



**Address by the Public Protector, Adv Thuli Madonsela, during a media briefing on the release of the SAPS lease report held at the Sheraton Hotel in Pretoria on Tuesday, February 22, 2011**

**Chairperson of the National Press Club, Mr Yusuf Abraham;  
Deputy Chairperson of the National Press Club, Mr Jos Charle;  
Members of the Press Club and the other media representatives present;  
Deputy Public Protector Adv Mamiki Shai  
SIU Head, Mr Willie Hofmeyr  
PPSA CEO Themba Mthethwa;  
The Investigation Team;  
Ladies and gentlemen;**

I am honored to present to the public, Against the Rules: Report of the Public Protector on an investigation in to allegations of improper conduct by the South African Police Service (SAPS) and the Department of Public Works (DPW) relating to the procurement of a lease agreement for a new SAPS Headquarters in Pretoria. The allegations and report also deal with the legality of the lease in question.

I am further deeply humbled by the media and nation's interest in this and other matters that my office deals with on a day to day basis in pursuit of its constitutional mandate. My gratitude particularly goes to the Press Club for hosting this event and its ongoing support.

I would also like to express my sincere gratitude to all the parties that have cooperated during this investigation, particularly SAPS, Department of Public Works (DPW), the National Treasury, the Special Investigations Unit (SIU), the complainants, Mr Roux Shabangu and the Investigation Team, among others.

I must also highlight that this report relates to the Pretoria lease only. The investigation relating to the Durban lease is still underway and the public will be kept up to date with developments and later the outcome as time goes on.

**Chairperson;**

In a bid to ensure accountability, good governance and integrity in all state affairs, among other things, the architects of our constitutional democracy saw it befitting that there should be institutions that keep the state in check by scrutinizing its administrative conduct, thereby ensuring that there is no abuse of power and state resources, that services are delivered

responsively and that the state is accountable at all times.

My office, the Public Protector, is one of those institutions established by Chapter 9 of the Constitution of the Republic to support and strengthen this constitutional democracy.

To achieve this, I make use of the power and responsibility bestowed upon me by the Constitution and as regulated by national legislation, to investigate any conduct in state affairs that is alleged or suspected to be improper or to result in any impropriety or prejudice; report on that conduct and take appropriate remedial action.

Remarking on the role played by oversight institutions such as my office on good governance and checks and balances during the International Ombudsman Conference in Durban ten years ago, former President, Nelson Mandela eloquently said the following:

*“Even the most benevolent of governments are made up of people with all the propensities for human failings. The rule of law as we understand it consists in the set of conventions and arrangements that ensure that it is not left to the whims of individual rulers to decide on what is good for the populace. The administrative conduct of government and authorities are subject to the scrutiny of independent organs. This is an essential element of good governance that we have sought to have built into our new constitutional order.*

*An essential part of that constitutional architecture is those state institutions supporting democracy. Among those are the Public Protector, the Human Rights Commission, the Auditor General, the Independent Electoral Commission, the Commission of Gender Equality, the Constitutional Court and others.”*

He added:

*“It was, to me, never reason for irritation but rather a source of comfort when these bodies were asked to adjudicate on actions of my Government and the Office and judged against. One of the first judgments of our Constitutional Court, for example, found that I, as President, administratively acted in a manner they would not condone. From that judgment my government and I drew reassurance that the ordinary citizens of our country would be protected against abuse, no matter from which quarters it would emanate. Similarly, the Public Protector (Ombudsman) had on more than one occasion been required to adjudicate in such matters.”*

These statements sum up the role of institutions such as the Public Protector and the responsibility of the state in helping such institutions live up to their mandate of supporting and strengthening constitutional democracy.

### **Ladies and gentlemen;**

On 2 August 2010, the Public Protector received complaints from Mr Paul Hoffman of the Institute for Accountability in Southern Africa and Mr Pieter Groenewald of the Freedom Front Plus to investigate alleged improper procurement of the lease for office accommodation for the SAPS in the Sanlam Middestad building in the Pretoria CBD. These complaints came as a result of a newspaper article published the day before alleging improper conduct and maladministration by the National Commissioner of the SAPS and the DPW.

At the centre of the complaints was the alleged non-compliance with tender procedures in the procurement of two buildings in Pretoria and Durban for use as accommodation for the SAPS.

