



**Statement by Public Protector Adv. Busisiwe Mkhwebane during a media briefing held on Thursday, February 02, 2017 in Pretoria**

**Programme Director; Mr Oupa Segalwe;**

**Deputy Public Protector Adv. Kevin Malunga;**

**Acting Chief Executive Officer, Mr Reginald Ndou;**

**Members of the media;**

**Ladies and gentlemen**

It is an honour and privilege for me to present to you an account of my first 100 of many days to come as South Africa's fourth Public Protector. I wish to thank my immediate predecessor, Adv. Thuli Madonsela and those that came before her, Adv. Lawrence Mushwana and Judge Selby Baqwa for the solid foundation that they have collectively laid.

I inherit a strong institution, with sound systems and a dedicated, skilled, experienced and hardworking team. With this combination, I have no doubt in my mind that we will do our best to realize my vision of taking this institution to the grassroots, where many of our people are yet to taste the fruits of democracy.

That this has been a bumpy sixteen weeks for the Public Protector South Africa is obvious. However, it was not unexpected. I have worked here before, from 1999 to 2005. But never before have I observed so much public interest in this constitutional institution. Over the last couple of years, the Public Protector has grown from being just another obscure institution with a great potential to make a meaningful contribution to our young

democracy to being a beacon of hope for South Africans from all walks of life.

With a heightened interest in the character of the person who was going to succeed Adv. Madonsela as shown during the parliamentary process to find her replacement, it is not surprising that my seven-year, non-renewable term of office got off to a rather rocky start. What I did not expect though was the peddling of half-truths, fabrications, innuendoes and vitriol about me and my being.

But throughout it all, the team and I stood our ground and refused to play along to what we believed and still believe were attempts to unsettle us and defocus us from what we are really here to do, which is to be a resource to the people of South Africa to hold their leaders to account.

I started my journey as Public Protector in earnest on 17 October 2016 and the first thing I did was hold meetings with staff and the management team, with a view to understanding who was playing which role and how do I lead the team towards a common goal. Conveniently, my arrival coincided with the time of year when most state institutions hold their strategic planning sessions in preparation for the year ahead.

Accordingly, we held our own two-day session where we sought to bring our organisational strategy in line with my vision of broadening access at the level of ordinary people. That work continues to this day as we refine the document in preparation for tabling in Parliament early next financial year.

During those first few days, I also had to present the institution's Annual Report for 2015/16 in Parliament as well as play host to my counterparts from all over Africa during the 5th General Assembly of the African Ombudsman and Mediators Association, in my capacity as the Board Chairperson of the African Ombudsman Research Center.

I also visited the community of Khayelitsha in Cape Town as part of the commemoration of the 16 Days of Activism for No Violence against Women and Children, where I got an opportunity to engage who ordinary people who grapple with service delivery issues daily.

In the midst of all these, work pertaining to our core function of investigations was underway. I have since issued three investigation

reports. These were matters concerning ordinary people such as the pensioners from Vhembe District in Limpopo, who have been left worse off following the privatisation of the Venda Pension Fund.

This was a special report that confirmed the findings and remedial action of the former Public Protector in a report that was issued in 2012. A copy of this and the two other reports – one on the plight of a small businessman who alleged that he lost out on a opportunity to secure a contract due to the improper conduct of officials at a North West municipality and a member of the public who was allegedly prejudiced by the conduct of officials at the Commission for Conciliation, Mediation and Arbitration (CCMA) – can be found on our website.

It has been quite a busy time for our investigation branches. Between October and December 2016, the total number of cases at hand was 7556. By the end of that quarter, we had managed to finalise 2083 while the rest were carried over into the current quarter. However, our case backlog remains a concern. At the beginning of this financial year, I am informed that we had 449 cases that were older than a year. By the end of last quarter, we had managed to reduce that backlog to 259, with 72 of the cases that had been closed up to that point disposed of in the last 100 days.

