‘IT COULD COLLAPSE AT ANYTIME’

- ROAD CONSTRUCTION PROJECT SHAKES PENSIONER’S HOUSE TO ITS VERY FOUNDATIONS
- PUBLIC PROTECTOR HELPS THE FAMILY SECURE R200 000 IN COMPENSATION
- NOW THE FAMILY PREPARES TO OCCUPY A NEW AND SAFE HOUSE ELSEWHERE

MAULED AND KILLED BY WILD ANIMALS

FILL VACANCY PERMANENTLY, GEORGE COUNCIL TOLD
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MESSAGE FROM THE PUBLIC PROTECTOR

‘Our ability to deliver on the constitutional mandate hinges on the clarification of the judgment’

Greetings to the resilient people of South Africa!

As usual, I am pleased to bring you the latest copy of The Public Protector, our official external newsletter.

During the production of this edition, a notable development, with serious implications for the functioning of my office took place while the Supreme Court of Appeal said that if the Public Protector falters our democracy is in trouble.

As you are aware, the Western Cape High Court has ruled that the Public Protector’s findings and remedial action are not binding as the Public Protector is an Ombudsman.

The judgement involved a matter between the Democratic Alliance and the South African Broadcasting Corporation (SABC). The case itself was based on my report, which followed an investigation into allegations of bad governance at the SABC.

I must point out at the outset that, as the Public Protector is an Ombudsman, the decisions of the Public Protector, not the courts are the right forum to review the findings of the very Public Protector who reviews their decisions and conduct to determine if such constitutes proper conduct as envisaged in Section 182 of the Constitution.

This is likely to place you, as a complainant, in a precarious situation, where you will have to dig deep into your pockets to enforce the findings and remedies through the courts.

We remain alive to the reality that most of the people that turn to the Public Protector have neither the money nor the time to take government to court over administrative injustices they have suffered.

A quick and cost-free channel to ensure prompt justice, including remedial action for ‘Gogo Dlamini’.

The judgement further appears to have been based on jurisprudence that is not relevant to the South African context in that the United Kingdom Ombudsman is not comparable to the Public Protector. The two institutions’ powers and orientation contrast in a big way. The UK Ombudsman is more like our Ombudsman bosies created by the state.

We believe the ability of this office to live up to its constitutional mandate hinges on the clarification of the said parts of the judgment.

This is likely to place you, as a complainant, in a precarious situation, where you will have to dig deep into your pockets to enforce the findings and remedies through the courts.

In the light of this, we have decided to exercise our right to appeal the judgment.

As we indicate on page 7, we filed a notice for leave to appeal the judgment in November 2014 and we are still awaiting the court’s decision on that.

In the meantime, we continue to do our work, dealing with your cases, as best we can, guided by the constitutional provision to investigate, report and take appropriate remedial action.

This is because the judgment does not affect how we do investigations but rather what happens after we have made findings and directed that certain remedies be implemented.

Till next time

Adv. Thuli Madonsela
Public Protector of South Africa

LETTERS TO THE PUBLIC PROTECTOR

A word of gratitude

Dear Public Protector

I would like to thank you for all your assistance and support in this matter. Your team has been in constant contact with my father and it seems that things are finally getting somewhere.

I really appreciate everything that you have done for us. It always humbles me when people do their work and do it well.

I wish that there is some way other than this email that I can thank you. I think I speak for the entire family when I say that we are grateful for your help.

Patrick Prins - by email

My father received his dues

Dear Public Protector

Just a note to say thank you for all that you have done to resolve this issue. My father received his money and it was reflected in his bank statement which he got yesterday (10 November 2014).

I am truly grateful for all your efforts, your professionalism and perseverance. Thank you so much. We wish you all the best.

Maryke Roberts - by email.

I struggled for months

Dear Public Protector

This evening I type this email with a very thankful heart to you for all that you have done for me.

This morning I received a text from the bank informing me that an amount has been paid into my bank account and the reference is “pension”. I have been struggling for months and I am so grateful for your help and that of God.

Jonene Terblanche - by email.
Bhini Khanyile is lucky to be alive. Six years ago the old man from Okhukho near Ulundi in KwaZulu-Natal saw his life flashing before of his eyes.

