protector ordered corrections and disciplinary measures against stakeholders as remedial actions. Thus, it can be said that the Public Protector plays a role in correcting small corruption and fraud.

DISCUSSION

This section discusses and evaluates the status of the Public Protector from the previous observation. It can be concluded that the OPP has played an expected role as an ombudsman, while its decisions and behaviors in political cases are sometimes controversial. More specifically, observations in previous sections bring mainly four conclusions. Firstly, the OPP has strengthened its operational capacity. Secondly, ordinary citizens or the party concerned are the main complainants, except in high-profile cases. Thirdly, the Public Protector mainly copes with small and various cases. Finally, while politician-related cases are controversial, the Public Protector success to resolve most small cases.

The OPP has improved its operational capacity over time. As discussed above, successive Public Protectors have vigorously improved its budget and personnel. In addition, they introduced sophisticated systems to conduct more investigations speedily. These efforts cause positive effects. While the Office could not proceed with all cases in the early 2000s, it finalizes almost all cases brought into the Office at the end of the 2010s. In other words,

the OPP's capacity has gradually improved to meet service demands for it.

As far as the available resources indicate, the Public Protector performs the role of an ombudsman. Investigation reports show the patterns and tendencies of the OPP's services. As analyzed above, ordinary people are the main actor who brings the case into the Office. Although the problems are small in scale, they are highly consequential for the parties concerned. As mentioned above, most cases are redressed in favor of complainants. Considering that all reports are signed by their name to authorize, all four Public Protectors are committed to protecting citizens' rights. Thus, solving these issues is required of an ombudsman in the first place, and the four Public Protectors have adhered to this goal.

However, it is doubtful whether the Public Protector can appropriately respond to high-profile cases. It might be said that complainants inappropriately use the Public Protector. As discussed above, most high-profile cases are brought by another politician. The complainant's character is obviously different from other kinds of cases. This indicates that a politician brings a case to the Public Protector in order to accuse political rivals. These accusations are sometimes baseless rumors. Therefore, it is impossible to fix the problem, because there may be no illegal action or evidence.

It should be also emphasized that the relationship between the Public Protectors and the ruling ANC questions the Office's impartiality. All four Public Protectors are closely related to ANC. Of them, three, except Madonsela, have made a controversy. Baqwa made an ambiguous decision regarding the ANC and Dlamini-Zuma during the Sarafina II scandal. Mushwana's decision for Oilgate was positively biased towards the ANC. Mkhwebane has made inappropriate rulings regarding Ramaphosa and Gordhan, rivals of Zuma. Needless to say, Madonsela is evaluated as the most prominent Public Protector, probably because she put her duty above her political affiliation.

In small cases, the Public Protector has been able to monitor administrative agencies. Therefore, the role works as a 'People's Protector'. However, the person holding the office has not always been politically neutral when it comes to high-profile cases. Certainly, although the office has made critical decisions against the ANC, it also often falls into the category of a 'politician's lapdog'. How, then, can the Public Protector become a genuine public protector?

One way is to reform the current systems and procedures so that the appointment of a politically neutral person is ensured. As Bazana & Reddy (2021) point out, anyone who has been working for more than 10 years in some public sphere can be appointed as the Public Protector, according to the current Public Protector Act. In particular, the provisions of Section 1A (3) I of the Act are problematic: 'a member of parliament'. Since the members of the South African parliament are elected by the proportional representative system, they always belong to a specific political party. Therefore, to ensure political neutrality, this method should be disqualified by the members of parliament. Contrastingly, the appointment of a court judge requires a fairly complicated procedure. Thus, considering the magnificent influence the Public Protector has, it will be necessary to introduce a more complicated procedure, similar to that of a court judge.

