



Statement by the Public Protector Adv Thuli Madonsela during a media briefing at Dipaleseng Local Municipality in Mpumalanga

Wednesday, 29 February 2012

**Programme Director, Kgalalelo Masibi;
Minister of Cooperative Governance and Cooperation, Mr Richard Baloyi;
MEC for Cooperative Governance and Cooperation on Mpumalanga, Mr Madala Masuku;
Executive Mayor of Gert Sibande District Municipality, Cllr Motloung;
Executive Mayor of Dipaleseng Local Municipality, Cllr Nhlapho;
Speaker of Dipaleseng Municipal Council, Cllr Thanjekwayo;
Executive Mayors of Ehlanzeni, Cllr L Shongwe;
Executive Mayor of Msukalingwa, Cllr Bongwa;
Executive Mayor of Bushbuckridge, Cllr Khumalo;
Chairperson of the Task Team, Mr Tozi Faba;
CEO of the Public Protector SA, Mr Themba Mthethwa;
Councillors and HODs presents;
Complainants, Messrs Van Tonder and Makhubo;
Communities of Siyathemba and Balfour;
The Public Protector team;
Members of the media;**

Ladies and gentlemen

Thank you for your interest in today's briefing and my office's work in general.

A while ago I visited Dipaleseng (Previously known as Balfour) with the former Minister of Cooperative Governance and Traditional Affairs, Mr Sicelo Shiceka, in the wake of service delivery protests at Siyathemba.

My visit was in response to public requests that my office gets involved in addressing systemic service failure that had fuelled the violent protest.

As COGTA was already engaged with the Dipaleseng community, it was a logical decision to align activities. For the same reason, I am delighted to have the Minister of COGTA, Minister Baloyi with us today.

It is also gratifying to see that other key role players in local government governance and

service delivery such as MECs and Mayors have also graced this occasion.

For me and the Public Protector team the spirit that has made it possible for all of us to converge today is in line with our vision of reconciling the state and its people through helping the state identify and redress maladministration.

You will recall that the protests had taken an ugly turn with human security concerns and destruction of the very infrastructure that is needed for service delivery. Vandalism, which had become the order of the day, saw the destruction of much needed infrastructure such as the local library and a municipal office.

You may want to know why did my office get involved given the fact that there already were multiple government interventions. We really got involved in response to allegations of systemic maladministration, incorporating abuse of state resources and governance failure within the Dipaleseng Municipalities.

In addition to allegations made during the stakeholder meeting we had with community representatives and members of the Local Municipal Council on 18 February 2010, I was approached by the Chairperson of the Balfour Business Chamber, Mr J Van Tonder, and a local Councillor, Mr M I Makhubu, who lodged formal complaints covering various allegations of maladministration on behalf of business and residents of Balfour.

When our process took off we sought to focus on alleged irregularities that needed to be investigated with a view to complementing rather than duplicating the service delivery improvement interventions of a Ministerial Task Team, set up following the visit of President Jacob Zuma shortly after the first wave of protests in 2009.

However, as soon as the investigation got underway, it became clear to my team that interventions to help the municipality to quickly identify and redress critical systemic governance and service delivery failures had to be part of the package.

Indeed this partly explains why it took much longer than expected to conclude our process. Our report back today, accordingly covers an overview of the corrective interventions we have made since the start of our process and our findings on the specific allegations of maladministration. Towards the end of my address I'll also briefly touch on another report I am releasing today with no relevance to Dipaleseng. I now turn to my report on the Dipaleseng investigation.

The Dipaleseng report.

As indicated earlier, the Dipaleseng investigation was based on a wide range of allegations of maladministration focussing on governance failure, service failure, procurement irregularities and abuse of state resource, consisting of a wide range of subjects.

Specific allegations included were the following :

- **The construction by the municipality of a Taxi Rank** that was not finished on the date stipulated in the procurement contract, the further funding of the project when the contractor who was supposed to have completed the project was already paid, the planning of the project and the fact that the Rank was still not operational at the time the complaint was lodged.

