



Address by Public Protector, Adv. Busisiwe Mkhwebane during a media briefing in Pretoria on Wednesday, October 31, 2018.

**Programme Director;
Deputy Public Protector, Adv. Kevin Malunga;
Chief Executive Officer, Mr. Vussy Mahlangu;
Members of the media;
Ladies and gentlemen;**

Good afternoon and thank you for honouring our invite. We were supposed to have had this briefing in the last quarter but, as you may be aware, I was touring the provinces as part of the annual Public Protector Stakeholder Roadshow.

Our schedule in that regard made it practically impossible to convene such a briefing. Accordingly, we owe the public one more briefing, which I intend holding sometime next month. These briefings are important as they provide a platform for me to inform the public about the progress we are making in instilling a culture of good governance and quality public service delivery in state affairs.

We meet today, exactly two weeks since the second anniversary (on 15 October 2018) of my appointment as the Public Protector. More than 30 000 complaints later, of which over 24 000 were finalized; nearly 60 investigation reports later; and a few turbulent moments later, we are still here doing our best to curb excesses in the exercise of state power and control over public resources.

We remain focussed in our quest to take the services of this institution to the grassroots in pursuit of the Public Protector Vision 2023, which as you know by now is under pinned by the following eight pillars:

1. Enhancing access to our services;
2. Engaging communities in their mother tongues for effective communication;

3. Increasing our footprint;
4. Leveraging stakeholder relations to advance our interests through MOUs;
5. Projecting an image of a stronghold for the poor as we should be;
6. Ensuring that people are well-versed on their rights;
7. Persuading organs of state to have effective in-house complaints resolution means to offload some of the burden from our shoulders; and
8. Inspiring people to be their own liberators.

One of the areas that we have worked hard to improve over the last two years is providing a better service to the public. To this end we have finalised and published the Public Protector Rules. The Rules are more like regulations similar to Court Rules. They govern how matters entrusted to my office are handled and processed.

They seek to expedite the resolution of complaints by facilitating cooperation with investigations and implementation of our remedial action through the standardisation of things such as timelines, subpoenas, search and seizures, alternative dispute resolution mechanisms, contempt of the Public Protector Orders and related fines.

The Rules also outline procedures of lodging complaints, procedures for resolution of disputes, service standards applicable to the Public Protector in relation to investigations and resolving disputes and timeframes for organs of state to respond to reports or findings.

They go into finer details such who can report a matter to or lodge a complaint with the Public Protector; the manner of doing so (it can be orally or in writing); information required when lodging a complaint; confidentiality of information entrusted to us and place of reporting matters or lodging complaints, among other things.

The rules go further to outline the format and procedure of investigations; the responsibility of state institutions to co-operate with Public Protector processes; contempt of the Public Protector proceedings; and methods of resolving complaints, including Alternative Dispute Resolution.

They were crafted and published in terms of section 7 (11) of the Public Protector Act 23 of 1994, which states that the Public Protector may make rules in respect of matters that have a bearing on investigations, provided that such rules are published in the Gazette for public comments and tabled in the National Assembly.

A copy of the rules is accessible from our website. I encourage the public and organs of state alike to familiarise themselves with the contents of this document so that they may be better informed on how to interact with my office.

I now turn to the main focus of the briefing, which is to reveal to the public the outcomes of numerous investigations that I have been working on. It is about 13 reports in total, which

thematically touch on issues such as poor administration, abuse of power, abuse of state resources and the plight of whistle-blowers.

Public health sector

Let me start with the following two advisory reports, which were a culmination of a stakeholder engagement and dialogue by the Public Protector and her team (the Team) in 2013. Due to the lapse of the time since the visits to the various health care facilities, I decided to compile the report as the Public Protector's advisory report to the Minister detailing observations noted during the stakeholder engagement and dialogue in 2013.

These are therefore not investigation reports issued in terms of Section 182(5) of the Constitution read with Section (8)(1) of the Public Protector Act but have been submitted to the Ministers and MECs concerned to note the issues raised and to follow-up with a view to improving service delivery.

The first one relates to the public health sector. The Public Protector visited all nine provinces and paid surprise visits to at least one healthcare facility in every province. At the healthcare facilities, the Public Protector engaged with both members of the public and officials working at the healthcare facilities. At all times, the Public Protector was also accompanied by officials from the national Department of Health.

In the main, the community members raised issues relating to the state of public healthcare facilities such as cleanliness, infrastructure, and lack of equipment and peripherals and overcrowding in wards.

They also raised issues relating to quality of service such as long queues to consult and access medication, shortages of medication, delays relating to ambulances, staff shortages, especially healthcare professionals, (nurses in the main, as well doctors), and overcrowding in wards, operation hours of primary healthcare facilities, and staff attitudes.

During the surprise visits, members of the public and officials at healthcare facilities raised a myriad of complaints such as dilapidated and inadequate infrastructure, shortages of medication and other peripherals, queues to consult medical practitioners and to access medication, shortages of staff, shortages of ambulances, operating hours of primary healthcare centres, shortages of equipment, etc.

In the light of this being an Advisory report, my recommendations to the Minister of Health was as follows:

1. The Minister of Health should consider putting together a comprehensive and holistic Strategy to deal with the observations in this report, and the findings in the National Healthcare Facilities Baseline Audit – National Summary Report- 2012.
2. The Department should consider strengthening the Office of Health Standards, in particular as it relates to its independence and the enforceability of its remedies through legislative amendments.

3. The Department consider the feasibility of sourcing a comprehensive Healthcare Management system that will address electronic filing, tracking patient medical history, and queue management.

The RDP housing programme

The second advisory report relates to the RDP housing programme. It follows public hearings and stakeholder consultations that the Public Protector conducted throughout South Africa during the 2011/2012 financial year.

My office has in the past, and continues to receive, complaints regarding RDP houses. Due to the number of complaints received, the Public Protector in 2011/2012 financial year decided to embark on a process of consultations and hearings with stakeholders with a view to identifying the challenges relating to the delivery of RDP houses.

The report is based on the issues raised during these stakeholder meetings held across the country and includes observations of the Public Protector that focuses on the following five key issues identified during the stakeholder and public consultation:

1. Planning of Human Settlements

The issues raised related to the planning and administrative processes involved in the delivery of RDP houses. The issues raised generally related to allegations of tardiness on the part of state institutions in the planning processes. This included allegations deviation by state institutions and/or officials from original plans in respect of RDP houses with regard to the size of the houses, the number of houses to be built, and the time periods within which to complete the projects, among others.

2. Procurement

The issues raised related to allegations of delays on the part of the state to pay benefits due to beneficiaries in order for the RDP housing projects to commence. Issues related to the transfer of funds to the Accounts Administrator and/or failure on the part of the state to make funds available for the completion of certain projects also fall hereunder.

The issues raised also included contractors challenging procurement processes and contractors complaining about payments after completion of projects.

3. Allocation of RDP houses

The issues raised under this heading related to the allocation of houses to unintended beneficiaries and allegations of removal or changing of names on the beneficiary lists/demand databases. Issues were raised relating to bias and/or corrupt activities on the part of officials, in that RDP houses are allocated to the families and/or friends of officials. There were allegations that some officials had sold RDP houses and further that the RDP houses were knowingly given to persons other than the rightful beneficiaries.