He had been wandering about in a veld, tending his cattle when he suddenly found himself wrestling with a vicious wild cat.

Khanyile was in the company of his six dogs, far from the homesteads, when he heard the dogs barking and whining in agony in a scrub a few meters ahead.

Curious and concerned, the elderly man hurried in the direction of the noise to investigate.

He could not believe his eyes. Three of his dogs were already lying on the ground in a pool of their own blood and a wrangling leopard had just ripped the fourth dog apart.

With most of his dogs dead, Khanyile who was only armed with a knobkerrie became more than vulnerable.

Before he knew it, the predator was on top of him, sinking its razor-sharp claws and canines into his flesh. The big cat had thrown him to the ground and was mauling away at, among other things, his hands and face. Miraculously, the animal stopped and disappeared into the bush.

"I don't know what came to its mind because it paused for a moment from attacking me, and then just dashed off," Khanyile recalled, in an interview with Chris Ndaliso of the Independent Newspapers.

He told of how he had to hobble to the closest homesteads before he was whisked away to a nearby hospital where his right arm was later amputated.

"I spent many days in hospital. The bone was broken because I tried to shield my face with the arm," he said.

"I guess that's how I broke the bone. My other hand is paralysed."

It's certainly a day that will remain etched in Khanyile's memory. Today, he thanks his lucky stars that he lived to tell the tale.

But his life has changed forever. Once independent, now Khanyile has been reduced to an object of pity, who cannot do much for himself.

He is practically dependent on his wife and others to do things for him.

"I'm useless," he said, "this is hard to accept because the one moment I'm walking in the veld looking after my cattle and the next thing I'm permanently disabled."

Once a successful small-scale farmer, Khanyile now struggles to make a living.

Unfortunately, he is one of many members of the Ukhukho community whose livelihoods have been dealt a blow by the existence of a wild animal enclosure - Hluhluwe-Imfolozi Game Park - a stone's throw from their dwellings.

Their plight prompted the Public Protector to launch an own-initiative
At the centre of the investigation were complaints that not enough efforts were being made by the provincial government to prevent wild animals from escaping from the park, terrorising locals.

Village dwellers claimed that leopards had escaped from the park, killing and maiming some members of the community. In addition, most locals had lost some of their livestock due to attacks by hyenas and lions.

They further complained that victims of animal attacks were not being compensated. It was also alleged that, due to a 1950 policy, victims were only compensated for attacks by animals other than those indigenous to the area.

The Public Protector’s investigation included meetings and interviews with community members, including Khanyile; community headmen; officials of Ezemvelo KZN Wildlife, which manages the park; and representatives of government.

The Public Protector also toured the park, inspecting the quality of the fencing around the 960km² tourist attraction, with a view to ascertaining if indeed it left local communities and their livestock vulnerable to wildlife attacks.

Area induna, Mzikayifani Shezi, also speaking to the Independent Newspapers, described Khanyile’s life as unbearable, and said he could remember two people who had been killed recently by wild animals from the game reserve.

“He (Khanyile) was lucky to survive, but I must say, he finds it difficult to accept his current condition.

“When we are at gatherings around the village we look after him. If he wants to have something to drink or when we eat meat in the kraal, we feed him,” said Shezi.

“These animals pounce at any time and we find it difficult to send our children to collect livestock, or send them to neighbours.”

The Public Protector has since completed her investigation, which found that virtually all of the community’s grievances, including those of Khanyile, were substantiated.

In a report titled Ubuntu, the Public Protector directed –as part of appropriate remedial action – that the Department of Economic Development, Tourism and Environmental Affairs, under whom Ezemvelo KZN Wildlife operates, compensate villagers whose livestock had been killed by wild animals from the reserve, villagers who had been injured, or the families of those who were killed.

Within six months of the report being made public, the department should, at its own cost, find a compensation expert to quantify Khanyile’s loss and compensate him accordingly, the Public Protector directed.

The report also directed that within 12 months, the department should consider establishing a victims’ fund that would cater for the compensation of potential victims. Revenue for the fund should come from fines and levies imposed on game park owners.

