



Address by the Public Protector during a quarterly media briefing session at the Court Classique Hotel in Pretoria, Gauteng on Wednesday, September 28, 2011.

**Chairperson of the National Press Club, Mr Yusuf Abrahamjee;
Deputy Chairperson of the National Press Club, Mr Jos Charle;
Members of the Press Club and other media representatives present;
PPSA CEO Themba Mthethwa;
Members of my team present;
Ladies and gentlemen;**

I would like to thank the National Press Club for its continued interest in the work that my office does.

I wish to express mine and my team's gratitude to the members of the media that are here this morning and the entire media community at large for their unwavering support.

If it wasn't for your daily contribution to the work of this office, many people would still be in the dark about what exactly is it that we do, where and how to find us.

More importantly, without you, this office would not have been able to contribute the way it continues to in helping to strengthen our young constitutional democracy through exacting accountability from those who exercise public power.

I must, however, express my disappointment at one national daily for going against my repeated calls on the media not to publish leaked reports this morning. I am equally saddened by parties who share confidential information such as this with the media.

I fully support freedom of the press and the inclusion of the public interest clause in the Protection of Information Bill but this publishing of confidential information cannot claim public interest.

This conduct is unethical and influenced by greed. Would public interest have suffered if the Business Day had waited for ten more days for the final report?

I would like to call on other media not to report on that document as the contents thereof remain confidential. My team and I will consider how we deal with this matter, which has now become a trend.

Today marks that time of the quarter where I have to report to the people of South Africa on the work my office has been doing since our last public accountability event. I particularly use this platform to inform the public about the latest reports I have issued.

This is in line with Section 182 (5) of the Constitution, which states that any report issued by the Public Protector must be open to the public unless there are exceptional circumstances, to be determined in terms of national legislation, that require a report be kept confidential.

Correctional Services matter

Ladies and gentlemen

In March this year, a distressed and traumatised former public servant, who we shall call Mr N, knocked on my door.

He came to complain that late in the preceding year he was told by his superior that the Minister in charge of his department had decided that his employment be terminated.

This was due to the fact that Mr N was gravely ill and his health condition was becoming an impediment to his performance of duties as a Director.

He advised that he was given certain options to consider. Among these was early retirement without the reduction of pension benefits and an added period of three and a half years of service, including the payment of a salary lump sum for that period.

Mr N said he accepted this verbal “package” but never received confirmation of its terms and conditions in writing.

He alleged in October 2010, the department terminated his employment without following proper procedures and without his acceptance of conditions of his service termination. He was left in a desperate financial position as the department did not adhere to its own undertaking.

At the time of writing this report, Mr N had no medical subsidy from the state and his entire monthly pension was being spent on medical expenses.

Following a five-month investigation into these allegations, I found that the process followed by the department to terminate Mr N’s service did not comply with the requirements of Section 16(6)(a) of the Public Service Act, 1994.

I also found that the process did not comply with the standard of reasonableness and fairness as required by Sections 23 and 33 of the Constitution of the Republic as well as the provisions of the Promotion of Access to Justice Act. The actions of the department, therefore, amounted to maladministration.

I further found that the process was procedurally unfair as, contrary to the requirement of law, the department failed to consult with and reach an agreement with the complainant on the conditions of the termination of services, their agreement with the complainant, reasonable explanation raised with the complainant or condition approved for such termination by the Senior Management of the department.

The decision to seek the termination of Mr N's services on the basis of early retirement instead of considering the requirements of incapacity due to ill health, was arbitrary and not in good faith. The actions of the department were therefore to Mr N's detriment and constituted maladministration.

I concluded that, as a result, Mr N suffered prejudice in the form of pecuniary loss of pension benefits and no post retirement medical assistance, which is causing severe distress and trauma to him.

The remedial action I directed in terms of Section 182(1)(c) of the Constitution to bring relief to Mr N and right the administrative wrongs of the state against him had the following elements:

Mr N was to be re-instated into employment with immediate effect, backdated to 01 November 2010. I further directed the department to conduct an investigation into the incapacity of Mr N due to ill health and the consideration and processing of ill health retirement of the complainant.

The department was also required to place Mr N on a temporary incapacity leave until the finalisation of the ill health retirement.