Complaints in respect of undue delays in the allocation of RDP houses were also raised. These types of complaints were common in provinces where the majority of the people live in urban areas, e.g. Gauteng and Western Cape. Mostly were people who applied for RDP houses as early as 1996 and have been on the waiting list or demand database throughout the years.

4. Post allocation problems

Issues relating to the RDP houses which were already allocated were also raised and mostly related to allegations of failure by the state to ensure that title deeds were issued to the Beneficiaries. Other issues related to allegations of substandard RDP houses that were allocated and/or structural defects in the RDP houses which were allocated.

5. Delay in issuing of Title Deeds

One of the major common issues identified across all provinces related to the alleged delay by Provincial Departments of Human Settlements and Municipalities in issuing title deeds to RDP housing beneficiaries.

In the light of this being an Advisory report, my recommendations to the Minister of Human Settlements was as follows:

1. Planning

The state should consider establishing a Compliance Monitoring Divisions to ensure that the required processes are complied with before the implementation of RDP projects.

2. Procurement

The aforementioned Compliance Monitoring divisions should also be tasked with monitoring compliance with prescripts in the procurement of RDP projects.

3. Allocation

The government should consider putting in place plans with clear timeframes to prioritise the adjudication of RDP house applications lodged between 1996 and 2006. Such plans should also have timeframes for the adjudication of applications lodged after 2006 to date.

The government should also adopt an effective communication strategy to disseminate information regarding the process and status of RDP house applications to applicants on a regular basis.

4. Post Allocation

The state should through “happy letters” advise beneficiaries on the process to be followed where structural defects are discovered after the handing over of RDP houses.

5. Title Deeds

The state should develop and adopt a strategy with clear timeframes on how to eradicate the existing backlog in the issuing of title deeds to beneficiaries.

Let me indicate, at this juncture, that while most of the processes that gave rise to these two reports occurred a while back, it is true that most of the problems we picked up are still prevalent in both the public housing and public health spaces.

As the Public Protector SA, we also assisted the Departments of Health and Human Settlements to establish ombud services. We also have a Memorandum of Understanding with the Health Ombudsman and we working on one with the Human Settlements Ombudsman.

I now deal with investigation reports issued in terms of Section 182(5) of the Constitution read with Section (8)(1) of the Public Protector Act.

Kamanyane et al

I investigated allegations of failure by the Dr. Ruth Segomotsi Mompati District Municipality, formerly known as Bophirima District Municipality, in the North West, to submit the names of 26 former employees of the Municipality to the Cape Joint Retirement Fund for the purposes of receiving additional benefits subsequent to their transfer to the provincial Department of Public Works and Roads in July 2001.

The complaint was lodged with my office in 2015 by Messrs. Kagiso Samuel Kamanyane, Jabu Mayedwa, James Kgopisi and Sepopo Seemane, who represented all 26 affected as they appear on the list attached to the Report.

They alleged that they suffered prejudice as a results or the conduct of the Municipality. Having considered the evidence uncovered during the preliminary investigation against the relevant regulatory framework, I decided to resolve the matter through mediation and conciliation, resulting in a Settlement Agreement facilitated by my office and concluded between the Complainants', duly represented by Mr. Seemane and the Municipality, being represented by Mr. Jerry Mononela in his capacity as the Municipal Manager.

In terms of the agreement, the Municipal Manager is to effect payment to all the 26 Complainants, in accordance with clause 2.1 of the settlement agreement, signed between the Dr Ruth Segomotsi District Municipality and the Complainants on 26 August 2018;

The Municipal Manager must also, within 30 working days of publication of this Report, identify all other affected employees or former employees who are not the complainants herein and calculate their benefits; and

The Municipal Manager must further, within 15 working days of determining the benefits payable to all identified employees or former employees, pay 60% of each member's gross benefits from the Cape Joint Consolidated Retirement Fund plus 15.5% interest therein.

Ms. DC Dihemo

I investigated allegations of undue delay by the North West Provincial Department of Public Works and Roads to transfer ownership of a house on Erf 248, 59 Bree Street , Lichtenburg into the name of Ms. DC Dihemo, a 71 year old pensioner. Ms. Dihemo lodged the complaint in 2012.

She alleged that she approached the Department in 2008 and offered to purchase the property. The Department allegedly indicated to her that the purchase price would be approximately R112 000. She allegedly paid the purchase price on 26 June 2008. She further paid an amount of R3 420 as transfer costs to the State Attorney.

In 2009 she was advised to pay occupational rent of R200 per month in line with the Deed of Sale. She was not allowed to alter and/or extend the property until it was transferred to into her name. To date the Department has allegedly failed to transfer the said property into her name.

I have found the allegation that the Department unduly failed to register and transfer ownership of the property into the Complainant's name to be substantiated. I have further found the allegation that the Complainant suffered prejudice as a result of the Department's failure to ensure the registration and transfer of the property into her name to be substantiated.

I have directed, among other things, that:

The Head of the Department (HOD) must, within 30 working days from the date of publication of this report, provide the Office of the State Attorney with all the necessary documents to enable the State Attorney to register and transfer ownership of Erf 248, 59 Bree Street, Lichtenburg in to the Complainant's name.

The Head of Office of the State Attorney in the North West must ,upon receipt of all the documents from the Department and within 45 working days from the date of publication of this report, ensure registration and transfer of Erf 248,59 Bree Street, Lichtenburg into the name of the Complainant.

The HOD must, within 30 working days of publication of this report, refund the Complainant all the monies paid as occupational rental, plus interest at a rate prescribed by Minister of Justice in terms of Prescribed Rate of Interest Act 55 of 1975, minus the rental for 6 months, which would have been a reasonable time to register the property;

The HOD must, with immediate effect, stop charging the occupational rental on Erf 248, 59 Bree Street, Lichtenburg; and

The HOD must, within 30 working days from the date of publication of this report, send an apology letter to the Complainant for the undue delay to transfer ownership of the property into her name.

Mr. Chester Staples

I investigated allegations of failure by the North West Provincial Department of Local Government and Human Settlements, through its North West Development Tribunal to process an application by the Complainant for the establishment of a development area at Nauwpoort farm near Rustenburg in the North West Province.

The complaint was lodged with my office on 21 February 2013 by Mr. Chester Staples. In essence, he alleged that:

He is a property developer residing at house no 7, 4th Avenue, Parkhurst, Johannesburg in Gauteng Province. In March 2009, he allegedly approached a town planner, Mr Conrad Henry Wieham, practising under the name and style, "The Practice Group (Pty) Ltd", to submit an application on his behalf to the Department, seeking permission to establish a development area on portion 31 and Remaining Extent of portion 3 of the farm Naauwpoort 355 near Rustenburg. The project was to be known as "Chesterton Equestrian Estate";

The application was allegedly submitted on 16 March 2009 in terms of the Development Facilitation Act, No. 67 of 1995 (DFA) to the Registrar of the Registrar of the Tribunal.

The Tribunal's preliminary hearing conference to process the application was allegedly convened on 09 February 2010 and the matter was postponed to 03 March 2010 for a formal hearing.

However, on 03 March 2010, the matter was allegedly postponed to 08 August 2011. The hearing did not materialise. This was due to failure by the Department to finalise the process to nominate and recommend to the Premier, the appointment of new Tribunal members, after the first Tribunal's term of office had lapsed on 31 August 2010.