The department was also directed to ensure that -within six months, wild animals’ enclosures are assessed for adequacy and that security is reinforced.

It was further called on to develop a policy that ensures a lasting solution.

For the full investigation report, visit www.publicprotector.org and, on the menu, select “Documentation”. 
A North West pensioner has been awarded R200 000 in compensation over life-threatening damages to his house, allegedly, as a result of a government infrastructure development project.

Now Frans Nkome’s family, in Swartdam village outside Pretoria, is finally fleeing the crumbling home – all thanks to the pay-out.

Nkome says his household is getting ready to move into a new home, on an alternative site, where they hope to live happily ever after.

The 61-year-old turned to the Public Protector in 2010, complaining that a provincial government project to construct a road in the village left him and his family fearing for their lives in a house that was teetering on the brink of collapse.

His troubles began in 2006 when the Department of Public Works and Roads in that province began to implement plans to construct a tarred road cutting through the village.

The road project, Nkome recalled, was a welcome development in his community. Previously, a dusty gravel stretch passed through the village, linking his and a neighbouring village of Dikebu.

But the development came on condition that the inhabitants of Nkome’s Mmotong section of the village vacate the area to make way for the road.

This saw the department expropriating residents’ properties, paying each household compensation to the tune of R150 000, with which they had to
When the Public Protector’s intervention.
Nkome sought the Public Protector’s on deaf ears. It was at that point that relocating him to an alternative area fell with no way of connecting with the outside world in person. The wet clay grounds in the surroundings also left Nkome’s cattle trapped in the mud.

This left him stranded in the house, with no way of connecting with the outside world in person. The wet clay grounds in the surroundings also left Nkome in danger.

He also complained that, in addition to a disintegrating house, the road’s storm water drainage system was constructed in such a way that is faced his yard, flooding the enclosure each time it rained.

This left him stranded in the house, with no way of connecting with the outside world in person. The wet clay grounds in the surroundings also left Nkome's cattle trapped in the mud.

His requests to have the Department relocating him to an alternative area fell on deaf ears. It was at that point that Nkome sought the Public Protector’s intervention.

When the Public Protector’s investigation team visited the family, they were greeted by gaping cracks on the house walls. So big were the cracks that passers-by could almost effortlessly be privy to goings-on inside the house from the outside.

More worrisome was the fact that the walls looked as though they were going to tumble sooner rather than later. Nkome feared for the worst. He worried that if things stayed unchanged, paramedics would one day be called to the site to free his family or their remains, buried deep under a heap of rubble from the collapsed structure.

On many nights, he would lie awake just so he could raise the alarm on time in the event the rickety walls caved in.

“It is just by the grace of God that nothing happened to us,” Nkome said. “The house could have collapsed at any time.”

A subsistence farmer, Nkome dreaded rainy days. The sight of rainclouds gathering overhead made him uneasy. Downpours could only mean trouble for his family as the yard would be waterlogged.

“As a farmer I should have been celebrating when I saw rain clouds,” said Nkome, “but I couldn’t ... When it rained I couldn’t even move out of the house.”

But all this will soon be forgotten after a successful intervention by the Public Protector, which saw the Department accepting liability for the Nkomes’ dilemma. Nkome is relieved that the Department has since paid up.

He has already paid for building material. The family hopes to move into the new house, five kilometres away from the old structure, in a month.

“I don’t know where I would have been had it not been for the Public Protector because I do not have money to pay the lawyers,” said Nkome.

ON MANY NIGHTS, HE WOULD LIE AWAKE JUST SO HE COULD RAISE THE ALARM ON TIME IN THE EVENT THE RICKETY WALLS CAVED IN

re-establish themselves on an alternative section of the village.

Puzzlingly, the Nkomes were left out of the arrangement and soon the road became a problem for the family. The new road virtually passed at the Nkomes’ doorstep.

Before long the walls of their house began to crack badly, allegedly, as a result of the use of heavy road construction machinery. Nkome complained to the Department that the equipment was shaking the structure to its very foundations, placing the lives of his family in danger.