There was also an allegation that the premises used as a taxi rank before the construction of the new rank was not zoned for such business.

- **The construction of a fence at a public school in Balfour.** The complainants were under the impression that the contractors were appointed by the municipality to erect a new fence on the border of the *Hoer en Laerskool Balfour* grounds, which was never completed. The safety of the children attending the school was allegedly at stake as it was without a fence since June 2008.
- **The municipality had no emergency and disaster plans in place.**
- **The municipality had no credit control/debt collection policy.** Accounts were not sent to residents timeously or at all and only certain categories of residents were paying for services.
- **The staff members of the Finance Department of the municipality were said to be incompetent** and the Department was alleged to have a high staff turnover.
- **The benefits and salary increases awarded to members of the Municipal Council were too high** and could not be afforded by the municipality.
- **The standard of education and training of senior officials of the municipality was doubtful.**
- **No proper town planning was in place at the municipality**, resulting in a lack of any growth and affecting the economy of the area.
- **The Municipal Manager was failing in his duties to maintain the property of the municipality** such as the municipal vehicles which were not registered or licensed.
- **The infrastructure and equipment of the SAPS in Balfour were in a dilapidated state.** The Business Chamber was providing financial support to the SAPS to purchase and maintain equipment.
- **Toilets were not installed in a number of houses built in Siyathemba in terms of government's RDP programme** despite the fact that it was included in the specifications and the contractor was paid for the installation.
- **A number of RDP houses that were supposed to have been constructed in terms of a housing project in Siyathemba were never built.** Approximately 130 owners of the new houses had not received title deeds for their properties.

The following additional complaints were lodged with and allegations made to the investigation team assisting the Public Protector during the investigation:

- **The provincial roads leading to Balfour are in a bad state.** Particular reference was made to the R51 between Balfour and Grootvlei, which had broken up in places, due to the heavy vehicles transporting coal to a nearby power station that belongs to Eskom.
- **The Municipality paid a contractor for the construction and upgrading of streets that were paved.** In some cases, the paving broke up shortly after the streets were completed and repairs had to be made.
- **Complaints lodged with the Municipal Manager and the Municipality were not responded to.**
- **The Municipality does not comply with the Batho Pele Principles** and has no Service Charter.
- **The Municipality sold three properties by auction about four years ago. The conditions of sale provided that it had to be developed within a certain period.** No development has taken place and the Municipal Manager cannot account for approximately R3 million that was paid for the properties.
- **Certain areas were excluded from the high mast lights project without any explanation provided by the Municipality.**
- **The Community Hall of the Municipality was allocated to the Balfour Primary School about 2 years ago, without consulting the community.**

- **Financial irregularities that occur on a daily basis at the Municipality amount to corruption by certain officials and must be stopped.**
- **There is a lack of communication between local attorneys representing residents of the Balfour and Siyathemba** and the Municipality relating to legal disputes that often result in unnecessary litigation and wasted legal costs.
- **The decision of the Government to move Balfour from the province of Gauteng to the province of Mpumalanga following the demarcation process that was conducted after 1994, is a major issue for residents of Balfour.** They are of the view that the Gauteng Provincial Government can provide better services to Balfour due to its close proximity to major centres such as Johannesburg and Pretoria. It was also alleged that there was no proper consultation with the Balfour community, that the said decision was taken against their will and that it caused them to be improperly prejudiced. An example that was referred to, is the complaints about RDP housing that have to be attended to by provincial officials of Nelspruit, which is much further from Balfour than Johannesburg, where the Gauteng Department of Human Settlements is located. Many of the affected people cannot afford to travel to Nelspruit to raise their concerns and to interact with officials in connection with complaints about service delivery by the Mpumalanga Provincial Government.
- **The website of the Municipality is not functional.**
- The dwelling of the property located at 29 Minnaar Street, Balfour that belongs to Ms Kahn, was not connected to the main sewerage line of the Municipality, as was supposed to have happened in terms of a sewerage project of the Municipality. Several complaints lodged with the Director: Infrastructure Services of the Municipality heeded no result. **Mr S Adam, who is the owner of a property where a building for a supermarket (U-Save) was constructed in Voortrekker Street,** incurred substantial costs to install a connection point to the main electricity line of the Municipality, as it failed to comply with its responsibility in this regard. He also claimed that despite having raised the matter on several occasions with the Director: Infrastructure Services of the Municipality, who promised to look into the matter, nothing was done.
- **Businesses in Balfour took it upon themselves to repair a number of potholes in Voortrekker Street.** As the damage to the street was evidently caused by heavy vehicles turning, it was proposed to the Municipality that a permanent road island be constructed in the middle thereof. The Municipality agreed to this and the suggestion that oil drums could be positioned in the middle of the street in the meantime. This arrangement was made with the Director: Infrastructure Services of the Municipality. Several subsequent requests that the drums should be removed and replaced by the road island, as agreed, heeded no result.