Again, I am told the institution had 719 cases older than two years at the end of April 2016. By the end of December 2016, the figure stood at 518, with 87 of the cases that were closed up to that point disposed of during the last 100 days.

I have issued eight Section 7(9) notices and/or Provisional Reports in the last three months. These are notices through which parties against whom I am considering making adverse findings are given an opportunity to provide me with more information, essentially to persuade me to reconsider my intention. The notices followed investigation into allegations of maladministration against the South African Revenue Services, Department of Home Affairs, Agri Sector Education Training Authority (AgriSETA), Transnet, Department of Mineral Resources and the South African Nuclear Energy Corporation, among others.

One of these is on a matter you all know about. This is on an investigation into allegations that the South African government failed to implement a

report produced by British Firm, CIEX. This report by CIEX contained information to the effect that billions of rand were siphoned from the public purse through unlawful means during the apartheid regime and that the post-apartheid South African government failed to recover some of the money. Parties have until February 28, 2017 to comment on the provisional findings. Only after receipt of comments in this regard will I be in a position to finalise the report for release.

Unfortunately, this investigation was nearly jeopardised because some of you could not wait for the process to be finalized. You went and published the contents thereof, setting off a chain of irreversible events. Publishing the content of draft reports that are released improperly without our consent impacts negatively on the credibility of this institution and its investigation processes.

It also strains relations with affected parties and hardens attitudes. This practice further results in a trust deficit between us and the public, particularly potential whistleblowers. I have since opened a criminal case, asking the police to get to the bottom of the leak.

We have up to 19 draft reports that are still being quality assured. A list of these reports can be found in your packs but just to give you a sneak peak, the reports concerned include the following:

- Alleged irregular acquisition of VVIP planes for the Presidency,
- Alleged maladministration and irregular conduct against the Rustenburg Local Municipality in respect of the funeral of Cllr. Moses Phakoe; and
- Alleged maladministration, corruption and unconscionable use of public funds by the Eastern Cape Provincial Government in connection with the expenditure of public funds in preparation for the funeral of the late former President Nelson Mandela.

We have, over the last 100 days, dealt with various cases of litigation, primarily cases where some of our reports were being taken on judicial review. The most recent of those cases is the application by the President to have the remedial action of the State of Capture report set aside. I have filed a notice to oppose the application in order to comply with court rules. In the notice, I clearly indicated that I will consider my position once I have been advised by Senior Counsel on the legalities of the basis of the

application. It must be noted that this is a complex matter and no precedent exists in South African law on how to approach it. I expect a comprehensive legal opinion from Senior Counsel in the second week of this month.

We continued during the period under review to monitor implementation of past reports. We specifically worked on 19 of such reports, four of which have since been implemented fully while the rest have either been partially implemented or implementation is in progress.

You would know that a chunk of our investigation do not result in formal reports. We settle them through Alternative Dispute Resolution (ADR) mechanisms such as conciliation, mediation and negotiation. This involves sitting the parties around the table and talking things out to find an amicable solution. Once common ground has been reached, a settlement agreement is developed and signed right away to implement remedial action.

We are currently handling hundreds of such cases. One such case involves the nudist beach in the Hibiscus Coastal municipal area in KwaZulu-Natal. We were approached by pastors that call themselves the Concerned Citizens Group. They complained that the Hibiscus Coast Municipality approved an application by an association of nudists to use parts of the Mpenjanthi beach to enjoy their nudity.

The municipality appears to believe there will be economic spin-offs for the area if this is allowed to go ahead. The pastors, on the other hand, are worried that kids will be exposed to nudity; that there will be promiscuity; and possibly, prostitution. Then there are the traditional leaders, who are of the view that the place is a sacred space. The Deputy Public Protector is overseeing that matter and several others.

Regarding the overall performance of the Public Protector South Africa against the targets set in the Annual Performance Plan, we have improved from 11% in the quarter preceding my arrival to 32% by the end of December. With a little under two months left, we are pulling out all stops to ensure that we achieve more on the 45 strategic goals that we have set for ourselves by March 31, 2017.

