



Address by Public Protector Adv Thuli Madonsela on the occasion of a media briefing at the Sheraton Hotel in Pretoria on Wednesday, July 06, 2011.

**Chairperson of the National Press Club (NPC), Mr Yusuf Abramjee;
Members of the NPC's Executive Committee present;
Members of the NPC;
Members of the media;
Deputy Public Protector, Adv Mamiki Shai;
CEO Themba Mthethwa;
Fellow South Africans**

Thank you for the opportunity to address the National Press Club.

I am once again grateful for the opportunity to update the people of South Africa on the progress my office continues to register with regard to the implementation of its constitutional mandate of investigating and redressing improper conduct and prejudicial conduct in state affairs and public administration.

From the time I assumed duty as democratic South Africa's third Public Protector, the National Press Club has been supportive of my office, often offering its resources to help me reach a wider audience in reporting back to the public and for that I wish to thank Mr Abramjee and his team.

The purpose of this briefing is to report back to the people of South Africa and other stakeholders the outcomes of investigations completed over the last quarter, among other things. I will also make use of this opportunity to make announcements relating to some of the decisions I have recently taken.

Recently I was in Spain attending the World Justice Project and I had the good fortune of witnessing the inaugural award of the Project for exemplary conduct in the promotion of rule of law to former Chief Justice Arthur Chaskalson.

One of the things that struck me was the quote of former President Nelson Mandela during the presentation of the award to the former Chief Justice. I do not have the exact words but it is about Mr Mandela's recollection of the time he was the President and Mr Chaskalson was the Chief Justice.

In this particular instance, Chief Justice Chaskalson who had been President Mandela's legal defender during apartheid had now been placed in a position of judging his actions as the President and had at some point judged against him.

President Mandela welcomed this reversal of fortune as not only important for constitutional democracy but also for helping his administration to improve its performance and remain true to the Constitution.

I often find myself in a similar position where I have to investigate and find against the people I know and have worked side by side with in the past. I hope that they take my reports in the same spirit as President Mandela.

My findings on the investigation involving the Executive Mayor of Hessequa Municipality in the Western Cape, Cllr Christopher Taute, are a matter of public record now following the unfortunate publishing of that report by the complainant yesterday afternoon. I must say that the actions of the complainant in this case were not necessarily wrong but unfortunate as this was a final report and not a provisional, which would have contained a confidentiality clause.

However, just to confirm and reiterate the contents thereof, I investigated allegations of improper conduct against the Mr Taute after claims that he had sent letters to local businesses on official letterheads soliciting them for donations to the ruling party. This, Mr Taute was alleged to have done in his official capacity as the Executive Mayor.

The letter implied that the businesses which had been awarded tenders in the past owed the ANC for winning those tenders and therefore had to give donations to the party in order to continue to enjoy good relations with the municipal council for future tenders. It was further alleged that this conduct breached the Code of Conduct of Councillors and other pieces of legislation.

Following the investigation, I found the conduct of the former Mayor to have been unlawful, improper and an act of abuse of power. Not only did the Mayor act in breach of Item 6(1) of the Code of Conduct for Councillors, his actions compromised the integrity and credibility of the Municipality that he was supposed to oversee.

The Mayor's conduct brought the Municipality's supply chain management system into disrepute as it was in violation of sections 127 and 195(1)(a) of the Constitution. With a dozen years' experience in local government, one would have thought the Mayor would know better. His conduct is accordingly improper, and constitutes maladministration.

In line with these findings, I have written to appropriate authorities that the remedial action to be taken in terms of section 182(1)(c) of the Constitution is that the Council of the Hessequa Local Municipality must urgently consider this matter and exercise its powers in terms of Item 14 of the Code of Conduct for Councillors regarding breaches of the Code (Schedule 1 to the Local Government: Municipal Systems Act, 2000);

The Council must also consider the finding of maladministration against the Mayor and ensure that it is dealt with in terms of its disciplinary procedures and report to me within 60 days of the issuing of the report.

With this report my office is sending a strong message to persons who occupy public office to always ensure that there are clear distinctions between party and state as these are two different entities that ought to operate separately. We must guard against a situation whereby the dissimilarities between (political) parties and the state will become a bit blurry.