Investigation Approach and Process

We interviewed about 20 people including the complainants, some residents of Balfour and Siyathemba, the Municipal Manager and senior officials of the municipality and government departments involved.

Correspondence and documentation relating to the matters concerned were perused and analysed. Relevant provisions of the Constitution, legislation and prescripts applicable to local government were considered and applied.

We also visited a number of sites and locations which were the subject of the investigation to do

an inspection in loco. These included several houses, vacant stands and roads in and around Balfour and Siyathemba. The Balfour Police Station and the Grootvlei settlement, were also visited, among others.

Before I provide an overview of my findings, let me outline some of the problems that have already been addressed.

Corrective Interventions.

As the investigation progressed, my team worked with the leadership of the municipality to identify governance and service delivery failures that could be turned into quick wins, thus immediate and visible service delivery improvement and providing relief to affected persons and communities.

In this regard, I wish to thank and applaud the municipal leadership for cooperation. Matters that were resolved in this manner, include the following:

- a. The new taxi rank was opened and is now being utilised by commuters;
- b. The renovation of Hoer and Laerskool Balfour was completed;
- c. The Disaster Management Centre in Balfour is now operational;
- d. Municipal vehicles have been licensed;
- e. The resources of the SAPS in Balfour have been improved and a new police station will be built in Siyathemba;
- f. The R51 road between Balfour and Grootvlei was repaired and will be maintained until its rehabilitation in 2014;
- g. The defects relating to the construction of roads in Balfour and Siyathemba were remedied;
- h. The municipality is in the process of implementing the Batho Pele principles and the Service Standards
- i. Three high light masts will be installed in Ward Three before the end of the current financial year;
- j. A settlement was reached with another dissatisfied resident in respect of an electrical connection to his property and he was compensated; and
- k. A road island in was constructed in Voortrekker Street

It is precisely because of the changes that have already been made to address the maladies we confirmed and the spirit with which our feedback was received by relevant role players in the Dipaleseng municipality that I have given my report the title "A Glimmer of Hope".

As I hand over the report, with additional directives on remedial action, my team and I are confident that there is indeed hope for the Siyathemba township, this town and its people.

However, I have also had to make specific findings on some of the allegations of maladministration. My general findings on some of the alleged irregularities are the following:

- a. The staff members of the Finance Department of the municipality are generally competent in terms of their qualifications and experience to perform their tasks.

However, staff retention is a challenge, especially due to the remuneration that the municipality is able to offer;

- b. The benefits and salary increases of members of the Municipal Council are not determined by the municipality but by the Minister of Cooperative Governance and Traditional Affairs. The municipality is obliged to remunerate councillors accordingly.
- c. The senior officials of the municipality have the appropriate qualifications and experience to perform their tasks. The perception of non-delivery on their part is partly due to their capacity constraints experienced by the municipality from time to time.

