



**Statement by the Public Protector Adv. Busisiwe Mkhwebane during a media briefing at the Public Protector House in Pretoria on Monday, 19 June 2017.**

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**Programme Director and Spokesperson of the Public Protector, Ms. Cleopatra Mosana;**

**Chief Executive Officer of the Public Protector, Mr. Themba Dlamini;**

**Acting Chief of Staff, Ms Linda Molelekoa;**

**The Public Protector Team;**

**Members of the media;**

**Ladies and gentlemen;**

Good morning and thank you for joining us this morning. Most importantly, thank you for helping me report back to the people of South Africa on what I have been busy with since the last time we engaged.

I have now been in office for a full eight months. Contrary to popular belief, it has been a busy period during which I laid the foundation for solid relations with stakeholders while also getting down to investigation work.

While on the road, as part of the nationwide stakeholder engagement that took place between February and May, I also managed to finalise and issue up to 11 investigation reports.

Some of these reports form part of the 10 787 out of 16 397 service and conduct failure matters that we have finalised during the year leading up to March 2017.

On service failure matters, I am certain the reports that we released will make a significant difference in the lives of the members of the public affected while ensuring that gaps

identified in the system, which certainly gave rise to the problems as uncovered, are addressed to avoid future recurrences.

Regarding conduct failure, which is essentially matters of governance, it is my hope that those that have been caught on the wrong side of the law, policies, regulations and other legal standards will be dealt with as per my remedial action to send a strong message that wrongdoing will not be tolerated.

More importantly, I trust that our modest contribution in this regard will bring us a step closer to playing our part in the mandate we share with fellow Chapter 9 institutions to strengthen and support constitutional democracy.

The outcomes of three of the 11 reports I am referring to were already communicated to the public during my last press conference when I marked a 100 days in office. They follow thorough investigations involving the sufferings of regular persons and improper conduct concerning Members of the Executive.

Today, I am releasing a further four, taking the total number of reports issued in the last eight months to 15.

I must add that all of these reports result from the investigations that were pending at the time of my assumption of duty. In the circumstances, it was my duty as the incumbent Public Protector to pick up where my predecessor Adv. Madonsela left off and finalise those matters to ensure good governance in all state affairs.

Before I reveal my findings on the four new reports, let me say that the stakeholder engagement blitz that I have just concluded last month was worth every cent of the R1.5 million budgeted and spent on it.

You would know that I visited 18 towns across the country between February and May 2017. During the tour, I picked up more than 1000 service delivery and conduct failure complaints.

These included saddening stories from members of the public in areas such as Ratanda, Thohoyandou, Ermelo, Thaba Nchu, Madibogo, Ngilanyoni, Masiphumelele, Mqanduli and Ritchie.

Among the cases such were one on the plight of the community of Masiphumelele in the City of Cape Town, where people live in squalor, right on the banks of a stinking drainage canal that not only poses a health hazard to residents but danger too as children playing nearby could fall and drown in the drainage.

That community also finds itself having to live with the indignity of a block of free-standing, individual toilets on the one side of their settlement. Some of these facilities are not working.

This case is among several across that we have identified for prioritisation in line with my vision of making an impactful contribution in the lives of the people at the grassroots.

Others include the plight of communities where traditional authorities and elected local government authorities are in disagreement over who has the power to allocate land for development purposes. We picked this up in the Free State and the North West.

There is also the thorny issue of the dilemma of farm dwellers who live in terror at the hands of oppressive farmers. This came up sharply in the Mpumalanga areas, among other provinces.

Let me turn now to eight of the 11 reports that I have released over the past eight months, copies of which are already on the website. I reported on the other three during my last media briefing on the occasion of my 100 days in office.

### **1. Transnet/South African Airways**

I investigated allegations of maladministration by Transnet relating to the bonus payments on the pension benefits accrued to the complainant in the matter, Mr DA Burnett, for the full period of his pensionable service with the South African Airways. Mr Burnett was employed as a pilot at the SAA until July 2000.

Three years before he left the employ of SAA, the retirement age of pilots was extended from the age of 58 to 60. Accordingly, when Mr Burnett turned 58 in 1998, SAA retained his services for another two years.