An apparent distinction between two such institutions will augur well for government's efforts towards nation building and good governance, among other things, because it will allow for an environment where fair competition for government contracts is not compromised, correct cost to government for such contracts, good quality services and also discourage the culture of entitlement.

Other investigation reports that we are releasing today, information of which you should have in the packages distributed to you, involve challenges that ordinary people continue to grapple with in their interactions with organs of state. In the main, the issues are with undue delays that often deny the public the basic rights they are entitled to as enshrined in the constitution.

One such case is of a pensioner in the Eastern Cape who had been in the employ of the provincial education department between 1990 and 2007. As we speak, this pensioner is yet to receive his pension benefits because a certain public servant recorded the termination of the complainant's employment as abscondment instead of retirement. You can just imagine how the poor man survives nearly four years down the line with no source of income.

Often overshadowed by the few investigations involving high profile individuals, matters such as the plight of this pensioner are in the majority of our day to day investigation activities. As a matter of fact such cases, which we have dubbed "bread and butter" matters, account for more than 90 percent of the over 16 000 complaints we receive on an annual basis. People need to understand that we are not necessarily an anti-corruption agency but an ombudsman and to us no case is too small. It matters such as these that are dearest to my heart because they help me sleep better at night. It is indeed a good feeling knowing that you have turned a sad looking face into a smiling one!

While we strive to give priority to such cases, ensuring prompt remedial action, we encounter stumbling blocks from time to time in a form of public servants who do not cooperate with investigations and disregard our remedial action. This leaves complainants in a dire state of distress and when the service does come at a later stage, it is not only costly for the state to implement, but sometimes too little late.

Recently, a complainant died of a heart attack while my office was still struggling to have the remedial action contained in my report implemented by the organ of state concerned.

I had urged the Commission for Conciliation, Mediation and Arbitration (CCMA) to revoke its decision not to accredit Adv Ntobizodwa Mdladla, an independent arbitrator and mediator, as a panelist for two bargaining councils, the decision which resulted in her losing income calculated at approximately R45 000 per month.

I had also urged the CCMA to compensate her for the pain, suffering and financial loss incurred as a result of the loss of income after finding that the governing body of the CCMA constituted maladministration and abuse of power. Instead the CCMA decided to disregard my findings rather insisting that we wait for the outcome of a court process that was unfolding on the side while the complainant continued to struggle.

This is just but one example of how ordinary people suffer while public servants, who are guaranteed a pay cheque at the end of the month continue to act in a manner that ensures that people affected by their decisions struggle to put food on their tables.

It is incidents such as the plight of the late Adv Mdladla that have led to our resolve to take to provinces in a stakeholder consultation road show from 15 July 2011, to sound out our approach to “prompt remedial action” and the “Public Protector Rules” which will seek to standardise things such as timelines, search and seizures, contempt orders and subpoenas. Speaking of subpoenas, we have already issued a few on public actors who refuse to cooperate with our investigations.

With this consultative process, we will seek to touch base with all important stakeholders including Parliament, organs of state, cabinet, political parties, traditional authorities, civil society and the general public, among others.

Other cases we are releasing include the following:

- Report on allegations of failure and/or refusal to disclose the cause of death of the patient by the Chris Hani Baragwanath Hospital;
- Report on allegations of submission of incorrect pension exit document to the Government Pension Administration Agency by the Eastern Cape and North West Provincial Departments of Education;
- Report on allegations of undue delay in processing appeal by the Moretele Magistrate Court;
- Report on allegations of maladministration against the Northern Cape Provincial Department of Health;
- Report on Theewaterskloof Municipality pertaining to the power surge which caused damages to the electrical appliances of the complainant;
- Report on allegations of failure to register the child and naturalize the mother by the Northern Cape Provincial Department of Health;
- Report on allegations of failure by the Department of Minerals and Energy to compensate people affected by the Mzintlava Quarry;
- Report on allegations of failure to record correctly pension documents by the Eastern Cape Provincial Department of Education;
- Report on allegations of irregular issuing of a mining permit to Elitheni Coal (Pty) by the Department of Mineral Resources in the Eastern Cape;
- Report on allegations of refusal by the South African Board for Sheriff to institute disciplinary enquiry into the conduct of the sheriff for Wynberg North;
- Report on allegations of failure by the Department of Minerals and Energy in the Eastern Cape to facilitate compensation for homestead owners affected by Mzintlava Quarry; and
- Report on allegations of undue delay in the rectification and issuing of Identity Document by the Eastern Cape Provincial Department of Home Affairs.