My Specific findings on maladministration, abuse of state resources and related irregularities are the following:

- a. The failure by the municipality to take timeous and appropriate action against the owner of the property (stand 1104 Balfour) for illegal use thereof as a taxi rank amounts to maladministration;
- b. The Budget and Treasury Office of the municipality is deficient and its failure to fully comply with the Credit Control Policy of the municipality in respect of the recovering of debts and revenue amounts to maladministration
- c. The failure of the municipality to comply with the requirements of the Municipal Systems Act in respect of the preparation and implementation of its Integrated Development Plan amount to maladministration;
- d. The delay in conclusion of the sale of land referred to in this report was partly due to failure on the part of the municipality to provide the purchasers with information and to insist on the finalisation of the transfer of the properties and amounted to maladministration;
- e. The utilisation of the Community Hall as a pre-school under the circumstances where no rental agreement had been entered into with the owners and the maintenance of the building left to them without any enforceable arrangement is improper. The municipality also runs the risk of civil claims for damages should one of the learners be injured, especially as its insurance probably does not cover the use of a municipal facility for an unintended purpose. The conduct of the municipality in this regard amounts to maladministration;
- f. The municipality is obliged by law to have an active website, especially as it had evidently decided previously that it is affordable, i.e before the previous website was discontinued. The delay in setting up the new website results in non-compliance by the municipality with the relevant provisions of the Municipal Systems Act, which is improper and amounts to maladministration;
- g. The failure by the Municipal Manager to report his knowledge and/or suspicions of credit note fraud amounting to R1.5 million by officials of the municipality to the SAPS was unlawful and constituted improper conduct and maladministration; and
- h. The failure by Municipal Manager to report the findings of the Municipal Finance Unit of the Mpumalanga Department of Cooperative Governance and Traditional Affairs on the theft of electricity by a former Councillor to the SAPS is unlawful, improper and amounted to maladministration.

Remedial action

Remedial action ought to be taken as envisaged in section 182(1)(c) is the following:

- a. The MEC of Cooperative Governance and Traditional Affairs of the Mpumalanga Provincial Government in terms of section 105 of the Municipal Systems Act to:
 - (aa) Assess the support needed by the municipality to strengthen its capacity to manage its integrated development planning and financial affairs, within 30 days from the date of this report
 - (bb) Take appropriate action to support the municipality within 60 days of the date of this report; and
 - (cc) Monitor the municipality in the management of its financial affairs and integrated development planning
- b. The Executive Mayor of the Municipality to take urgent steps to ensure that the Municipal Manager reports to the Municipal Council of the complaints received by the municipality and the matter in which it was resolved on a regular basis
- c. The Municipal Manager to take urgent steps to:
 - (aa) Expedite the transfer of Erf 1838 to the name of the purchaser;
 - (bb) Regularise the utilisation of the Community Hall referred to in this report as a pre-school in order to ensure that the municipality's risks are contained, the premises are properly maintained and a formal rental agreement entered into. The said agreement should make provision for measures to ensure that the hall is made available at no costs to the municipality for community purposes when so required;
 - (cc) Ensure that the website of the municipality is re-activated within 30 days from the date of this report;
 - (dd) Instruct the attorneys of the municipality to take legal action against the owner of stand 1104 Balfour for the illegal utilisation of the premises as a taxi rank within 10 days from the date of this report;
 - (ee) Ensure the municipality's full compliance with its Credit Control Policy;
 - (ff) Ensure that the municipality's Integrated Development Plan complies with the relevant legislation and other prescripts and is properly implemented;
 - (gg) Liaise with the Mpumalanga Department of Human Settlement for the handing over of title deeds to the beneficiaries of houses in Siyathemba within 30 days from the date of this report;
 - (hh) Ensure that the relationship between the municipality and the attorneys representing residents of the area is improved;
 - (ii) Report the theft of electricity referred to in this report to the SAPS; and
 - (jj) Improve the relationship between the relevant officials of the municipality and the Fire Protection Association of Dipaleseng in the interest of disaster management.