My office investigated the matter with the assistance of the Special Investigating unit.

Ours was simply to determine: What happened? What should have happened; and whether there was a discrepancy between what happened and what should have happened. We finally had to determine if such discrepancy, if any constituted improper conduct, maladministration, abuse of power or any of the violations envisaged in the Constitution and the Public Protector Act. We also had to take appropriate remedial action as envisaged in section 182(3) of the Constitution. This is how the investigation unfolded.

On 3 August 2010, I requested the National Commissioner of SAPS and the Director-General of DPW not to proceed with the implementation of the lease pending the finalisation of the investigation

On 10 August 2010 both SAPS and DPW wrote back to me undertaking to comply with the request. DPW further advised that parties had been informed that the implementation of the leases in question had been suspended pending the outcome of an internal investigation and the investigation of the Public Protector and the SIU.

On 11 and 19 October 2010, the Director-General of DPW informed the National Commissioner of SAPS that the lease agreement between the DPW and Roux Property Fund (RPF) in respect to the Sanlam Middestad building was invalid. This was on the basis of the findings of an internal inquiry and independent legal advice obtained.

On 25 October 2010, I issued a preliminary report on the investigation and informed the National Police Commissioner of the SAPS of my concurrence with the decision of the DPW to commence with an entirely new procurement process. This report was presented to the Executive Authorities and accounting officers of the SAPS and the DPW.

On 31 October 2010, Ms Gwen Mahlangu-Nkabinde replaced Mr Geoff Doidge as the Minister of Public Works.

Shortly after her assumption of duty, Minister Mahlangu-Nkabinde's office obtained informal advice from the Office of the State Attorney, indicating that the lease was enforceable. This advice was however given subject to a further legal opinion to be obtained from senior counsel at the request of the Minister's office.

The opinion of senior counsel dated 22 November 2010, concluded that the contract between the DPW and RPF was unlawful, thereby rendering the lease agreement invalid.

On 22 November 2010, the DPW advised Nedbank, the financiers of RPF, that it was continuing with the lease. This was followed by a public pronouncement by Minister Mahlangu-Nkabinde that the DPW was continuing with the implementation of the lease. On the same day, the Director-general of the DPW was suspended.

Our investigation was conducted over a period of five months. It included interviews with officials from the SAPS including National Commissioner, officials from the DPW and Mr Roux Shabangu of the RPF. Voluminous documentation relating to the procurement was perused and relevant provisions of the Constitution, the PFMA, Treasury Regulations and other procurement prescripts were considered and applied.

Copies of the draft report were distributed to all relevant parties and responses to the draft were

submitted and considered for purposes of the final report.

My findings in full are contained in the full report that, I believe, has already been circulated to you. I will quickly zoom into my specific findings in relations to the SAPS and the DPW.

### **Specific Findings Relating to SAPS**

- a. The lease agreements were signed between RPF and the DPW and not by the National Commissioner of the SAPS, as was alleged.
- b. Although the SAPS did not sign the lease agreement, its involvement in the procurement process was improper, as it proceeded beyond the demand management phase and it further failed to implement proper controls, as required by the PFMA and relevant procurement prescripts.
- c. The SAPS failed to comply with section 217 of the Constitution, the relevant provisions of the PFMA, Treasury Regulations and supply chain management rules and policies. This failure amounted to improper conduct and maladministration.
- d. The conduct of the accounting officer of the SAPS was in breach of those duties and obligations incumbent upon him in terms of section 217 of the Constitution, section 38 of the PFMA and the relevant Treasury Regulations. These provisions require from an accounting officer to ensure that goods and services are procured in accordance with a system that fair, equitable, transparent, competitive and cost effective. This conduct was improper, unlawful and amounted to maladministration.
- e. On the evidence available it could not be found that an improper relationship between the preferred service provider (RPF) and the SAPS motivated the deviation from required tender procedures.