Mr Burnett was a member of the Transnet Pension Fund. According to him, the Transnet Second Defined Benefit Fund (TSDBF) started paying annual bonuses to its retired members in 2007. However, he has only been receiving bonuses on the portion of his pension benefits accrued up to the age of 58 and not 60.

I found that the allegation that Transnet failed to consult Mr Burnett on the impact of the implementation of the SAA Pilots' regulating Agreement, 1997 (prior to the anticipated Rule change of TSDBF) on his membership of the TSDBF and resultant pension entitlements is substantiated. I further found that neither the collective SAA Pilots and Flight Engineers' agreement, the Income Tax Act nor the conditions of service of the complainant provided for the termination of the complainant's membership of the TSDBF while remaining in service by virtue of the extension of his retirement age from 58 to 60.

As part of remedial action, I directed that the Group Chief Executive (GCE) of Transnet takes the necessary steps to recover from TSDBF, on the complainant's behalf, in lieu of past and future bonuses on the excluded portion of his pension emoluments, the actuarial value of the amount that would presently be standing to his credit for the period that his contributions had been received and invested by the TSDBF from July 1998 to July 2000 in terms of the Rules of the TSDBF.

I further directed the GCE to take necessary steps to recover from TSDBF, on the complainant's behalf interest at a rate prescribed in terms of the Prescribed Rate of Interest Act No 55 of 1975, on the withdrawal benefit owed to the complainant (gratuity and annuity) when his membership with the TSDBF was terminated, for the period July 1998 to the date when the benefit was paid by the TSDBF.

### **2. Compensation Fund**

I investigated allegations of undue delay and maladministration by the Compensation Fund with regard to the processing and payment of compensation benefits to the employees of Exempted Employers.

This followed complaints from five former employees of the South African Police Services, who alleged that the Fund was unable to print awards for Exempted Employers. These are employers, who, in terms of the applicable law, do not have to pay assessment fees based on their workers' earnings and the risks associated with the type of work.

Four of the complainants, aged between 55 and 61, were suffering from Post-Traumatic Stress Disorder. The other was given an award by the Fund for a permanent disablement concerning a back injury in November 2013. However, the award had wrongly assessed his disablement as 30% instead of 20%.

Upon analysis of the complaints, I decided to conduct a systemic investigation on whether there was undue delay by the Fund to process and pay compensation benefits to the complainants and whether they were improperly prejudiced by the alleged conduct of the Fund.

Following the investigation, I found that allegations that the Fund unduly delayed to process and pay the complaints compensation benefits were substantiated. She found that due to the deficiencies in the Umehluko system, the Compensation Fund has been unable to print awards for Exempted Employers since August 2014.

I further found that the Fund failed to conduct due diligence before implementing its Umehluko system to determine whether the system would suit its needs and would be implementable.

The Fund failed to explore any other viable solutions to ensure that, pending the full functionality of the system, compensation benefits to complaints is processed and paid, in an attempt to address the delays brought about by the challenges associated with the system.

I further found that the complaints were denied an opportunity to access money which could have made their financial position more tenable.

As part of the remedial action, I directed the Compensation Commissioner to issue written apologies to each of the complainants for the delays to process and pay compensation benefits to them, and to further provide full and comprehensive reasons regarding the cause of the delay. This was to occur within fourteen days from the date of receiving the report.

I directed the Director-General to take urgent steps to ensure that the Fund pays interest, in line with the applicable rate, on the lump sum arrear pensions, alternatively lump sum payment, that each of the complainants were entitled to, from the date on which the awards became payable to the date of issuing of the correct awards. This ought to happen within 90 days of receiving the report.

The Director-General also had to take urgent steps to ensure that the Fund conducts an audit to establish how many other claimants were also affected by the delays associated with the implementation of the Umehluko system and to consider in respect of each of those claims/claimants so affected, its obligation to pay interest to the relevant claimant on any lump sum award or lump sum arrears pension that the relevant claimant is/was entitled to.