The consequence thereof was that the Complainant's application was not processed this resulted in him allegedly having to pay costs amounting to R1 383 344.00, which included fees paid to the town planners who submitted the application on his behalf as well as the purchase of all materials and services related thereto.

I found the allegation that the Department, through its Tribunal, failed to process the Complainant's application for the development of a property to be substantiated. I further found the allegation that the Complainant was prejudiced by the conduct of the Department, through its Tribunal, to also be substantiated. As a result, I directed the following:

That the Head of the Department (HOD) must, within 30 working days from the date of publication of this report, send an apology letter to the Complainant for the prejudice caused to him;

That the HOD must, within 60 working days from the date of publication of this report, pay the Complainant an amount of R1 383 344.00, plus interest calculated from the date on which the application was lodged, 16 March 2009, to the date on which all DFA applications should have been finalized, 17 June 2012, and

The HOD must, within 90 working days from the date of publication of this report, institute civil proceedings against any person(s) liable in law, for the recovery of the amount referred to above.

Mr. Kgomo

I investigated allegations of undue delay to pay for services rendered and maladministration by the North-West Provincial Government relating to the improper termination of a contract with RR Travel JV Tshepi Investment. This followed a complaint from Mr T C Kgomo on behalf of and in his capacity as the Director of the Company on 25 March 2015.

Mr. Kgomo alleged that on or about September 2013, the company was awarded a transversal contract for a period of two years dating from 15 April 2014 to 31 March 2016, for the provision of specialised travel and hotel accommodation services to the NWPG.

The aforementioned service included advising the NWPG on the best possible travelling arrangements, offering advice on destinations, arranging reservations, car rental and weather conditions for both local and international travelling, types of accommodations, routes, schedules and rates.

The parties entered into a contract in terms of the National Treasury General Conditions of Contract. On 03 April 2014, a Service Level Agreement (SLA) was signed between Mr. Kgomo and the NWPG, duly represented by the North-West Department of Finance.

As early as May 2014, he began experiencing problems with receiving payments from the ordering departments for services rendered, which problem persisted until 18 October 2014, he received communication from the NWPG informing him that his contract had been terminated per the SLA. No reasons were provided.

In addition to the alleged improper termination, the Complainant alleges that the NWPG owed his company outstanding payments in the amount of R10 997 982.74 for services rendered between April 2014 and August 2014. Furthermore, the NWPG also owes him interest that accrued as a result of some of the late payments received for services rendered. The allegation relating to the undue delay to pay the complainant for services rendered was resolved by mediation in terms of the Public Protector Act and the complainant was paid.

I found that the allegation that the North West Provincial Government unduly delayed to pay the Company for services rendered was substantiated. I found that the allegation that the North-West Provincial Government improperly terminated the contract to the Company was unsubstantiated.

Based on my finding that North West Provincial Government unduly delayed to pay the Company for services rendered, there is prima facie evidence that indeed there may be some interest which is due and payable to the Company on those invoices which were not paid on due date.

I found that the allegation that the NWPG improperly prejudiced the Company due to the undue delay to pay for services rendered was substantiated.

To remedy the situation, I directed that:

1. The Director General of the NWPG must within 30 days from the date of this report apologise to the Complainant for the undue delay to pay him for services rendered;
2. The Director General of the NWPG must, within thirty (30) days of issuing this report, appoint an Audit company to audit all the invoices and supporting documents to independently determine the interest payable to the Company;
3. The Director General of the NWPG must submit the audit report to the Public Protector within thirty (30) days of receiving the audit report;
4. The Director General of the NWPG must pay the Company interest on all invoices that has been determined by the Audit above as not paid within thirty (30) days of receipt of the invoice. Such payment must be made to the Company within thirty (30) days of receipt of the audit report at the prescribed rate of interest applicable on the date on which payment was due.

South African Local Authorities (SALA) Pension Fund

I investigated allegations of failure by the South African Police Service (SAPS) to timeously submit disability claims in accordance with the rules of the South African Local Authorities Pension Fund (SALA Pension Fund), thus financially prejudicing the Complainants.

My office received complaints from seven Complainants, all employees of the SAPS and members of the SALA Pension Fund. The Complainants alleged that the SAPS failed to submit disability and death claims to the SALA Pension Fund timeously in terms of the SALA Pension Fund Master Policy (Master Policy). The late submission resulted in claims being repudiated by the SALA Pension Fund.

As a result of the late submission of claims and subsequent repudiation, the members of the SALA Pension Fund suffered financial prejudice in that they did not receive compensation they are entitled to in terms of the Master Policy.

The seventh complaint was resolved in accordance with section 6(4)(d)(i) of the Public Protector Act, through mediation. The Complainant was declared medically unfit by the SAPS during the time of the rule change by the SALA Pension Fund where the period for submission of applications was extended to six months. The SALA Pension Fund then accepted the Complainant's retirement documents in terms of the extended period.

I found that the allegation that the SAPS failed to timeously submit the notices and disability and death claims to the SALA Pension Fund within the prescribed period was substantiated. I further found that allegation that the Complainants were improperly prejudiced by the conduct of the SAPS was substantiated, too.

I directed the National Commissioner of Police to:

1. Issue letters of apology to the Complainants for the prejudice caused due to maladministration on the part of the SAPS within 21 working days from the date of this report;
2. Ensure that the SAPS pay the following amounts within 60 working days from the date of this report to the following Complainants:
 - (i) The first Complainant, Sejake M, the amount of R972 210.38 (**nearly a million rand**);
 - (ii) The second Complainant, Makhaba N, the amount of R595 369.50 (**nearly six hundred thousand rand**);
 - (iii) The third Complainant, Dlomo SA, the amount of R1 397 820.35 (**one point three million rand**);
 - (iv) The fourth Complainant, Mashigo L, the amount of R1 462 440.34 (**one point four million rand**);
 - (v) The fifth Complainant, Nyokong J, the amount of R1 735 238.67 (**one point seven million rand**); and
 - (vi) The sixth Complainant, Seitlheko GP, the amount of R1 041 851.74 (**just over a million rand**).
3. Pay interest at the prescribed rate of interest in terms of the Prescribed Rate of Interest Act 55 of 1975 to the Complainants on these amounts from the date of this report until date of payment;
4. Within 90 days from the date of this report, ensure that the SAPS appoints an independent audit firm to conduct an audit to establish how many employees, who were SALA Pension Fund members, were similarly affected by the late submission of disability and/or death claims;
5. The audit conducted by SALA Pension Fund, as identified in this report shall be the starting point of audit.

The Minister of Police must within 60 working days after the audit ensure that:

1. All affected employees are compensated for any loss they may have suffered;

2. Develop and implement Standard Operating Procedures (SOPs) for the handling of disability claims of the SALA Pension Fund members, within six months from date of this report. These SOPs must specifically address the speedy submission of claims; and
3. Arrange, in conjunction with the SALA Pension Fund, a training workshop on the Master Policy for all personnel tasked with such duties to mitigate future recurrence and submit proof to my office within 12 months from the date of this report. Any such recurrence by any SAPS official after training is provided, such official must be disciplined accordingly and whatever loss incurred by the SAPS be recovered from the said official.

SAPS accepted the remedial action and paid the above complainants after receiving the notice in terms of section 7(9) of the Public Protector Act.