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Public Protector awaiting court decision to appeal WC High Court judgment

The Public Protector is still awaiting a decision of the Western Cape High Court with regard to whether her office will be granted leave to appeal Judge Ashton Schippers’ judgment, in which the court held, among other things, that the Public Protector’s findings and remedial action were not binding.

This was in a matter between the Democratic Alliance and the South African Broadcasting Corporation. Though the Public Protector was not supporting either of the parties, she joined the proceedings as a respondent to clarify her office’s powers.

A notice for leave to appeal the judgment was filed in November 2014.

The judgment has been the subject of intensive public discourse, with some choosing to adopt it as a definitive interpretation of the extent of the Public Protector’s powers and the binding effect of the findings and remedial action of the institution.

The Public Protector believes that there is a strong chance of a higher court arriving at a different decision, particularly given the fact the Supreme Court of Appeal has previously found that the Public Protector is more than an Ombudsman.

This is more so because the office now called the Public Protector was called an Ombudsman from 1991 to 1994, having been initially referred to as the Advocate-General. Furthermore, the 1996 Constitution not only changed the name but also the words used in conferring powers to the Public Protector.

With respect to Judge Schippers and the judiciary at large, the Public Protector is of the view that the decision places a burden on complaints in the event organs of state counter review her findings and remedial action and decide their conduct was not improper.
The Public Protector has directed the Senqu Municipal Council in the Eastern Cape to ensure that the position of Chief Financial Officer (CFO) is advertised when the employment contract of the current CFO, Christopher Rudolph Venter, comes to an end.

This follows findings that Venter did not have the required qualifications to be appointed to the position of CFO at the time when he was appointed in 2002.

In a report titled Saved by the Notice, the Public Protector found that Venter only passed Standard 10 in 1981 and did not possess the appropriate tertiary qualification as required by the advertisement for the position of Financial Manager.

The report followed an investigation into alleged irregular appointment and extension Venter’s employment contract.

It was also alleged that Venter had an undue influence in the appointment of his wife by SEBATA (Pty) Ltd, a service provider engaged by the municipality for the Financial Management System and Support.

The matter was brought to the attention of the Public Protector by the Sterkspruit Ratepayers Association and Sterkspruit Civic Association, who represented the community of Sterkspruit.

In the main, the complaint was that Venter’s appointment as CFO was irregular as he did not possess the necessary qualifications and skills to fulfill the requirements of the position.

In addition, the appointment of Venter’s wife was alleged to have been unduly influenced by him and that she was performing his duties as CFO.

The Public Protector also found that Venter had not acquired the appropriate tertiary qualification for the position of CFO when his contract of employment was renewed by the Municipality in 2007.

She further found that he had also not acquired an National Qualification Framework level 6 tertiary qualifications prescribed by the Guideline for Municipal Competency Levels for the position of CFO when his contract of employment was renewed in 2012.

Although Venter has since obtained the required higher education qualification of a Certificate in Municipal Financial Management on 5 June 2014, his appointment to the position of Financial Manager in 2002 without the required qualifications and the renewal of his employment contract in 2007 and 2012 without the required qualifications constitute improper conduct and maladministration, the Public Protector found.

On whether the Municipality irregularly appointed Venter as CFO in contravention of relevant laws, the Public Protector found that the allegation was substantiated as the Municipality failed to comply with the requirements of its own advertisement for the position of Financial Manager when it appointed him in 2002.

The Municipality further failed to advertise the position of CFO when it became vacant in 2007 and in 2012, when it renewed the employment contract of Venter as CFO.

Regarding whether there was undue influence by Venter in the appointment of his wife by SEBATA, the Public Protector found that the allegation could not be substantiated.

The Public Protector directed the Municipal Manager of the Senqu Municipality to ensure that a separate performance agreement is concluded with Venter.

She directed the MEC for Local Government and Traditional Affairs to investigate the reasons behind the violation of the Municipal Systems Act 32 of 2000 by the Senqu Municipality and the officials responsible.

The MEC was further directed to take action to ensure that the situation is not repeated.
The Public Protector has directed the George Municipal Council not to renew the monthly contract of the Area Coordinator in the town of Touwsranten in order to avoid perpetuating the illegality of the appointment of the current incumbent.