### **3. Eastern Cape Department of Social Development**

I investigated allegations of delay by the Eastern Cape Department of Social Development in paying a certain Ms Zanele Malanda's pension benefits along with interest thereon and failure to pay out her leave gratuity upon her exiting the development's employ.

I found that the department unduly delayed the payment of the Ms Malanda's pension benefits held with the Government Employees Pension Fund (GEPF) and was therefore liable for the payment of interest. I found that the department delayed in authorising the necessary exit documents for Ms Malanda by nearly 14 months after her discharge from service.

I further found that the Department provided the GEPF with an incorrect appointment date of Ms Malanda. It reflected 1997 instead of 1992 and was only rectified on or about 2010.

In addition, I found that the ECDSD failed to pay Ms Malanda's leave gratuity. Ms Malanda suffered prejudice as she was without income since July 2002 when her salary was stopped by the ECDSD.

As part of the remedial action, the I directed the Head of the Eastern Cape Department of Social Development to ensure that Ms Malanda is paid interest for the delayed payment by the GEPF of the complainant's pension benefits at the same rate as prescribed (as at the time) by the Minister of Justice and Constitutional Development in terms of Section 1(2) of the Prescribed Rate of Interest Act. This had to happen within 30 days of receipt of the report.

The Head of the ECDSD also had to ensure that the complainant is paid the leave gratuity due to her and interest thereon at the same rate as prescribed (as at that time) by the Minister of Justice and Constitutional Development in terms of Section 1(2) of the Prescribed Rate of Interest Act within 30 days of receipt of the report.

I further directed the Head of ECDSD to write a letter of apology to the complainant for the delay in the payment of her leave gratuity and interest thereon as well as the delay in processing her exit documents.

### **4. Tshwane South College (Minister taking it on judicial review)**

I investigated allegations of improper conduct involving maladministration, abuse of power by the Principal of Tshwane South College (TSC), tender irregularities, improper appointment of consultants.

I also investigated allegations of failure by the erstwhile MEC for Education in Gauteng, Hon. Angie Motshekga, and Acting Head of Department Mr. L Davids, to provide the outcome of the Gauteng Shared Services Centre (GSSC) Forensic Report on TSC. I further investigated alleged failure by former MEC Barbara Creecy to implement the recommendations of the GSSC Forensic Report.

In addition to these, my investigation also dealt with alleged harassment of whistleblowers and the prejudice they suffered in this regard.

The investigation followed three complaints lodged in a space of three years by three individuals, all of whom were doing so on behalf of employees of the TSC, who organised under what is called TSC Forum.

At the end of the probe, I made the following findings:

1. The allegation that former MEC, Hon. Motshekga did not provide the complainants with a copy of the GSSC Forensic Report, communicate to them the outcome or furnish them with the reasons thereof was substantiated.
2. The allegation that former MEC, Hon. Creesy failed to implement the recommendations of the GSSC Forensic Report was partly substantiated in that, on assumption of duty in 2009, she commenced to discipline the Principal and his Deputy. However, she withdrew the disciplinary hearings and reinstated the Principal on the basis of a second legal opinion, which was in contrast with the earlier one.
3. The allegation that the Principal victimised and harassed TSC employees by subjecting them to disciplinary action and termination of their contracts as a result of their disclosure to MEC Motshekga was substantiated. They were charged for various acts of misconduct.
4. I found that the Principal did improperly appoint Kwinana and Associates to investigate fraudulent honorarium claims.
5. The allegation that the TSC council and Acting Principal, Mr Kraft, improperly appointed GMZ Consulting to conduct disciplinary hearings at TSC was substantiated.
6. The allegation that the Deputy Principal failed to disclose an alleged conflict of interest and that the Acting Principal failed to manage the conflict in appointing GMZ Consulting was not substantiated.
7. The allegation that the complainants suffered prejudice was substantiated.

As part of remedial action, I directed the Minister of High Education to, among other things, conduct an inquiry to review the dismissals and disciplinary actions taken against the members of the TSC Forum.

I also directed the Minister to consider disciplinary action against the Principal for failing to take steps against the Acting Principal and others by not terminating the GMZ Consulting contract.

I further directed the Minister to establish mechanisms to effect the protection of employees who make protected disclosures to the TSC.