North West Housing Corporation and the City of Tshwane

I investigated allegations of maladministration by the North West Housing Corporation and the City of Tshwane Metropolitan Municipality, regarding the improprieties relating to the sales and transfers of the properties that belonged to the NWHC, falling within the municipal boundaries of the CTMM, which were purchased by the Complainants from the NWHC. The complaints were lodged by Mr. Michael Mere; Ms. Bongo Sepeng; Mr Ernest Kgasoe; and Ms W Ledingwane between the period 2011 and 2013, respectively.

The allegation that the city and the corporation improperly failed to assist Mr. Mere, Ms. Ledingwane, Ms. Sepeng and Mr Kgasoe in the registration and transfer of stands number 2827 Zone 2 Ga-Rankuwa, 309 Block X Mabopane, 992 Unit 7 Ga-Rankuwa and 2281 Unit 8, Ga-Rankuwa respectively into their names to be substantiated.

I directed the Gauteng MEC for Human Settlements to:

1. Take cognizance of the findings regarding the maladministration by the city relating to the improprieties mentioned in this report;
2. Within thirty days from the date of the issuing of this report, appoint an audit firm to investigate if there are any other person(s) who may have been deprived of their property, and within thirty (30) days of the finalisation of the investigation, submit the report to the Executive Mayor for implementation in accordance with my remedial action taken in paragraph 7.2.3 of the report; and
3. Include in his/her oversight role with the housing and human settlement activities, the monitoring of implementation of the remedial action taken in pursuit of the findings in terms of the powers conferred to the Public Protector under section 182(1)(c) of the Constitution.

I also directed that the Executive Mayor of the City of Tshwane:

1. Ensure that the City Manager, within ninety (90) days from the date of the issuing of this report, provides alternative houses having all the necessary basic services such as water, electricity and sewage system to all the beneficiaries who were dispossessed of their housing rights through the alleged fraudulent and unlawful transfer of their properties or compensate the complainants with the current market value of the properties that were fraudulently and unlawfully transferred to the third parties;
2. Within ninety (90) days of receipt of the report from the MEC for the Gauteng Department of Human Settlements, ensure that the City Manager provides alternative houses having all the necessary basic services such as water, electricity and sewage system to all other beneficiaries who were dispossessed of their housing rights through the alleged fraudulent and unlawful transfer of their properties or compensate them with the current market value of the properties that were fraudulently and unlawfully transferred to the third parties;
3. Ensure that the City Manager, within ninety (90) days from the date of the issuing of this report, establishes a township at the area where stand number 2827 Zone 2 Ga-Rankuwa is situated and register and transfer the relevant property into Mr Mere;
4. Ensure that the City Manager, within thirty (30) days from the date of the issuing of this report, implements city's Investigation Report dated 24 February 2013; and
5. Ensure that the City Manager and the Chairman of the corporation, within thirty (30) days from the date of the issuing of this report, provide him with all the information regarding any other person(s) who may have been deprived of their property to be considered in the implementation of the remedial action mentioned in paragraph 7.2.3 of the report.

I also directed the MEC for North West Housing and Human Settlements and the Chairman of the corporation to:

1. Ensure that, within thirty (30) days from the date of the issuing of this report, the Chairman of the corporation consider paying ex-gratia payments to the affected complainants for the embarrassment, pains and actual loss suffered as a result of loss of their houses for the last 13 years and the Public Protector may be consulted to mediate the reasonable amount payable in this regard;
2. Ensure that the CEO of the corporation, within thirty (30) days from the date of the issuing of this report, identify and refer to the Executive Mayor of the city and the Chairman of the corporation any other person(s) who may have been deprived of their property to be considered in the implementation of the remedial actions mentioned in paragraphs 7.2.3 and 7.3.2 of this report; and
3. The MEC for North West Housing and Human Settlements to include in his/her oversight role with the housing and human settlement activities, the monitoring of

implementation of the remedial action taken in pursuit of the findings in terms of the powers conferred to the Public Protector under section 182(1)(c) of the Constitution.

I further directed the City Manager to:

1. Render an apology to each of the Complainants, within a period of thirty (30) days from the date of the issuing of this final report, for the improper failure by the city to ensure or assist them with the registration and transfer of their properties into their names or to secure ownership of their respective properties as well as for the unlawful registration and transfer of their properties to third parties which resulted in their prejudice;
2. Within thirty (30) days from the date of the issuing of this report, assist Mr Mere with the necessary consent to use the property, stand number 2827 Zone 2 Ga-Rankuwa, to enable him to derive the projected financial benefit, pending the registration and transfer of the property concerned into Mr Mere's name in the Register of Deeds;
3. Within ninety (90) days from the date of the issuing of this report, establish a township at the area where stand number 2827 Zone 2 Ga-Rankuwa is situated and to register and transfer the relevant property into Mr Mere's name;
4. Within ninety (90) days from the date of the issuing of this report, provide alternative houses having all the necessary basic services such as water, electricity and sewage system to all the beneficiaries who were dispossessed of their housing rights through the fraudulent and unlawful transfer of their properties or compensate the complainants with the current market value of the properties that were fraudulently and unlawfully transferred to the third parties;
5. Within thirty (30) days from the date of the issuing of this report, implement city's Investigation Report dated 24 February 2013; and
6. Within thirty (30) days from the date of the issuing of this report, identify and refer any other person(s) who may have been deprived of their property to the Executive Mayor of the city and the Chairman of the corporation to be considered in the implementation of the remedial actions mentioned in paragraphs 7.2.3 and 7.3.2 of the report.

Lastly, I directed the Chief Executive Officer of the corporation to:

1. Render an apology to each of the Complainants, within a period of thirty (30) days from the date of the issuing of this report, for the improper failure by the city to ensure or assist them in the registration and transfer of their properties or to secure their ownership of the properties concerned which resulted in their prejudice;
2. Within thirty (30) days from the date of the issuing of this report and in consultation with the Chairman of the corporation, consider paying ex-gratia payments to the affected complainants for the embarrassment, pains and actual loss suffered as a

result of loss of their houses for the last 13 years and the Public Protector may be consulted to mediate the reasonable amount payable in this regard; and

3. Within thirty (30) days from the date of the issuing of this report, identify and refer any other person(s) who may have been deprived of their property to the Executive Mayor and the Chairman of the corporation to be considered in the implementation of the remedial actions mentioned in paragraphs 7.2.3 and 7.3.2 of the report.

Collapse of governance at Pikitup

I investigated allegations of maladministration and violation of the waste management service provider to the City of Joburg, Pikitup's Supply Chain Management processes and procedures in connection with the awarding and subsequent extension of contract PU298/2012 to Aqua Transport and Plant Hire.

The investigation also covered alleged irregular procurement of office space to relocate the Pikitup Head Office; appointment of consultants; appointment, removal and replacement of employees in violation of Pikitup recruitment and selection policies and payroll and misconduct arising from theft of Pikitup cellular telephones.

This probe was prompted by complaints received from Mr. Philip Richardson in August 2013 and the South African Municipal Workers Union (SAMWU) in March 2016.

Mr. Richardson alleged that the contract awarded to Aqua by Pikitup was observed as being "under investigation," and yet was progressing normally with payments being made to the service provider;

Since public funds were involved, it appeared, according to Mr. Richardson, that both Pikitup and Aqua considered themselves totally above the constructs of due process and believed they could act with impunity as the said contracts were progressing normally despite objections so widely reported in the media.