This comes after findings that the appointment of the Area Coordinator was a breach of the municipality’s Appointment Policy. This was because the Municipal Manager failed to adhere to several provisions of the policy, making the appointment unlawful, amounting to improper conduct and constituting maladministration.

The findings followed the investigation of alleged maladministration against the Municipal Manager, relating to the appointment of the Area Coordinator. The complaint was filed by a representative of the Ward 4 Committee in Touwsranten.

Issues identified for investigation included whether the procedure followed in the appointment of the Area Coordinator was improper and constituted maladministration. The Public Protector looked into whether there was any political interference by the Executive Mayor’s office and if so, whether this was improper and constitutes maladministration.

In a report titled Out of the Blue, the Public Protector found that the incumbent, whose highest level of education is Grade 10, did not meet the essential requirements of the position, which was the relevant B-Tech Diploma in Municipal Management.

No evidence was presented to show that the incumbent met the criteria set out under section 20(3) of the Employment Equity Act 55 of 1998 and as such the incumbent’s appointment was unlawful, amounted to improper conduct and constituted maladministration.

“Although there was no evidence of interference from the Mayor’s office, the manner of the appointment lends itself to an investigation into the nature of the relationship that existed between the incumbent and all the various people involved in his appointment,” the Public Protector said.

“There is the possibility of the existence of an improper or possibly corrupt relationship between the incumbent and one of the people involved in the process of his appointment.”

The Public Protector said this was especially true of the Municipal Manager, who provided no plausible explanation as to why the position was offered to the incumbent who was not only unqualified for it but had not solicited for the position.

She called upon the Council to ensure that the vacancy of Area Coordinator was permanently filled by following the appropriate Appointment Policy of the municipality.

The Council also had to consider taking disciplinary action against the Municipal Manager for failure to adhere to the prescribed Appointment Policy in the appointment of the Area Coordinator.
The Commission for Gender Equality (CGE) has been directed to reimburse its former Chief Executive Officer, Chana Pilane-Majake, for the use of her private cellular phone and internet services.

In a report titled Unsettled Business, the Public Protector directed that the reimbursement must be paid with interest.

This follows the investigation of allegations that the CGE unfairly excluded its former Pilane-Majake, when the institution paid arrear provident fund contributions to other Senior Management Service (SMS) employees and to pay her cellular telephone benefits for the period she was on precautionary suspension.

The Public Protector considered the two allegations and whether Pilane-Majake was prejudiced by such conduct if it indeed occurred.

Regarding the alleged unfair exclusion from provident fund employer contributions, the Public Protector found that the claim was not substantiated as evidence from CGE payroll records showed that only MMS members received the arrear provident fund payment.

“If SMS employees were entitled to be paid arrear contributions to the provident fund,” said the Public Protector, “[Pilane-Majake] would have been entitled to such payment regardless of her being on precautionary suspension at the time of her having opted for an exit package that failed to take such a matter into account.”

The complaint over the payment of cellular phone and 3G allowances was found to have been substantiated.

The Public Protector found that Pilane-Majake surrendered her CGE cellular phone handset and 3G card during her precautionary suspension. The communication she had to address to the CGE during this period, including queries from the Harries Commission lawyers established to adjudicate her matter, were dealt with through her private telephone and internet services.

The Public Protector found that the CGE had to bear Pilane-Majake’s telephone and internet services costs during that period in terms of the Principles, Policies, Rules and Regulations for its staff.

This was because Pilane-Majake remained the institution’s employee until the termination of her employment and evidence showed that she did incur CGE-related expenses.

The Public Protector found that the CGE’s failure to assess and pay the invoices submitted by Ms Pilane-Majake constituted improper conduct and maladministration as Ms Pilane-Majake incurred expenses relating to the use of her private cellular phone and internet usage for official purposes while on precautionary suspension.

“The complainant suffered prejudice in that she was left to personally bear the cost of CGE-related communication expenses incurred through the use of her private cellular phone and internet services for official purposes while on precautionary suspension,” the Public Protector said, adding that Ms Pilane-Majake suffered an administrative injustice.