Chairperson;

Earlier I referred to the action by the complainant in the Hessequa Executive Mayor matter as not having been necessarily wrong because the report concerned was not provisional or confidential. I said this in reference to a recent incident where a provisional and confidential report by my office on the matter involving South African Police Service and the Department of

Public Works was leaked to the media and subsequently published by a Sunday newspaper and others.

Following those developments, my office held a press conference with the intention of highlighting and raising awareness of the unlawfulness of those two acts, namely the leaking and publication of the said report. I wish to reiterate that these sorts of actions affect our investigations badly and deal a blow to our efforts to conduct fair investigations.

While I am not pointing fingers at anyone, I would like to appeal to all who receive such documents as part of our investigation processes and media practitioners on whose hands such documents land to exercise some level of caution when confronted with such situations, bearing in mind that doing what was done in previous occasions is inconsistent with section 7(2) of the Public Protector Act 23 of 1994, which states that:

“Notwithstanding anything to the contrary contained in any law no person shall disclose to any other person the contents of any document in the possession of a member of the office of the Public Protector or the record of any evidence given before the Public Protector, Deputy Public Protector or a person contemplated in subsection (3) (b) during an investigation, unless the Public Protector determines otherwise.”

There are a number of investigations that are still ongoing at this stage. Some are at provisional report stage and we will make them public as soon as they have undergone all the necessary phases.

These include undue delays in the processing of applications for appeals, low cost housing, social grants and general service delivery matters at municipal level.

Other matters include the investigation into the Joburg billing system, allegations of irregularities at Midvaal Municipality, Minister of Police, Premiers of Gauteng and Northern Cape, Minister of Water Affairs and Environment, Minister of Cooperative Governance and Traditional Affairs and the Durban leg of the police head quarters. There are many other investigations that are underway.

Ladies and gentlemen;

As I draw towards my conclusion, I would like to make just a few announcements on a couple of decisions that I have made recently, which I believe are of great public interest. In November last year, I was approached by Adv Paul Hoffman of the Institute for Accountability in Southern Africa to look into allegations that billions of rand were “siphoned” from public funds through unlawful means during the apartheid regime as contained in a report by British firm CIEX. As you may be aware the story was covered by another Sunday newspaper this past weekend and followed up by a TV station on Monday.

Initially I had taken a decision not to take up this matter and accordingly communicated in writing my reasons for that decision to the complainant. In terms of section 6(9) of the Public Protector Act, I have discretionary powers to decide whether or not to take up a complaint on a matter older than two years.

But high up in my decision not to investigate was the issue of resources as I consider that and the availability of information and sources of evidence that make it possible for me to pursue an investigation effectively before making up my mind on whether to investigate or not.

At that point I concluded that the investigation was not likely to yield much as I do not have the resources to undertake a matter as old as that.

However, I subsequently met with the complainant a week ago and he made further representations which I have been considering since. I have now arrived at a decision that I will conduct a preliminary investigation into the matter at this stage and after that I will then decide whether to go for a full probe or not.

Another matter that I wanted to bring to your attention relates to the so called "Oilgate" investigation. You will recall that the Supreme Court of Appeal made a ruling a couple of weeks back and I am sure that you all know the contents of that particular judgment.

After studying the judgment thoroughly, I have decided that my office is not going to appeal the matter. Instead, we will work with the complainant to see what else still needs to be probed, taking into account that a lot has happened since then. By this I am referring to the fact that the funds at the centre of this matter have since been paid back and one of the people who would be a key respondent in the investigation is no longer available.

In conclusion, I wish to inform the public that my office, assisted by the Special Investigations Unit, has been hard at work since 23 June 2011 to put final touches to the report on the investigation into the lease for police headquarters in Durban. Work is almost done on that report and I will accordingly make the contents thereof public on Thursday, July 14, 2011.

Thank you.

Adv TN Madonsela
Public Protector of the Republic of South Africa