The media report concerned included an article that appeared on the Independent Online webpage in June 2013 under the headline "Pikitup boss pays [R228 000] to dispute reports", wherein it was alleged among other things that former Pikitup Managing Director, Ms. Amanda Nair, "controversially awarded a multimillion-rand tender to a firm implicated in alleged fraud – an allegation contained in a forensic investigation commission by the public utility ..."

The article further stated that "... Ms Nair had awarded the contract to Aqua even though the City of Joburg's Bid Adjudication Committee had questioned her decision because of a forensic investigation by Ernest & Young (E&Y) which had implicated the company in alleged wrongdoing" and that "Pikitup paid almost R6 million rand for E&Y to investigate companies providing services to it. It was recommended that Aqua be charged criminally for fraud because of alleged irregular activities, including suspected tender collusion..."

SAMWU, on the other hand, alleged in their complaint that Ms Nair extended the contract of Aqua and added R40 million despite a decision by the previous Board not to extend it; that

she irregularly appointed friends and former colleagues without subjecting them to an interview process and improperly offered them higher salary scales than the normal remuneration scales as prescribed by the Pikitup Remuneration Policy.

The labour union alleged that the friends and former colleagues appointed improperly and offered higher salary scales were Mr. Mthembeni Ncanana, Ms. Phumla Mokele, Mr. Kelvin Ngwenya, Ms. Kathija Docrat, Ms. Michelle Alexander, Mr. Ike Sampson, Mr. Gerhard Booyesen, Mr. Donovan Denyssen and Ms. Aneesa David.

It was further alleged that Mr. Ngwenya, who is the son of Ms. Nair's domestic worker and resided at her house, came in with a group of interns and was the only one appointed permanently without following the proper recruitment process. The interns at Pikitup were compensated approximately R2000.00 per month, but Mr Ngwenya, it was alleged, was paid R9 500.00 per month.

SAMWU also alleged that Mr. Booyesen was recommended to Pikitup by a former General Manager: Fleet, Mr. James Hunter, without an interview and was appointed as the Acting General Manager: Fleet.

Other allegations made by SAMWU were that there were salary discrepancies amongst employees of Pikitup as all officials related to Ms. Nair were remunerated on higher salary scale levels. In demonstrating the levels of the salary discrepancies, SAMWU further stated that:

1. In October 2011, Mr. Sampson was absorbed with a salary of R3 000.00 per month. Later in 2012, he became Ms. Nair's Executive Driver/Messenger and his salary was adjusted to R15 000.00 per month. At the time of lodging the complaint, Mr. Sampson was earning R16 951.13 per month;
2. In May 2015, Mr. Denyssen was re-appointed as the General Manager: Infrastructure at a salary of R2 400 000.00 per annum;
3. The salary of Mr. Ncanana, the General Manager: Partnership, was increased from R760 000.00 to R1 105 033.00 per annum during 01 March 2013 and 01 December 2014; and
4. In April 2015, Ms. David was appointed as the General Manager: Fleet at a salary of R1 300 000.00 per annum.

In addition to these, SAMWU alleged that Ms. Nair removed seven black employees from critical positions and replaced them with as many employees of Indian descent.

Further allegations were that Ms. Aneesa David was promoted to the level of the Chief Operations Officer without completing her probation as the General Manager: Fleet. During April 2014, Mr. Denyssen allegedly resigned from Pikitup after he was charged with misconduct for theft of Pikitup cellular telephones which he unofficially issued to Ms. Nair and her family members.

In June 2015, Ms. Nair and Mr. Denyssen were allegedly arrested by the Hillbrow South African Police Service (SAPS) detectives for theft of Pikitup cellular telephones as per CAS 1308/04/2014 and were detained at the Hillbrow SAPS. Pikitup allegedly paid her bail and for her legal representation. It was alleged no disciplinary action was taken against Ms. Nair while Pikitup funds were used to pay for her bail and legal representation.

All consultants appointed during Ms Nair's management were allegedly not appointed through a proper Supply Chain Management process and were allegedly loaded on the SAP system as Pikitup's employees. The consultants allegedly received benefits like normal employees and were further provided with tools of trade at the expense of Pikitup; and Pikitup was alleged to have irregularly procured office buildings to accommodate Pikitup Head Office.

Following an investigation, I found the allegation that Pikitup improperly awarded and subsequently extended the contract for the supply, operations and maintenance of plant equipment to the designated landfill, garden sites and waste management depot as well as ad hoc rentals as and when required of the service provider (Yellow Plant project) to Aqua in despite the findings of Ernst & Young, Gobodo Forensic & Investigative Accounting and National Treasury investigations to have been substantiated.

The allegations that:

1. the appointment of Ms. David was irregular;
2. the appointment of Mr. Booyesen was improper and irregular;
3. the appointment of Mr. Denyssen by Ms Nair as someone associated with her was improper and irregular;
4. the appointment of Mr. Ngwenya, Ms Nair's associate, friend or relative, was improper and irregular;
5. the appointment of Mr. Ncanana was improper and irregular;
6. the appointment of Ms. Phumla Mokele was improper and irregular;
7. the appointment of Mr. Ike Sampson was improper and irregular;
8. the appointment of Ms. Docrat was irregular; and
9. the appointment of Ms. Alexander was improper and irregular were all substantiated.

Accordingly, the conduct of Ms. Nair in the circumstances amounts to improper conduct in terms of section 182(1)(a) of the Constitution, maladministration as envisaged in section 6(4)(a)(i) and abuse or unjustifiable exercise of the power in terms of section 6(4)(a)(ii) of the Public Protector Act.

I found, however, that the allegations that Ms. Nair irregularly removed black employees from critical positions and replaced them with Indian employees were not substantiated.

I found that the allegation that Pikitup improperly failed to investigate the alleged theft of Pikitup cellular telephones, which resulted in Ms. Nair and Mr. Denyssen being arrested by the Hillbrow SAPS, bail paid and legal representation provided to them was substantiated.

In this regard, Pikitup failed to adhere to its own Cellular Telephone Policy, which covers employees of Pikitup as well as fixed term employees. The issuing of official cellular telephones to Ms. Nair's family was against the policy in the sense that such telephones were issued to family members of Ms. Nair, who were not employees of Pikitup. The phones were not regarded as a work tool to be used in order to execute the business of Pikitup.

Evidence indicated that the Board of Pikitup interfered with the administration of justice by unduly taking a resolution which sought to cause the withdrawal of the criminal proceedings against Ms. Nair and Mr. Denyssen from the court roll. I view such conduct by the Board as a breach of its fiduciary duty.

Pikitup improperly failed to institute disciplinary proceedings against Ms. Nair and Mr. Denyssen regarding the theft of cellular telephones as well as to recover the legal costs that were incurred by Pikitup as result of their arrest in connection with the theft of cellular telephones.

Accordingly, the conduct of Pikitup, specifically that of the Board in the circumstances amounts to improper conduct in terms of section 182(1)(a) of the Constitution, maladministration as envisaged in section 6(4)(a)(i) and unjustifiable exercise of the power in terms of section 6(4)(a)(ii) of the Public Protector Act.

The allegation that Pikitup irregularly appointed Doris Dondur, Joenne Murphy, and Rene Kenosi as consultants without following proper SCM processes is substantiated.

Regulation 35(2) of the Municipal Supply Chain Management Regulations which deals with appointments of consultants provides that a contract for the provision of consultancy services to a municipal entity must be procured through competitive bids if the value of the contract exceeds R200 000.00 (VAT included) or if the duration period of the contract exceeds one year.