One of the challenges we face is the misalignment of the Public Protector Act 23 of 1994 and the Constitution. This is mainly because the Act was based on the Interim Constitution of 1993 and thus, it predates the current Constitution. I have therefore initiated a process of that seeks to amend the Act to bring it into line with the Constitution. I have also finalised the Public Protector rules as required by the Act. I have further requested the Department of Justice to assist in placing the amendment on the parliamentary legislative process.

One of the Public Protector's constitutional mandates, apart from the well-known task of investigating improper conduct in state affairs, is to be accessible to all persons and communities. In pursuit of this little-known mandate, I met with two Cabinet Ministers, Hon. Michael Masutha and Hon. Des van Rooyen, in efforts to broaden access. We explored the use of Magistrates Courts, Municipal Premises and Tribal Offices respectively to reach more people.

On resourcing, the Public Protector is one of the most underfunded institutions when one looks at its broad mandate and jurisdiction. This financial year, we have been allocated R263.3 million. Only half of our organisational structure is funded, which means we operate at half our potential.

We have embarked on a restructuring process that seeks to align operations with the new vision. We are in the process of finalising this process. We have also been addressing the challenges of low staff morale that has resulted from, among other things, the inability to implement the Occupation Specific Dispensation for legally qualified Senior Managers.

There has been continuous engagement with Labour Union to address other issues that have contributed to low staff morale such as performance management and related policies as well as job evaluations.

Between November 2016 and January 2017, we advertised up to 45 vacancies that must be filled urgently to help us deliver on our mandate. Key among these are positions of Chief Executive Officer, Chief Operating Officer, Executive Manager: Complaints and Stakeholder Management and Senior Manager: Legal Services. For these positions, we have interviewed candidates and will be making offers soon, with a view to having the successful contenders start in March 2017.

During the period under review, we had about five contract positions. Three of them; Chief of Staff, Manager: Communications and Special Advisor: Report Writing and Quality Management; ceased to exist and are largely the cause of the turbulence I referred to earlier. The former Chief of Staff, who had six months left on his 12 months contract, agreed to part ways with the institution and he was paid for the remaining months. The Communication Manager's contract lapsed at the end of December and was not renewed. Instead we advertised for a permanent position of Communication Manager.

The Special Advisor: Report Writing and Quality Management was advised to resign and she did. This was because she had been appointed improperly. All of these happened before I assumed duty. The agreement between her and the institution had been that she would be reappointed as a consultant. The planned appointment now had to happen during my tenure. I could not approve that as that would have amounted to a contravention of the Public Finance Management Act. She then took the institution to the CCMA, which found in her favour. Following this, the institution paid her out.

Turning to stakeholder management, on 16 February, I will kick-start a four-month, nationwide stakeholder engagement roadshow that will see me crisscrossing the country, interacting with a varied network of stakeholders.

These will include Premiers, Members of the Executive Councils and Members of Provincial Legislatures to the general public and political parties represented in Parliament.

Held under the theme: "Broadening Access: Taking the Public Protector to the grassroots", the roadshow will seek achieve, among other things, the following:

a) Formally introduce myself to stakeholders; b) Communicate my vision to stakeholders and to solicit their views; and c) Increase awareness about the existence; mandate and services of the Public Protector as well as increase access to the said services.

I will spend at least two days in each province, engaging with government leaders on the one day and affording the public an opportunity to engage

with us on the other. Our first two engagements will take place in Gauteng. Details will be communicated closer to the beginning of the roadshow.

Stakeholders have been very outspoken on all platforms, be it radio, social media and other channels. Some were voicing their apparent frustrations with us while others were being supportive. The roadshow therefore presents an opportune moment for you to engage us directly, in an unmediated fashion.

I urge you to make use of this opportunity and bring your concerns and suggestions to our attention so that, together, we may find ways of ensuring that this office lives up to its constitutional mandate and works to the satisfaction of all concerned.

Thank you