Lastly, I directed the TSC council to take appropriate steps to rectify the current procurement policy of the college and to ensure that it complies with the standards of the Public Finance Management Act and Treasury Regulations.

We have received communication from the office of the Minister of Higher Education that, on the basis of a legal opinion, the department will take this report on judicial review.

## **5. Ngaka Modiri Molema District Municipality**

I investigated allegations of maladministration, corruption, nepotism, fruitless and wasteful expenditure and purging of staff by the former Municipal Manager of Ngaka Modiri Molema District Municipality in the North West, Mr. Mokgele Mojaki.

The complainants in the matter are former employees of the municipality who at the time of lodging the complaint were either suspended and/or dismissed from work and were engaged in labour dispute proceedings against the employer.

In the main, they alleged failure to follow due process in the appointment of Mr Mojaki and several senior members of staff, failure to follow proper procurement processes in the appointment of service providers and the purge of several staff members for identifying and complaining about the alleged lack of skills, qualifications and relevant experience by Mr Mojaki.

I made the following findings:

1. The allegation that the appointment of Mr Mojaki as Municipal Manager was irregular was not substantiated. He has the required qualifications and experience. In addition, appropriate recruitment procedure was followed prior to his selection and appointment.
2. Also unsubstantiated was the allegation that Mr Mojaki's secondment to the Municipality was irregular.
3. The allegation that the appointment of about seven officials effected by Mr Mokgele were irregular was substantiated. These included Managers for Organisational Development, Communication, Rural Development, Fleet Management, Security, and Senior Accountant: Bid Administration and Financial Practitioners.
4. Also substantiated was the allegation that the appointments of Senior Manager: Office of the Municipal Manager, Performance Management Systems Manager, Communication Manager and Small Medium and Micro Enterprises Manager.
5. The allegation that the appointment of Mr Seymour Williams by Mr Mojaki as Senior Manager in the office of the Municipal Manager was irregular was substantiated and so was the allegation that this conduct created a potential conflict of interest in that Messrs Mojaki and Williams were co-directors in a company called Sikelo Consulting Worx.
6. The allegation that the appointments of Mr Lekgoa Mahole and his wife to the positions of Acting Manager: Legal Services and Senior Internal Auditor, respectively, were irregular was substantiated.
7. The allegation that Mr Mojaki was involved in the systematic purging of staff is substantiated.
8. Regarding procurement issues, the allegation that the contract for branding 35 municipal vehicles was irregular is substantiated.

9. The allegation that the appointment, by Mr Mojaki, of Bokone Bophirima Properties as the Municipality's property valuation service provider was irregular is substantiated. Mr Mojaki failed to follow a proper tender process.

Regarding remedial action, I directed the Speaker to, among other things, institute civil proceedings against Mr Mojaki to recover all moneys lost by the municipality as a result of his ineptitude and abuse of authority in respect of his conduct of non-disclosure of his relationship with Mr Williams as well as the subsequent improper award of the property valuation contract to Bokone Bophirima Properties and the E-markets contract for branding 35 municipal vehicles.

The Speaker also had to reinstate all the municipal employees as ordered by the Labour Court and issue a formal apology to them for the mistreatment they suffered under Mr Mojaki's authority.

In addition, the Speaker should take urgent steps to investigate, and if warranted, review employment contracts of staff members that were irregularly appointed by Mr Mojaki.

## **6. Council for Geoscience**

I investigated allegations of improper conduct and prejudice suffered in relation to non-payment of Insearch Recruitment Projects CC and the early termination of the contract awarded in that regard by the Council for Geoscience. The complaint was lodged by Ms Vionne Tembo of Insearch Recruitment Projects CC.

I found that the allegation that Geoscience unduly failed to pay the complainant's company's invoices for service rendered is not substantiated. By 12 September 2014, Geoscience had paid the complainant's company's 8 outstanding invoices amounting to R601 706.25 excluding the invoices submitted for June, July and August 2014.

I further found that Geoscience refusal to pay invoices submitted for June, July and August did not violate any law or legal prescripts since no services were rendered by the complainant's company.