Evidence revealed that Pikitup did not comply with Regulation 35(2) of the Municipal Supply Chain Management Regulations in the sense that the consultants were not procured through competitive bids since the value of their contracts exceeded R200 000.00 (VAT included). There was also no indication of a proper and approved deviation process from the normal procurement processes in this instance from Pikitup which could have otherwise justified the non-compliance with the applicable legal prescripts.

Accordingly, the conduct of Pikitup in the circumstances amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

Lastly, The allegation that the procurement process followed by Pikitup in the acquisition of its office space to relocate Pikitup Head Office was improper and in contravention of applicable legal prescripts is substantiated.

Pikitup improperly followed and relied on clause 14.1 of its SCM Policy (version 2/2023) to procure its Head Office building. Failure by Mr Maharaj to indicate any of the prescribed reasons for deviation in the memorandum and failure by Pikitup to record and report same to the Board and to the meeting of the Council amounts to a contravention of the MFMA SCM sub-regulations 36(1) and (2).

Accordingly, the conduct of Pikitup in the circumstances amounts to improper conduct in terms of section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

As part of remedial action, I direct the Chairperson of the Pikitup Baord to do the following:

1. Within 60 working days of the issuing of this report, ensure that disciplinary steps are taken against all implicated officials of Pikitup who together with Ms Nair flouted, subverted or violated the MFMA and the Pikitup's SCM Policy in this matter;
2. Within 60 working days of the issuing of this report, ensure that disciplinary steps are taken against all implicated officials of Pikitup who together with Ms Nair flouted, subverted or violated the Pikitup's Recruitment and Selection Policy in this matter;
3. Within 60 working days of the issuing of this report, ensure that all irregular employment appointments identified in this report are reviewed and properly processed in line with the Pikitup's Recruitment and Selection Policy;
4. Within 60 working days of the issuing of this report, ensure that all the contracts with the service providers or consultants irregularly procured are cancelled;
5. Within 60 working days of the issuing of this report, ensure that criminal action is instituted (in accordance with section 173(2) of the MFMA) against all current and/or former employees of Pikitup implicated in this report to have committed an act of financial misconduct;
6. Within 90 working days of the final report, ensure, through a civil litigation claim and in line with section 176(2) of the MFMA, recovery of unauthorised, irregular or fruitless and wasteful expenditure by Ms Nair and/or any other official in their personal capacity for all the financial misconduct identified in this report. An actual amount is to be determined by the Board following a thorough verification of financial losses emanating from the procurement and misconduct identified in this report;
7. Within 60 working days of the issuing of this report, ensure that all the relevant Pikitup staff receive regular training on the Pikitup's SCM Policy as well as the Recruitment and Selection Policy; and

8. Within 30 working days of the issuing of this report, the Pikitup's Board of Directors must implement the following recommendations from the National Treasury:

The Board should ensure that regular Supply Chain Management training is provided to all Pikitup staff involved in procurement to ensure consistent and appropriate application of Supply Chain Management prescripts.

The Plight of Whistle-blowers

As the Pikitup case demonstrates, the demon of poor governance continues to ravage society unabated, causing untold harm to public resources as it goes along. We continue to see its manifestations in the private sector too. The VBS Mutual Bank saga, aspects of which we are investigating, is the latest in a string of case studies that best illustrates this point.

The saddest part is the reality that the poor remain the hardest hit by the scourge irrespective of whether the thieving occurs in the public or the private sector. It saddens me to acknowledge that, it would appear that we are losing the battle against bad administration.

One of the most potent weapons in the push-back against this cancerous practice in whistle-blowing. It is the corner stone of the fight against this malady. Unfortunately, blowing the whistle on wrongdoing brings with it a lot of personal sacrifice and risks for those who dare to do the right thing and lift the lid on wrongdoing wherever it rears its head.

Truth be told, the country does not do enough to acknowledge the efforts of those who blow the whistle on corruption. Instead, these patriotic men and women are most likely to be subjected to untold hostility and victimisation.

Over the years, this office has worked hard to bring to the surface the plight of whistle-blowers, with a view spark some sort of action on the part of policy makers. However, there doesn't seem to be any movement and the ramifications for those that risk it all to do what is right are huge.

We have, in the past, investigated and confirmed allegations that government employees, who had witnessed wrongdoing and blew the whistle under the Protected Disclosure Act (PDA), had, in contravention of the law, been subjected to occupation detriment, getting kicked out of the system.

In terms of the PDA, no employee may be subjected to any occupational detriment by his or her employer on account of having made a protected disclosure. The act defines a protected disclosure as a revelation made in good faith to, among other institutions or persons, a Member of Cabinet, the Auditor General and the Public Protector, by an employee who reasonably believes an impropriety they are disclosing falls within the ambit of the institution or person it is disclosed to and that the allegations concerned are substantially true.

In those particular cases concerned, the organs of state involved – that is the Department of Justice and the KwaZulu-Natal Office of the Premier – were directed not only to reinstate the

officials concerned but to also back-pay them from the day they left their employment unceremoniously.

But beyond providing a remedy for the affected individuals, our reports are meant to fix the system in such a way that the problems in question are not recurrent. Apparently, our advice keeps falling on deaf ears as demonstrated by a number of cases that we have dealt with in recent months.

The idea is and has always been that government in its entirety must use our reports as some sort of touchstones much in the same way as court decisions become law. These reports are meant exclusively for those implicated.

In August, I reported on my investigation into allegations of undue delay, gross negligence, improper conduct and maladministration by Minister of Police and the South African Police Service (SAPS) in failing to provide Umzimkhulu Local Municipality's whistle-blowers, Messrs. Thabang Zulu and Les Stuta, with security protection.

This was an investigation within an investigation. I had been investigating allegations of maladministration, corruption and the unconscionable expenditure of public funds by the Municipality in connection with the restoration of the heritage of the dilapidated uMzimkhulu Memorial Hall.

It had been alleged that a Councillor of the Municipality, the late Cllr Sindiso Magaqa, had been killed for having exposed and/or enquired about the allegations of corruption in the construction of the Hall, in particular the fact that the amount of public funds that had already been spent by the municipality was not commensurate with the work that had already been done and completed in the construction of the hall.

As part of that investigation, I interviewed Messrs. Zulu and Stuta as part of my investigation. They happened to have been speakers at Cllr. Magaqa's funeral, where they spoke about the issues which later became the core of my investigation.

It was during the interview that they revealed to me that they feared for their lives. They were worried that they may be assassinated over the remarks they had uttered at the funeral. They requested my intervention. In particular, they requested protection at the state's expense.

I then turned to the competent organs of state in this regard, namely the State Security Agency (SSA) and the SAPS. As you may have seen in the report, I found that the Minister of Police failed to provide the two whistle-blowers with protection.

I directed, among other things, that the President reprimands the Minister and takes steps to ensure that this does not recur. As you may be aware, the Minister disagrees with my findings in this regard and has taken the matter on judicial review.

Of course the Minister is entitled to the kind of legal action he has taken. And so, the remedial action has yet to be implemented. Needless to say, the lives of Messrs. Zulu and Stuta, who have had to flee their homes, remains in peril.