This report has been submitted to the Speaker of the National Assembly, the President of the Republic, the Minister of Cooperative Governance and Traditional Affairs, the Speaker of the Provincial Legislature, the Premier, the MECs, the Speaker of Dipaleseng and the Executive Mayor and the complaints among others. All affected organs of state have also received copies.

We will be monitoring implementation thereof.

THE SEKGABUTLA REPORT

Ladies and gentlemen;

I thought I should also make use of this opportunity to announce my finding regarding the investigation involving the former MEC for Health in the Limpopo province.

Background

Befuddled Interests is my report as Public Protector following an investigation into allegations of improper conduct by Ms Merriam Segabutla, former MEC for Health and Social Development in the Limpopo Provincial Government. The allegations related to the procurement of services for the provincial Department of Health.

A complaint was lodged with my office in June 2010 with allegations of improper and unethical conduct by Ms Segabutla in connection with contracts relating to forensic investigations that were awarded by the Limpopo Department of Health to Trispen Solutions (PTY) Ltd and Tsepo Technology Consulting (PTY) Ltd.

It was alleged that Ms Segabutla selected the said service providers because the sole Director of Tsepo Technology Consulting (PTY) Ltd, Mr J Lucas, is related to her and her attorney, Mr G Van der Merwe, was involved with Trispen Solutions (PTY) Ltd.

The basis for the allegations regarding Mr Lucas was that Ms Segabutla had indicated Mr Lucas as a relative on a visitors' form at her daughter's school in Pretoria. With regard to Mr Van der Merwe it was alleged that he represented her in divorce proceedings in return for contractual work.

No evidence could be found of Mrs Segabutla's involvement in the procurement process that resulted in the selection of Tsepo Technology Consulting and Trispen Solutions.

At first, Ms Segabutla denied any involvement with Messrs Lucas and Van der Merwe other than in her official capacity.

However, when she was interviewed during the investigation she admitted that she did have private relations with both. She explained that she got to know Mr Lucas when he was rendering services for the Department and that she trusted him. She further conceded that she had

indicated Mr Lucas as her daughter's uncle on the school's visitor form even though they are not related. She further admitted that she occasionally requested Mr Lucas to deliver parcels to her daughter at the school when he travelled from Polokwane to Pretoria, returning home from rendering services at the Department. This was confirmed by Mr Lucas during the investigation.

On Mr Van der Merwe, Ms Segabutla explained that she met Mr Van der Merwe when he was rendering services to Trispen Solutions that was conducting forensic investigations at the Department. During this time, she instructed him to represent her in a divorce matter. Mr Van der Merwe confirmed that he was acting on behalf of Ms Segabutla in her private capacity. They both confirmed that Ms Segabutla had never paid Mr Van der Merwe, offering that they were waiting for the divorce settlement which was to provide Ms Segabutla with funds to pay the necessary fees.

In terms of general conclusions, it is common cause that Ms Segabutla did have a questionable private relationship with both Mr Lucas and Mr Van der Merwe which had an impact on her official relationship with them as the executive authority of an organ of state they were rendering services too. I have made the following findings:

Findings

- a. By virtue of her position as the Member of the Executive Council (MEC) responsible for Health and Social Development of the Limpopo Province, it was expected of Ms Segabutla to act in the best interests of the Department and in a manner that is consistent with her position.
- b. By requesting Mr Lucas to visit her daughter at school and indicating to the school that he is related to her, Ms Segabutla created the perception that he is a relative or a close family friend. It is reasonable to expect only relatives and close family friends to be entrusted with visits to a young girl in a boarding school.
- c. As Mr Lucas is the sole director of Tsepo who was involved in a multi-million Rand contract with the Department at the time, Ms Segabutla furthermore created the perception that Mr Lucas might have been favoured in the selection process, due to his close relationship with her.
- d. The interaction between Ms Segabutla and Mr Lucas in connection with her daughter, as referred to in this report, constituted a conflict between her official responsibilities as the Member responsible for Health and Social Development of the Executive Council of the Limpopo Province and her personal interests.
- e. The MEC briefed Mr Van der Merwe to act as her attorney in a private matter, whilst she was fully aware at the time that he was also involved in a forensic investigation that was conducted for the Department by Trispen.
- f. Under the circumstances, Ms Segabutla created the perception that Mr Van der Merwe became involved in the said contract between the Department and Trispen because he was her attorney and that he was therefore favoured in the selection process.
- g. Instructing Mr Van der Merwe to represent her in a private matter at a time when he was also involved in providing a service to the Department, constituted a conflict between the Ms Segabutla's personal interests and her official responsibilities.

The Public Protector's specific findings against the MEC are that:

By conducting herself in the manner referred to in paragraph (viii) above, Ms Segabutla

- a. Acted in breach of section 136 of the Constitution and paragraph 2.3 (e) of the Executive Ethics Code by Exposing herself to situations involving the risk of a conflict between her official responsibilities and her private interests, which conduct is prohibited by these provisions; and
- b. Acted in a manner that is inconsistent with the position that she occupied and that was not in the best interests of the Department.

I then had to determine remedial action as envisaged in section 181(2) (c) of the Constitution. During the course of the investigation, Mrs Segabutla was relieved of her duties as an MEC. The consequence was that no corrective action could be legitimately taken against her by the Premier or the Provincial Legislature.

Later in the process, Ms Segabutla was appointed by the President as the South African Ambassador Designate to the Republic of Cuba in August 2011. She is currently therefore employed by the Government and based at the Ministry of International Relations and Cooperation. In addition to that, the President who was the head of the Executive at the time of the transgression, emerged as the sole public authority who had some authority to act then and still has the authority to act now.

Remedial Action

The remedial action that is to be taken, as envisaged in section 182(1) (c) of the Constitution, is accordingly that the:

- a. The President is to reprimand Ms Segabutla for her unethical conduct referred to in this report and to advise her on how to conduct herself in future.
- b. The Speaker of the Limpopo Provincial Legislature is to take steps to ensure that this report is tabled in Limpopo Provincial Legislature within 30 days from the date that it is issued; and
- c. The Premier of the Limpopo Province is to take steps to ensure that all the Members of the Executive Council of Limpopo are made aware of the contents of this report and are sensitised about compliance with the provisions of section 136 of the Constitution and the Executive Ethics Code, within 30 days from the date of this report.

This report has also been sent to the President, the Minister of Cooperative Governance and Traditional Affairs; the Speaker of the Provincial Legislature, the Premier of Limpopo, among other people.

My office will be monitoring compliance with the remedial action.

I am aware that you were expecting more reports. Three of these were finalised too late for inclusion and will be released in a week or so. I am happy to report on progress on other investigations of interest. I am also happy to provide details on

some of the cases where we have successfully resolved service failure disputes through conciliation, mediation, negotiation and other means thus ensuring speedy justice and relief to destitute citizens while promoting good governance.

Ladies and gentlemen ;

I particularly thank the competent authorities we have engaged on my findings and remedial action for respecting our Constitution and the law. The Constitution requires the Public Protector to investigate any alleged or suspected improper or prejudicial conduct in state affairs or the public administration to report on that conduct and to take appropriate remedial action.

That's what I have done in respect of these investigations and that's what we always do. If we all continue to respect the Constitution and comply with its dictates including those relating to principles of good administration and ethical conduct as envisaged in sections 195 and 136, respectively we will achieve the ideal of a state that is accountable acts with integrity at all times and delivers services that are responsive to all the people.

Thank you.

Adv Thuli Madonsela
Public Protector of South Africa