### **Specific Findings Relating to DPW**

- a. The procurement by the DPW of the lease was not in accordance with a system that is cost effective and competitive, as is required by section 217 of the Constitution, the relevant provisions of the PFMA, Treasury Regulations and supply chain management rules and policies. This failure amounted to improper conduct and maladministration.
- b. The conduct of the accounting officer of the DPW was in breach of those duties and obligations incumbent upon him in terms of section 217 of the Constitution, section 38 of the PFMA and the relevant Treasury Regulations. These provisions require from an accounting officer to ensure that goods and services are procured in accordance with a system that fair, equitable, transparent, competitive and cost effective. This conduct was improper, unlawful and amounted to maladministration.
- c. The process that led to the conclusion by the DPW of the lease agreements with RPF was fatally flawed, in various respects, including non-compliance with prescribed procurement procedures such as ensuring a competitive bid process or justifying the deviations in the prescribed manner. This rendered the process unlawful and further constituted improper conduct and maladministration.
- d. The lease agreement should not have been entered into as it did not comply with the validity requirements of the Constitution, applicable legislation and prescripts. The lease agreements entered by the DPW and RPF are therefore invalid.
- e. The decision of the DPW to proceed with the implementation of the lease agreement in the face of considered legal advice from two senior counsel to the contrary, particularly the opinion procured on 22 November 2010 under the leadership of the current Minister

of Public Works, was in breach of its fiduciary duties and the requirements of good governance in terms of the PFMA, and amounted to maladministration.

- f. The reckless manner in which the DPW dealt with public funds in this case, particularly:
- the failure to subject the lease agreement to judicial review, as advised by senior counsel and by implementing the lease agreement despite further legal advice from separate senior counsel to the contrary; and
  - renegeing on the undertaking given to the Public Protector not to implement the lease until the investigation was complete, was improper and fell short of the requirements of good administration.

**Remedial action to be taken, as envisaged in section 182(1)(c) of the Constitution, is the following:**

- a. The National Treasury should urgently review the purported lease agreement between the DPW and RPF in order to determine if the contract can be terminated forthwith.
- b. The National Treasury must determine whether any irregular or fruitless and wasteful expenditure was incurred by the SAPS and/or the DPW in respect of the procurement process and other matters related thereto and take appropriate action, where applicable.
- c. The Cabinet must at its first meeting convened after the date of publication of this report request an explanation from the Minister of Public Works on:
  - The reasons for the decision to implement the lease agreement with RPF, despite the DPW being provided with a legal opinion of independent senior counsel, soon after her appointment, advising to the contrary;
  - The justification for proceeding with the implementation of the disputed lease, prior to the finalisation of the investigation by the Public Protector, and despite senior counsel opinions and the DPW's previous undertakings to the contrary.
- d. The Secretary of Cabinet must advise the Public Protector of the outcome of the deliberations referred to in paragraph (c) above and the resolutions taken within 10 days from the date of the Cabinet meeting.
- e. The Minister of Public Works with the assistance of the National Treasury should take urgent steps to ensure that the appropriate action is instituted against the relevant DPW officials that acted in contravention of the law, policy and other prescripts in respect of the procurement processes referred to in this report.
- f. The DPW must ensure that appropriate measures are implemented to prevent a reoccurrence of contraventions of the relevant procurement legislation and prescripts.
- g. The Minister of Police should, with the assistance of the National Treasury, take urgent steps to ensure that the appropriate action is instituted against the appropriate SAPS officials that acted in contravention of the law, policy and other prescripts in respect of the procurement processes referred to in this report.
- h. The SAPS must ensure that appropriate measures are implemented to prevent a reoccurrence of contraventions of the relevant procurement legislation and prescripts.
- i. The National Treasury should develop and introduce measures that will prevent a recurrence of a situation where client departments of the DPW infringe on the functional areas of the DPW in respect of the procurement of leased accommodation.

Further to these, the National Treasury, the Ministers of Public Works and Police, the DPW and the SAPS must submit action plans and progress reports to the Public Protector in respect of the implementation of the remedial action referred to above.

What are my expectations from the organs of state involved? I am confident the

organs of state in question will deal with my findings and remedial action contained in this report in the spirit of section 181(3) of the Constitution. This is in line with global jurisprudence on the status of the report of an Ombudsman. Indeed the Minister of finance has already endorsed the findings in the Draft Report wholly.

My confidence in the state's ability and commitment to do the right thing is further bolstered by President's J G Zuma's remarks during the state of the nation address where he stated.

*"We have a well-established institutions that support democracy and protect the rights of citizens, such as the Office of the Public Protector, the South African Human Rights Commission, the Office of the Auditor General, the Commission on the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities and the Gender Commission"*

**Thank you.**

**Adv TN Madonsela  
Public Protector of the Republic of South Africa**