In another case, I issued at the end of August a report following an own initiative investigation into the conduct of the Universal Service and Access Agency of South Africa (USAASA) board in obstructing me from investigating complaints lodged by the parastatal's Chief Executive Officer Mr. Lumko Mtimde in May 2018.

Mr. Mtimde had alleged maladministration and improper conduct on the part of the board in respect of the appointment of the Company Secretary and a myriad other corporate governance issues.

He had also alleged that the board corruptly and irregularly interfered after he set out to stem what he saw as unlawful and irregular processes pursued as part of the Digital Migration project; in particular the procurement process for the production, manufacturing and distribution of Set Top Boxes. The board intended to take disciplinary steps against him.

The complaints were lodged under the PDA. On receipt of the complaints, I notified the board that Mr. Mtimde had made a Protected Disclosure in good faith and requested the board to hold its disciplinary inquiry into Mr. Mtimde in abeyance pending the investigation of the complaints he had lodged. However, the board defiantly forged ahead with the inquiry. Mr. Mtimde was subsequently suspended.

Following my investigation, which confirmed the allegations of obstructing me from investigation Mr. Mtimde's complaints, I directed among other things that his suspension be lifted within seven days of the report.

Today I release yet another report which puts a spotlight on the plight of whistle-blowers. It relates to allegations of unfair treatment and victimization of an alleged whistle-blower, Mr Thuso Bloem, by the Greater Taung Local Municipality in the North West, resulting in his unfair suspension and consequent dismissal.

In a complaint lodged in May 2015, Mr. Bloem, a former Senior Administration Officer of the Municipality, alleged that the former Municipal Manager, Mr Mpho Mofokeng, unlawfully and improperly suspended and dismissed him following his making a Protected Disclosure to the then Mayor, Councillor Makgalemane, regarding what he considered to be irregular procurement activities.

My investigation revealed that, indeed the Municipality improperly suspended and later dismissed Mr. Bloem in retaliation against his Protected Disclosure regarding suspected corruption, conflict of interest, maladministration and related procurement irregularities by Mr Mofokeng. I found that this action amounted to an occupational detriment as envisaged in the PDA.

Mr. Bloem reported a Protected Disclosure to the Municipality. This led to him being subjected to an occupational detriment in that he was unlawfully suspended and later dismissed by Mr Mofokeng.

I further found that, as a result of this action, Mr. Bloem suffered immense financial, emotional and social prejudice. In the main, he endured loss of remuneration over the past

five years and eight months, financial expenses relating to fighting his intended discharge and dismissal mainly in the form of legal fees, transport and communication costs.

Among other things, I directed that Mr. Bloem be reinstated within 30 working days from the date of this report and that he be paid all remunerations that would have accrued to him had he not been dismissed, having taken into account annual increases together with interest calculated at the applicable rate as prescribed by the relevant authority.

I implore decision makers across the public administration to take note of this and other reports I have referred to, which deal with the protection of whistle-blowers. One cannot overemphasise the pivotal role that whistle-blowers play in the war on maladministration and other maladies such as corruption. Whistle-blowers are all we have and the real test of our seriousness about rooting corruption lies in how we treat those to who – like Zulu, Stuta, Mtimde and Bloem – dare to place their heads above the proverbial parapet.

I now turn to matters involving members of the Executive.

Minister Zulu

I investigated allegations of a possible violation of the Executive Ethics Code and the Powers, Privileges and Immunities of the Parliament and Provincial Legislatures Act, 4 of 2004 by the Minister of Small Business Development, Hon. Lindiwe Zulu.

This followed a complaint lodged by the DA Shadow Minister of the Department of Small Business Development, Hon. Mr Toby Chance, MP on 22 March 2018 in respect of Minister Zulu's response to a question put to her in Parliament on 29 November 2017, regarding Ministerial vehicles for the Department.

Mr Chance alleged that Ms Zulu wilfully misled Parliament and/or misrepresented information to Parliament, in her oral reply to a Parliamentary question posed to her by Mr Chance in the National Assembly on 29 November 2017 relating to new cars that were allegedly in the process of being bought for Ms Zulu and the Deputy Minister by the Department.

The Transcription of the Proceedings of The National Assembly held on Wednesday, 29 November 2017, received from Mr Chance with his complaint, reveals that Mr Chance put it to Ms Zulu that the Department of Small Business Development had bought a Mercedes Benz E400 valued at R1,1 million for her, a Lexus GS 350, valued at R900,000 for her Deputy Minister and a BMW 5 series for R1 million, all three cars valued at R3,1 million.

Mr Chance questioned the justification of the purchase of these vehicles and the exorbitant expenditure by the Department taking into consideration the current challenges facing small businesses in South Africa.

In response to Mr Chance's questions and statements, Ms Zulu indicated that she did drive a Lexus which was valued at R580 000. She stated that she did not have a BMW bought by the Government. Ms Zulu also pointed out that the Deputy Minister drove a car which was inherited from the Department of Trade and Industry.

Information received through investigation of the matter revealed that when Ms Zulu responded to Mr Chance's statement regarding the vehicles in Parliament on 29 November 2017, her response was based on the current vehicles being utilised by her and the Deputy Minister and the only vehicles within her knowledge and possession as at that date (being 29 November 2017).

According to Ms Zulu, when a budget is approved in Parliament, the document is not immediately available to the Minister, but is published on the National Treasury's website to be accessed by the Department's CFO & Accounting Officer. The document is then routed via submissions to the Minister's office.

Ms Zulu further indicated that at the time of her reply to Mr Chance, on 29 November 2017, she was not privy to the full Adjusted Estimate document and was therefore not aware (nor made aware) of the shifting of funds from Goods and Services to Machinery and Equipment, authorising and approving the purchase of motor vehicles for her and the Deputy Minister. Further, she stated that on 29 November 2017, she was not aware that the cars were being purchased for herself and the Deputy Minister nor of the intent of the Department to purchase the cars.

Ms Zulu made a written submission to Parliament on 15 March 2018 which was a true reflection of the actual transaction, which was a purchase on 20 December 2017 of a BMW 540i for her, valued at R874 876.80, and a BMW 540i for the Deputy Minister, valued at R944 376.80. According to Ms Zulu, both vehicles cost a total of R1 819 253.60 which was far less than the R3 000 000.00 that was budgeted for.

The two BMW 540i's were purchased on 20 December 2017 after the written approval of the expenditure was obtained via submission by the Accounting Officer of the Department on 6 December 2017. The BMW's were purchased in terms of the National Treasury Transversal Agreement for BMW and Mercedes Benz and further in accordance with National Treasury's Transversal contract number RT57 of 2016.

The vehicles that were planned to be purchased were abandoned because of the cost of the Mercedes Benz E400 and the BMW X5 was also abandoned because of the price difference. The Lexus was not bought because it was not contained in the list of the budgeted vehicles in terms of the National Treasury Transversal Agreement for BMW and Mercedes Benz (Commitment for Goods and Services).

Ms Zulu justified the need for new vehicles for her and the Deputy Minister based on paragraph 1.2.3 of Chapter 5 of the Ministerial Handbook, wherein Departments are authorised to purchase 2 official vehicles each for the Minister and Deputy Minister directly from manufacturers or dealerships when the current vehicle has reached mileage of 120 000km or is older than 5 years.

Based on the response received from the Minister a finding could not be made that Ms Zulu wilfully misled Parliament nor that she prevented Parliament in exercising its oversight function over the Department, in terms of Section 7(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act, as alleged by the Complainant.