Mr N had to be paid compensation for financial damages suffered and for the humiliation.

This is one of the reports I am releasing today. It provides an example of the kind of hope-inspiring deeds we are capable of when my office and organs of state cooperate in compliance with our Constitution and the rule of law.

Immediately after the release of the provisional report I received a letter from Minister Nosiviwe Mapisa-Nqakula dealing with two things:

1. She requested an amendment of the provisional report on action attributed to her without her side of the story.
2. She accepted the findings and alluded to the National Commissioner's action plan for implementation with immediate effect. My team celebrated this case for days. This is but one of the many cases that highlight our role in helping the "ordinary person" deal with the powerful state. Most of such cases, about 95 percent of the 16 000 to 18 000 cases we deal with each year, do not result in reports as appropriate dispute resolution mechanisms are employed to ensure speedy finalisation.

Often this kind of contribution by my office, which is in line with the constitutional imperative of enforcing administrative justice, goes unnoticed.

My team is deeply gratified to note that such cases are gradually finding their place in the media. This helps my office to reach out and help many other South African citizens and residents, who like Mr N, are in a state of distress and trauma, not knowing who to turn to when

the architects of our Constitution deliberately made justice avenues such as my office available to them.

I often argue that it cannot be that in a country of nearly 50 million people an office of this nature only receives a paltry 18 000 cases per annum. It's not that I want people to complain against the state but because we are of the view that many people do not complain because they are not aware of this office's existence.

This has been proven time and again when we go out of our office to pay communities that had never heard of us a visit as we recently did during our stakeholder consultation road show termed: "The Public Protector Dialogues with the Nation."

After those interactions we returned to our office with a mixed bag of genuine service and conduct failure complaints, some of which we have already started looking into. Some of these complaints came from people who were not aware that there is an institution such as the Public Protector.

Chairperson;

I would be making a mistake if I do not commend the Department of Correctional Services under the stewardship of Minister Nosiviwe Mapisa-Nqakula and the National Commissioner Tom Moyane for the exemplary conduct in response to my findings in pursuit of my responsibility and Section 182(1)(c) of the Constitution. One of the key things the Minister said in her response was that it had not been her intention that Mr N be penalised by this action or put in a worse position medically and financially. The Minister further stated that her intention was not to prejudice Mr N but to provide him with an exit strategy that would accommodate his ill health while filling the vacuum he'd left. This is in line with the promise that underpins our world acclaimed Constitution, particularly preamble, founding values and bill of rights therein.

Of course the Minister was entitled to disagree with my findings. But she had to do so within the system created by the architects of our constitutional democracy. As I have said previously, organs of state can't simply ignore my report or directives on remedial ation. I have also said that state law advisors are not review panels of my decisions and that only a court of law can review a decision of the Public Protector as in the so called "Oilgate" matter involving the Mail and Guardian.

Where the Minister disagreed, she duly engaged me and I integrated her views as I have done with others where such views had merit.

If a matter has to end up in court, the court would then have to arrive at a conclusion that my decision was irrational and that any other Public Protector faced with a case of the same merits would have arrived at a different decision.

Failure to implement without at least engaging me or taking me on review through a court of law is not only unconstitutional but also a disregard for the rule of law while rendering my office ineffective against the provisions of Section 181(3) of the Constitution.

Gugulethu Community Health Center matter

Another story of hope-inspiring response to my office's role is that of the Gugulethu Community Health Center in the Western Cape. My office undertook an own initiative systemic investigation into allegations of poor service delivery at the Centre.

This investigation was prompted by allegations of poor service delivery, undue delays and drunkenness of staff whilst on duty, among other things, had been expressed by numerous members of the community, including the press.

The allegations of poor service delivery against the above Centre are well founded.

I also found undue delays on the part of the Centre to provide health services. Such delays violate the rights, values and principles governed by section 27(1) of the Constitution, and constitute maladministration.

I found that allegations of use or abuse of alcohol by staff whilst on duty were substantiated. During an inspection *in loco*, confirmation of this during normal business hours was found. It was observed that the cleaner smelled of alcohol, had bloodshot eyes, was loud and rude to patients. It is noteworthy that a certain witness, Mr H, had also stated that the cleaner was "*problematic*", that numerous complaints against her had allegedly been lodged with the Management of the Centre, but no action was taken.