I also found as unsubstantiated the allegation that Geoscience improperly terminated the contract months prior to its expiry as the contract of 18 months which was linked to a budget of R2 078 000 commenced on 01 February 2013 and terminated on 31 May 2014 once the budget had been exhausted.

I further found Geoscience unduly failed to pay the complainant's company interest on invoices within 30 days after submission. The conduct of Geoscience in this regard prejudiced the complainant's company as the small enterprise with limited cash flow was deprived, to its operational detriment, of a timeous source of income to which it was entitled in terms of the contract entered into between the parties.

As part of the remedial action, I directed the Board of Geoscience ensures that its Acting Chief Executive Officer implement the remedial action within the specified timeframes.

I also directed the Acting Chief Executive Officer of Geoscience to ensure that interest owed to the complainant's business on all invoices paid after 30 days of receipt is paid at the rate of 15.5% per annum within 30 days of receiving the report.

I further directed Acting Chief Executive Officer of Geoscience to consider taking appropriate action in terms of the Public Finance Management Act against any official who might have been responsible for the late payment of the complainant's company's invoices resulting in fruitless and wasteful expenditure.

Lastly, I asked the Acting Chief Executive Officer of Geoscience to write a letter of apology to the complainant for the delay in paying interest owed to her company within 30 days.

### **7. Limpopo MEC Mapula Mokaba-Phukwana (parties taking it on judicial review)**

I investigated allegations of abuse of office and violation of the Executive Members' Ethics Act by the Member of the Executive Council of the Limpopo Department of Transport, Safety and Liaison, Hon. Mapula Mokaba-Phukwana, MPL.

Fellow MPL, Hon. Joseph Buthane alleged that MEC Mokaba-Phukwana irregularly awarded a contract for forensic investigation services to MPA Investigators, who were in actual fact debt collectors and not forensic investigators.

Hon. Buthane further alleged that MEC Mokaba-Phukwana suspended half of the Executive Management Team of the Department and when questioned on their suspension, she allegedly responded by indicating that she was dealing with Economic Freedom Fighters corruption in the Department of Transport, Safety and Liaison.

I found that the allegation that MEC Mokaba-Phukwana improperly awarded a contract to MPA Investigation Team to conduct forensic investigation without proper legal authority was substantiated. The MEC did not have legal authority to award a contract to MPA since that authority exclusively vests with the Head of Department (HOD) as the Accounting Officer in terms of Section 38 of the Public Finance Management Act.

I further found that the MEC appointed MPA Investigation Team to render investigation services to her department without following the legal prescripts regulating procurement and in the process causing her Department to incur irregular expenditure.

I further found that HOD, Ms Hanli du Plessis, improperly regularised the contract irregularly awarded to MPA Investigation Team to conduct forensic investigation services in her department.

She also re-appointed MPA Investigation Team on 02 March 2015 on the basis of a verbal instruction or directive issued by MEC Mokaba-Phukwana apparently at a meeting held on 24 February 2015 at the Legislature in Lebowakgomo.

I found that the re-appointment of MPA by Ms du Plessis in terms of Regulation 16A 6.4 of the National Treasury Regulations was dishonest and was embarked upon with an ulterior motive to achieve a predetermined outcome, in the process causing the Department to incur irregular expenditure.

I further found the conduct of MEC Mokaba-Phukwana to be inconsistent with the Executive Ethics Code and Executive Members' Ethics Act.

In terms of the remedial action, I directed the Premier of the Limpopo Provincial Government to consider taking appropriate disciplinary action against MEC Mokaba-Phukwana with

regard to her conduct. I also directed the Premier in consultation with the National/Provincial Treasury to determine the exact amount of the irregular expenditure incurred by the Department of Transport as a result of MEC Mokaba-Phukwana's conduct and recover such irregular expenditure from her.

I further directed the Premier of Limpopo to take appropriate steps to ensure that all members of the Executive Council of Limpopo Provincial Government are made aware of the content of the Public Protector's report and are sensitised about compliance with the provisions of the Executive Members' Ethics Act and the Executives Code within 30 days from the date of the report.