No merits could be found to the allegations and a closure report has been submitted to the Complainant, the Respondent and the President in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, section 8(1) of the Public Protector Act, 1994, and section 3 of the Executive Members Ethics Act, 1998.

Former Minister Nkosinathi Nhleko

I investigated allegations of a violation of the Executive Ethics Code by the former Minister of Police the Hon. Mr Nkosinathi Nhleko, MP. It followed a complaint by Mr Zakhele Mbhele, MP for the DA, who alleged that former Minister Nhleko improperly awarded a contract worth R30 million to a Non-Governmental Organisation (NGO) by the name of Indoni, which is run by his partner Dr Nomcebo Mthembu, without going out on an open tender;

In doing so, alleged Mr. Mbhele, the former Minister was acting in violation of the Executive Ethics Code, specifically paragraphs 2.3 (d)(e) and (f), as well as paragraph 3.1(c).

The former Minister approached the Public Protector on 29 November 2016, requesting an investigation into allegations reported in an article published by the City Press on 27 November 2016, alleging that he was involved in the payment of millions of Rands in favour of Indoni SA (Indoni), an NGO owned by his partner, Dr Nomcebo Mthembu.

He stated that the alleged report in the newspaper are damning, misleading, malicious and suggest that he is implicated in an unlawful instruction to enrich his partner.

During the investigation, it came to my attention that the Civilian Secretariat of Police Services (CSPS) had lodged a complaint with the Public Service Commission (PSC) to investigate the alleged irregularity in the process followed by the CSPS in awarding a contract of R30.8 million to a company called Indoni SA.

The PSC investigation report *inter alia* made the following findings:

1. That there was no contract worth R30.8 million that was entered into between the CSPS and Indoni as alleged in the media;
2. That based on documents provided to PSC by CSPS, that in fact a total amount of R1 254 428.72 was paid to Indoni; and
3. That payments made by CSCP failed to comply with the National Treasury's Practice Note No. 8 of 2007/2008, by failing to invite competitive bids in the procurement process and also failed to record the reasons for deviation from normal procurement processes.

Consequently, the PSC made the following recommendations:

1. *"The CSPS must ensure that when it conducts procurement processes, it must always adheres to its own supply chain management policies and all other related*

prescripts that govern supply chain management processes within the Public Service; and

- 2. The CSPA must ensure that when deviating from normal procurement processes, it always ensures that the reasons for deviating from inviting competitive bids are recorded and then approved by the Accounting Officer.”*

No further recommendations were made relating to the officials who were responsible for the malfeasance indicated above.

The allegation that former Minister Nhleko improperly awarded a contract worth R30 million to an NGO named Indoni, which is run by his partner Dr Nomcebo Mthembu, without going out on tender and, in doing so acted in violation of the Executive Ethics Act, specifically in violation of paragraphs 2.3 (d) (e) and (f), as well as paragraph 3.1 (c), could not be substantiated by the evidence and the information obtained during the investigation.

At the time the MOU with Indoni was signed, former Minister Nhleko was not yet appointed as the Minister of Police and he was also not involved in the administrative processes leading to the utilization of the services of Indoni and the subsequent payment to the said service provider . The MOU had been signed on 23 May 2014 between the former Minister of Police Mr Nkosinathi Mthethwa and Civilian Secretariat of Police Service (CSPA).

Minister Gigaba

I investigated an alleged violation of the Constitution, the Executive Ethics Code and the Code of Ethical Conduct and Disclosure of Members’ Interests for Assembly and Permanent Council Members, 5th Parliament, 2014 by the Minister of Home Affairs, Mr. Malusi Knowledge Gigaba, MP (Minister Gigaba). This followed a complaint lodged on 22 February 2018 by Mr. John Steenhuisen, MP of the Democratic Alliance.

Mr. Steenhuisen, MP attached to his complaint a judgement delivered by the Gauteng Division of the High Court on 14 December 2017 in the matter of Fireblade Aviation (Pty) Ltd v Minister of Home Affairs.

In terms of the judgement, Judge Tuchten held inter alia that:

“...there is no escaping the conclusion that...the Minister has deliberately told untruths under oath’ (my emphasis)

...

By telling a deliberate untruth on facts central to the decision of this case, the Minister has committed a breach of the Constitution so serious that I could characterize it as a violation’ (my emphasis).”

In this regard, it is the contention of Mr. Steenhuisen, MP that Minister Gigaba, “not only lied under oath but also acted in breach of his constitutional duties” and the Executive Ethics Code.

Following my investigation, I sent Minister Gigaba a section 7(9) notice on 8 October 2018 to afford him an opportunity to respond to the provisional findings. I gave him 10 days from the date of the notice within which to respond. Minister Gigaba failed to respond and the report was compiled accordingly.

Let me also stress the point that, in this matter, I was not investigating issues that had been before the court. In terms of section 182(3) of the Constitution, I cannot investigate court decisions. Accordingly, my focus was on whether or not the Minister's conduct as found by the court was consistent with relevant provisions of the Executive Ethics Code.

I found that the allegation that Minister Gigaba violated the Constitution and the Executive Ethics Code when he told an *'untruth under oath'* was substantiated.

As a Member of the Executive, telling an 'untruth under oath' and before a court of law is a direct violation of section 165(4) of the Constitution, paragraph 2.1 (b)–(d) and paragraph 2.3(b) of the Executive Ethics Code as well as paragraph 4.1.3 and 4.1.4 of the Parliament Code of Ethics.

By breaching the above provisions of the Executive Ethics Code and the Parliament Code of Ethics, Minister Gigaba violated section 96(1) of the Constitution, which states that, "Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.

The Minister's aforesaid conduct is also in violation of paragraph 4.1.3 and 4.1.4 of Parliament Code of Ethics, which requires the Minister, as a Member of the National Assembly, to act on all occasions, in accordance with the public trust placed in him and discharge his obligations, in terms of the Constitution, to Parliament and the public at large.

In addition to the findings, I also made the following observations:

National Key Points are strategic installations as regulated by National Key Points Act, 102 of 1980, such as International Airports, military bases which requires special security. Therefore any person employed at such National Key point may be vetted under the National Strategic Intelligence Act, 39 of 1994.

The Executive needs to consider processes which should be followed and the level of approvals for utilisation of National Key Points by private companies.

I now turn to the remedial action. I direct that:

1. The President must take appropriate disciplinary action against Minister Gigaba for violating the Constitution, the Executive Ethics Code and the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members;
2. The President must, in terms of section 3(5)(a) of the Executive Members' Ethics Act, within a reasonable time, but not later than 14 days after receiving this report,

submit a copy thereof and any comments thereon together with a report on any action taken or to be taken in regard thereto, to the National Assembly;

3. The Speaker of the National Assembly must, within 14 days of receipt of this Report from President, refer Minister Gigaba's violation of the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members to the Joint Committee on Ethics and Members' Interests for consideration in terms of the provisions of paragraph 10 of the Parliament Code of Ethics;
4. The President must advise the Public Protector of action taken by the President within 20 days of the date of this Report; and
5. The Speaker of the National Assembly, within 30 days of publication of this report, provide the Public Protector with the implementation plan on steps to be taken against Minister Gigaba for breaching the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members.

Thank you.

Adv. Busisiwe Mkhwebane
Public Protector of South Africa