In view of these, I directed that there should be a system in place to ensure that there is somebody at all times to assist and / or monitor trauma patients.

The Centre Manager should address the conduct of the cleaner, who was clearly rude to patients at the Trauma Unit and exhibited signs of being inebriated on 28 February 2011.

The Centre Manager must immediately introduce management interventions to prevent any use of alcohol. The Head of the Department should facilitate surprise inspections to monitor the situation.

The Head of the Department must monitor the management, administration and service delivery at the Centre until all the deficiencies have been addressed.

Jimmy Manyi matter

Ladies and gentlemen;

Also being released today is my report on an investigation conducted following a complaint against the then Director-General of the Department of Labour, who has since been appointed the Chief Executive Officer of Government Communications and Information System (GCIS) and cabinet spokesperson, Mr Jimmy Manyi.

The complaints from Adv Paul Hoffman of the Institute for Accountability in Southern Africa related to allegations that Mr Manyi had a conflict of interest between his public duties as the Director-General, CEO of GCIS and Cabinet Spokesperson; and his private duties as the President of the Black Management Forum (BFM).

My finding was that Mr Manyi had a conflict of interest between his personal interests in the BMF and his duty towards the Department of Labour.

I also found that Minister Membathisi Mdladlana, who was in charge of that department at the time, failed to comply with the relevant provisions of the Code of Conduct and the Rules that required him to manage effectively the said conflict of interest as the relevant Executive Authority of the department.

However, on the issue of Mr Manyi's current position as the CEO of the GCIS and Cabinet Spokesperson, I found that a perceived conflict of interest exists between these positions and his position at the BMF. I concluded that this may lead to an actual conflict of interest if not properly and effectively managed by the relevant Executive Authorities in accordance with the Rules, the Code of Conduct and the Financial Disclosure Framework.

The remedial action to be taken is that the Minister in the Presidency must take urgent steps to establish from the declarations made in terms of the relevant and applicable legislative and policy framework, the existence of a conflict of interest and the declaration thereof.

The Minister needs to ensure that the conflict of interest is properly and effectively managed in accordance with the relevant and applicable legislative and policy framework and the internal conflict of interest policy of the GCIS.

In this regard the appropriateness of implementing one of the following measures to address the conflict of interest must be established:

- Mr Manyi may be required to divest himself of the private interest;
- Mr Manyi may be excluded from participation in identified decision making processes;
- A permanent change to some or all of Mr Manyi's official responsibilities.

The following investigations were conducted in terms of the Executive Members' Ethics Act

Nathi Mthethwa matter

Chairperson;

My office also conducted an investigation into allegations that the Minister of Police, Mr Nathi Mthethwa, contravened the provisions of the Executive Members' Ethics Code by spending in excess of R700 00 towards accommodation for himself and unknown guests or staff at two five star luxury hotels in Cape Town and Durban.

My findings were that accommodation expenses at Table Bay and Hilton Hotels indeed came to R734 448. I also found that the Minister was entitled to accommodation at state expense in Cape Town when he had to vacate his official residence during May to July 2009 because of repairs that were being done to his residence.

There was no evidence indicating that the Minister influenced accommodation arrangements in a way to have him and/or his staff put up in the Table Bay or the Hilton.

I further found that when the Minister became aware of the irregularities, he instituted an investigation and once completed the Minister instructed that the recommendations of the report be implemented.

My specific findings were that the amount spent on the accommodation of the Minister and his entourage was unreasonably high. I did not only take into account the requirements of paragraph 7.2.5 of the Ministerial Handbook but also that the accommodation expenses should be reasonable and kept as low as possible.

The lapse of judgment was enabled by the absence of clear guidelines in the Handbook on what constitutes a reasonable tariff.

The remedial action I directed was that in the review of the Ministerial Handbook, the Department of Public Service and Administration should not only include the alignment of Chapter 1 with the wording of the Executive Code of Ethics but also set standards for domestic accommodation of Ministers.

Consideration should also be given to the publication of annual or biennial tariffs for ministers similar to subsistence and travel guides to guide optimal accommodation.