Alternatively, it is also an option to limit the OPP's role to the correspondence of small cases. As seen in the previous section, the OPP is more or less successful in responding to cases received from the public. Although the OPP has sufficient capacity, the Public Protector does not start investigations of their own accord. By removing highly political cases from the office's purview, the Public Protector may be able to correct further small-scale problems. In response to the State Capture scandal, the Zondo Commission proposed the establishment of a specialized institution that deals with corruption related to procurement (Zondo Commission 2022: 844-847). If such an organization is set up,

a division of mission between the new organization and the Public Protector will be discussed. It is realistic and meaningful that the new organization treats high-profile cases and the Public Protector's office becomes a purely 'ombudsman' organization.

CONCLUDING REMARKS

This article questions whether the South African Public Protector has played an expected role as an ombudsman. Despite the major impact on current South African politics, the Public Protector's office has not been studied academically. This study fills the gap and provides the first systematic and empirical analysis of the Public Protector's office.

This article made four discoveries. Firstly, the successive Public Protectors have strengthened the office's operational capacity. Secondly, most cases are brought into the Office by ordinary citizens or the party concerned, except in high-profile cases. Thirdly, the Public Protector mainly copes with small cases. While there are politician-related cases, the number of them is small. Finally, while high-profile cases are controversial, the Public Protector succeeds to resolve most small cases.

Overall, it can be concluded that the Public Protector has played an expected role as an ombudsman, whilst some challenges and problems remain in relation to high-profile cases. The Public Protector has played the expected role of an ombudsman. Four successive Public Protectors have continued to improve the office's capacity and have solved small but important problems for citizens. In this sense, the Public Protector is a watchdog protecting the citizens. On the other hand, they have generally failed to monitor high-profile politicians. Whilst complainants may inappropriately use the Office, the relationship between the Public Protector and the ruling party should be seriously considered. Since the Public Protectors so far have been politically connected with the ruling party, ANC, the office has sometimes become a politician's lapdog. Some reforms are very much needed, such as promoting the political neutrality of the Public Protector or creating another organization that specializes in political cases.

This study contributes to the research on current South African politics. Yet, it is not perfect, as it relies on the annual and investigation reports released by the OPP. While they provide rich information, they have weaknesses and problems. Thus, the research needs some reservations to generalize the conclusion due to the limits of available resources. For example, Investigation Reports are only a small part of all cases the Office conducts. It cannot be denied that the Office would release more reports on successful cases; it would hesitate to publish non-successful cases. Thus, the sample might overrepresent successful cases. In addition, this study is based on the reports and does not consider the implementation of remedial actions. Thus, there should be more to clarify about the Public Protector's office. Future research should analyze unreleased reports and find more detailed information on specific cases. They should also consider whether remedial action has been genuinely implemented. Careful fieldwork will be required as well. Given that the Public Protector cannot be ignored in current South African politics, the limits and problems in this paper should be overcome in future research.

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NOTES

- (1) In 1945, South African politicians started to consider establishing an ombudsman-like institution (Rudolph 1983; Baqwa 2001).
- (2) Information Scandal or 'Infogate' revealed in 1978 that the Apartheid regime improperly used public money to influence internal and international public campaigns. As a result of the scandal, Prime Minister B. J. Vorster resigned (Dubow 2014: 191–192).
- (3) Speech by Nelson Mandela at the African Regional Workshop of the International Ombudsman Institution, August 26, 1996, the Nelson Mandela Foundation, Mandela Centre of Memory, Reference Code: ZA COM MR-S-413 (The manuscript is available on the Nelson Mandela Foundation's website (<https://archive.nelsonmandela.org/index.php/za-com-mr-s-413>)).
- (4) Other Chapter 9 Institutions are the Human Rights Commission; the Commission for the Protection and Promotion of the Rights of Cultural, Religious and Linguistic Communities; the Commission of Gender Equality; the Auditor-General; and the Electoral Commission.
- (5) *Economic Freedom Fighters and Others v. Speaker of the National Assembly* [2016] ZACC11.
- (6) Both annual and investigation reports are available on the OPP's website (<http://www.pprotect.org/>).
- (7) While there is also a category named 'Alternative Dispute Resolution/Settlement Agreements', none of the documents are released in it.

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