



Statement by Public Protector South Africa Chief Executive Officer, Mr Themba Mthethwa, during the press conference on the Durban SAPS/DPW lease investigation on Monday, June 20, 2011 at the Public Protector House in Pretoria

**Programme Director;
Senior Managers of the Public Protector South Africa present;
Members of the media;
Ladies and gentlemen**

Let me start by expressing our gratitude to all of you for responding favourably to our invite albeit at such short notice. For us, this goes to show the level of interest you have in our work.

The Public Protector, Adv Thuli Madonsela, is on record commending the media for its relentless interest in her work.

This is very important to us as, among other things, it helps raise awareness about the role and work of this important constitutional institution. I would therefore like to thank you sincerely for your unwavering support.

We have called this urgent press conference in an attempt to address our concerns regarding the emerging trend of leaking the Public Protector's "provisional" reports. It has happened again this weekend and for us this is a growing concern.

The provisional report leaked this time relates to the Public Protector's investigation into complaints and allegations of maladministration, improper and unlawful conduct by the Department of Public Works and the South African Police Services, relating to the leasing of office accommodation in Durban.

I am sure that you are all familiar with the contents of a front-page news report by a prominent Sunday newspaper published in yesterday's edition. The news report in question relates to the afore-mentioned investigation.

In its news report titled "*I Feared for My Safety*", the newspaper quotes from what appears to be an official Public Protector report, which was declared provisional and confidential. The provisional report was sent only to parties involved in the investigation on Thursday, June 9, 2011 in the strictest of confidence.

In terms of the Public Protector Act 23 of 1994, parties against whom the Public Protector is considering potential adverse findings are entitled to be given an opportunity to engage with the basis on which the Public Protector is considering such adverse findings. It is for this reason that they are being favoured with copies of the draft report.

Upon receipt of responses from parties involved the Public Protector analyses and, to the extent possible, integrates comments that have merit. This approach is also in line with our resolve to promote transparency and is consistent with the Public Protector institutional nature, which is inquisitorial rather than adversarial.

Ladies and gentlemen;

The drafters of the Public Protector Act prohibited the publishing of details relating to the Public Protector investigation that is still underway. Section 7(2) of the Act 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.”

This makes the leaking of the Public Protector’s provisional reports unlawful and this kind of conduct also undermines justice, fairness and the integrity of our investigations. It also strains relations between us and some of our stakeholders. We would therefore like to call on the media to work with us in this regard.

The reason we have repeatedly said our provisional reports are not for public consumption is because comments received from parties involved might warrant adjustments of content here and there and if published during “provisional” phase it poses a challenge of unfairness to institutions and persons whose names are mentioned therein.

We are also of the view that the decision to publish this leaked report was unethical. Even the newspaper in question acknowledges in its news report that the document they quoted from was provisional and declared confidential.

The Public Protector is considering taking up this matter with the South African National Editors Forum (SANEF) to discuss a mutually affirming way of dealing with this trend. We will explore the possibility of agreeing on a Memorandum of Understanding with SANEF.

While we condemn the leaking of our reports, we would also like to, once again, applaud the media for its role of exacting accountability and promoting good governance as well as for its keen interest on our efforts to do the same.

We call on all media practitioners to be patient until the final report is released. We have given parties until Thursday, June 23, 2011 to comment on the provisional report and only shortly thereafter will we be in a position to communicate the findings and the remedial action to be taken.

We wish to assure the public, Parliament and parties involved in our investigations that this and any other Public Protector investigations are conducted on the basis of unwavering institutional independence and impartiality.

Thank you.