I directed the MEC of Transport to consider taking appropriate disciplinary action against Ms Du Plessis with regard to her conduct as outlined in the finding. I further directed the MEC in consultation with the National/Provincial Treasury to determine the exact amount of the irregular expenditure incurred by the Department as a result of Ms du Plessis' conduct and recover such irregular expenditure from her.

The Speaker of the Limpopo Provincial Legislature was directed to take appropriate steps to ensure that the report is tabled in the legislature within 30 days from the date of the report.

I directed the Acting National Commissioner of Police to take appropriate disciplinary action against Ms MPJ Antonio of MPA Investigation Team.

Lastly, I directed the Minister of Finance to take steps to ensure that the Chief Procurement Officer sensitises all the members of the Executive Council of Limpopo about compliance with Treasury Regulations and procurement processes in the public service.

I must add that both MEC Mokaba-Phukwana and Ms Du Plessis intend to take this report on judicial review.

#### ***8. North West Department for Rural, Environment and Agricultural Development / MLB Construction***

I investigated allegations of maladministration and undue delay by the North West Department for Rural, Environment and Agricultural Development in effecting payment for work done by Mr Lesley Molelowatladi and Ms Lumaka M'Belle.

I found that the department failed to pay the complainant an amount of R612 355.55 for materials purchased. I further found that the Department's conduct to deduct an amount of R43 460.00 from the complainant's final account without any form of consent or authority to pay its labourers amounted to maladministration and improper conduct.

As part of the remedial action, I have directed the MEC for Rural, Environment and Agricultural Development to take appropriate steps to ensure that all staff members of the Department are made aware of the report and are sensitised about compliance with public procurement laws, policies and prescripts.

I have also directed the Head of the Department to, as a matter of urgency, effect payment of R612 355.55 to the complainant, the amount of which is for the complainant's material on site. The amount is to be paid with interest from the date it became due to the payment at the rate of 15.5 % in terms of Sec 1(1) and 2 of the Prescribed Rate of Interest Act of 1975. I

also directed the Head of Department to take appropriate action against the Principal Agent for its role in the excess amount of R3 503 951.80 paid made to Naledi Builders and ensure that such amount is recovered from the Principal Agent.

I have also directed that where evidence of criminality is found, the South African Police Service and the Hawks should be alerted to take appropriate action, with a view of prosecution and civil recovery of monies found to have been improperly paid or misappropriated.

I now turn to the main reports for today, which involve the following organs of state:

**1. Department of Arts and Culture vs South African Roadies Association;**

**2. KwaZulu-Natal Provincial Government and SAPS**

**3. North West Provincial Government / Bapo Ba Mogale**

**4. South African Government / CIEX**

***Department of Arts and Culture v South African Roadies Association***

I investigated alleged failure or undue delay by the Department of Arts and Culture (DAC) to implement a Settlement Agreement. The complaint was lodged with the Public Protector by South African Roadies Association (SARA) following the lack of implementation by DAC of the Settlement Agreement signed on 01 April 2014. The Complainant is SARA duly represented by its president, Mr Freddie Nyathela.

In the main, the complaint was that the DAC failed or unduly delayed to implement the Settlement Agreement signed between DAC and SARA in terms of section 7(4) (a) and (b) of the Public Protector Act 23 of 1994 on 01 April 2014.

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

- (a) **Whether the Department improperly failed or unduly delayed in implementing the Settlement Agreement signed between SARA and DAC on 01 April 2014;**
- (aa) The allegation that the Department improperly failed or unduly delayed to implement the settlement agreement is substantiated.
- (bb) The Department of Arts and Culture failed to implement a Settlement Agreement entered into between SARA and it, dated 01 April 2014 which was facilitated by the Deputy Public Protector, Advocate KS Malunga.
- (cc) DAC's failure to implement the Settlement Agreement was in violation of *Clause 4.1.9 of the Settlement Agreement which provides that DAC shall submit to the*

*Public Protector a detailed implementation plan with regard to the intervention of the IDT and other bodies and its proposal regarding assisting with the removal of health, safety and security risks uncovered at SARA House by close of business on Tuesday 15 April 2014.*