THE COMPLAINANT SUFFERED PREJUDICE IN THAT SHE WAS LEFT TO PERSONALLY BEAR THE COST

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WHAT IS THE PUBLIC PROTECTOR?
The Public Protector is a high level Independent constitutional officer, appointed by the President on the recommendation of Parliament in terms of the Constitution. The Public Protector has the power to make findings, issue reports and take appropriate remedial action.

WHAT CAN BE INVESTIGATED BY THE PUBLIC PROTECTOR?
Conduct in government at any level. This includes central, provincial and local government and state owned enterprises. Any person performing a public function. This includes anyone performing any official duty which affects all, or part of, the people of South Africa such as an employee of the State such as a policeman or an electoral officer. Corporations or companies where the State is involved such as Eskom and Telkom. Statutory councils as well as the Human Sciences Research Council and the entities covered by the Public Service Management Act. Acts of private individuals involved in state business may also be investigated.

HOW DOES ONE COMPLAIN TO THE PUBLIC PROTECTOR?
You should try to solve the problem yourself before complaining to the Public Protector, for example by: Speaking to the officials involved and if that does not help you can write to the person in charge of the officials such as the Head of Department or the Chief Executive Officer or the Municipal Manager. You may also consider approaching a member of the National or Provincial Parliament or a safer oversight body such as the Independent Police Investigative Directorate. Only if you are still unable to solve the problem, should you approach to the Public Protector.

WILL ANYONE ELSE HEAR ABOUT MY COMPLAINT?
The Public Protector and staff will keep the name of a complainant confidential when necessary, and if at all possible.

HOW DOES THE OFFICE OF THE PUBLIC PROTECTOR WORK?
Anyone can complain to the Public Protector except under the Executive Members Ethics Act. Think of the Public Protector as a referee who can look at all sides of a problem. If the Public Protector finds that the complaint is justified, he/she will do whatever possible to find a solution to the problem. The Public Protector may also report the matter to Parliament, which will debate the matter and see to it that the remedial action is followed. Investigations are mostly done informally, but the Public Protector can subpoena people to give evidence under oath or affirmation when this becomes necessary.

WHAT CAN THE PUBLIC PROTECTOR NOT INVESTIGATE?
Court decisions by judges and magistrates, including sentences imposed by them. Conduct outside state affairs. However, staff of the Public Protector can help by advising you on where to complain or what to do in the above cases. In certain cases the Public Protector may refer you to a Court of Law. Since the Public Protector does not act as anyone’s legal representative, you will be advised to consult a lawyer if the matter must go to court.

WHAT CAN THE PUBLIC PROTECTOR INVESTIGATE?
Maladministration, including prejudice suffered by the complainant or another person, abuse of power, unfair, capricious, discourteous or other improper conduct and undue delay. Dishonesty or improper dealing with respect to public money and improper enrichment, receipt of improper advantage may also be investigated. The Public Protector also investigates corruption and violations of the Executive Ethics Code.

CAN THE PUBLIC PROTECTOR INVESTIGATE WITHOUT A COMPLAINT?
Yes, he or she may also add to a complaint.

HOW MUCH DOES IT COST TO GET HELP FROM THE PUBLIC PROTECTOR?
Services are free.

WHAT CAN THE PUBLIC PROTECTOR INVESTIGATE WITHOUT A COMPLAINT?
Yes, he or she may also add to a complaint.
Vision
An effective, accessible and impartial organisation that rights administrative wrongs and promotes good governance in state affairs.

Mission
To strengthen constitutional democracy by investigating, rectifying and redressing any improper or prejudicial conduct in state affairs.

Core Values
• Impartiality • Ubuntu • Fairness
• Efficiency and professionalism • Redress

Service Pledge
• Accessible to all persons and communities;
• Prompt justice, incorporating remedial action;
• Promotion of good governance in the conduct of all state affairs
• Efficient and effective organisation
• Optimal performance and purpose driven culture

WHERE TO FIND THE PUBLIC PROTECTOR

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Behind Pick ‘n Pay
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