The process of review of the Handbook should be expedited to provide clarity on ethical considerations regarding executive accommodation, particularly in the current climate of fiscal challenges.

Nomvula Mokonyane matter

I also investigated allegations of a breach of the Executive Members' Ethics Act against the Premier of Gauteng, Ms Nomvula Mokonyane. This followed a complaint received from a Member of the Provincial Legislature, Mr Jack Bloom in April last year.

Mr Bloom alleged that the denial by Premier Mokonyane of her office's involvement in the awarding without tender, of a R30 million project to beautify the R24 Albertina Sisulu Highway between the OR Tambo International Airport and Johannesburg is indicative of possible unethical behaviour.

In addition, he alleged that there appeared to be maladministration as the reason cited for awarding the contract without tender was that of urgency because of the need to complete it before the 2010 FIFA World Cup, when documents showed that consideration of the project was at an advanced stage in June 2009.

I found that indeed the Premier's Office received and referred the proposal by Utho Ngathi to the Department of Roads and Transport;

However, I found no tangible evidence that indicated that the role of the Premier and her office went beyond the receipt and referral of the proposal to the Department of Roads and Transport, and therefore influenced the adjudication or award of the contract or tender;

I accordingly concluded that the Premier did not breach the provisions of the Code and is consequently not guilty of any unethical behaviour.

Bull killing matter

Ladies and gentlemen

I made observations in relation to the alleged improper killing of a bull by the *Amabutho* (Zulu Warriors) at the Ukweshwama Ceremony held at Enyokeni Royal Palace last year.

This was after Compassion in World Farming South Africa, an animal rights group, requested me to investigate and determine whether the reports that the bull killed at the annual Ukweshwama Ceremony was subjected to massive cruelty were true or not.

Compassion in World Farming alleged that the killing of the bull was not only unconstitutional, but also in contravention of the provisions of the Animals Protection Act 71 of 1962.

The group further requested a representative of my office to attend the Ukweshwama Ceremony and observe the actual killing of the bull on its own.

After having observed the ceremony I resolved that this matter would best be handled by the by the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

This matter is therefore referred to the Commission for an appropriate determination. I have requested the Commission to favour me with a report within a period of 6 months.

These are the few investigations that resulted in reports in the last three months. As you are aware, we issue about 40 reports annually, with the rest of the matters brought to my office settled through ADR.

Chairperson

I am on record explaining to the people of South Africa that in our investigation reports, we can only tell the truth as we see it. For us to be able to do so, we have to find it. Therefore, complainants, the media and all other interested parties, have a vital role to play in terms of helping us find this truth.

As I wind down my speech, you will recall that last week I released a copy of the provisional report on the investigation into allegations of a breach of the Executive Members' Ethics Code by the Minister of Cooperative Governance and Traditional Affairs, Mr Sicelo Shiceka.

This report was shared with President Jacob Zuma, the Minister of Finance, Pravin Gordhan and Mr Shiceka. It was further shared with the complainants yesterday. I am expecting to hear from the recipients' respective offices on or before Monday, October 3, 2011. Upon receipt of comments, I will move swiftly to finalise the report and release it for public consumption seven or so days from the return date.

Other reports that are in their final stages include that of the Midvaal Local Municipality and former Limpopo MEC for Health and Social Development, Merriam Segabutla and the Premier of Northern Cape, among others.

Regarding those that I have just released, I trust that competent authorities will show leadership and emulate the Department of Correctional Service in terms of dealing with my findings and remedial action.

My door remains open for organs of state that take issues with the content of my reports to engage me so that we can find a way forward. I can't emphasise the importance of implementation of remedial action enough.

In the same vein, I would like to thank those organs of state that continue to cooperate with my investigations, complying with my findings and remedial action.

This helps my office live up to the service promise I have made to the people of South Africa and Parliament. This promise, which is rooted on our organisational strategic objectives, is to be accessible to and trusted by all persons and communities; to provide prompt remedial action; and to promote good governance in the conduct of state affairs.

It is this kind of cooperation that will ensure the ideal of an accountable state that operates with the highest level of integrity while being responsive to the needs of its entire citizens and residents.

Let us all do our bit to strengthen and support our teenage constitutional democracy.

Thank you.

Adv TN Madonsela

Public Protector of the Republic of South Africa