- (dd) DAC's failure in this regard constitutes improper conduct and maladministration as contemplated in Section 182(1)(a) of the Constitution of the Republic of South Africa and in section 6 (4) (a) (v) of the Public Protector Act 23 of 1994.
- (b) Whether the Department improperly failed to fund or render financial assistance to SARA on the following issues despite SARA being fully compliant with DAC's funding policies:**
  - (i) Assistance to SARA by DAC to strengthen its international relations;**
    - (aa) The allegation that the Department improperly failed to render its support to SARA of the international interactions is not substantiated.
    - (bb) Indications in terms of available evidence are that DAC has fulfilled its obligations and full support of international interactions proposals over a cycle of three years has been provided to SARA. According to SARA'S comprehensive financial statement for the year ending on 31 December 2015, an accumulated fund of R4, 686,487 is reflected. A contract has also been concluded and funds transferred in accordance with the contract.
    - (cc) The Public Protector accordingly could not find any improper conduct, undue delay or maladministration on the part of the Department in relation to the funding and assistance to SARA to strengthen its international relations.
  - (ii) SARA's request to DAC for funding of its operational and administrative costs.**
    - (aa) The allegation that the Department improperly failed to fund operational and administrative costs of SARA while other similar organisation were granted the same support is substantiated.
    - (bb) In terms of the DAC's Implementation of an Agreement Settlement Report, dated 2016-10-14 to the Public Protector, DAC indicated that it would not grant funding in this regard given the prevailing rules and statutes in the Public Service. The Department has in fact acknowledged that there has been some inconsistency in the approach with regard to the funding provided to a number of stakeholders. There is no policy informing the funding model in this regard and as a result other organisations have been receiving this kind of funding (for operations) while others such as SARA have been excluded from this support. The absence of a policy document regulating this grant and the discretionary mandate derived from Culture

Promotions Act of 1983 result in some inconsistencies in the approach to funding these type of costs.

- (cc) The Public Protector accordingly finds that there is no proper alignment on this funding model and that the exercise of such discretion has been unfairly exercised in the case of SARA.
- (dd) The Public Protector also could not find the evidence of the proper application of Section 2 of Broad Based Black Economic Empowerment of 2003 which provides for the promotion of economic transformation in order to enable meaningful participation of black people in the economy and achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises in this regard.
- (ee) The conduct of DAC in this regard was improper and constitutes maladministration as contemplated in section 182(1)(a) of the Constitution of the Republic of South Africa and in section 6(4)(a)(v) of the Public Protector Act 23 of 1994.
- (c) **Whether the Department unduly funded operational and administrative costs of the three (3) orchestras namely (Cape Town Philharmonic Orchestra, Cape Town Jazz Orchestra and KwaZulu Natal Philharmonic Orchestra) and unfairly discriminated against SARA.**
- (aa) The allegation that the Department improperly funded operational and administrative costs of three (3) orchestras while on the other side failing and denying SARA similar funding is substantiated.
- (bb) In terms of the available evidence the funding of the three (3) designated orchestras is a legacy of decision taken after a White Paper on Arts, Culture and Heritage of 1996. The direct funding to orchestras was documented in the 2003 Estimates of National Expenditure published by National Treasury and approved by Parliament.
- (cc) However, Public Protector finds that the White Paper on Arts, Culture and Heritage of 1996, unfairly discriminates against SARA in that it makes specific provision for funding of both operational and administrative costs to orchestras whilst SARA is only funded for administrative costs.
- (dd) The Public Protector accordingly finds improper conduct and maladministration as contemplated in terms of section 182(1)(a) of the Constitution of the Republic of South Africa and in section 6 (4) (a) (v) of the Public Protector Act 23 of 1994 on the part of the Department in relation to funding of the three named orchestras, in as far as such provision makes specific arrangement to benefit certain institutions while

excluding others who are still within the same set up of promotion of culture and social cohesion in South Africa.

**(d) Whether the Department improperly failed to acknowledge receipt and respond to correspondences from SARA.**

- (aa) The allegation that the Department improperly failed to acknowledge receipt and respond to correspondences from SARA is not substantiated.
- (bb) In terms of the available evidence, the Department has notably been more responsive to SARA's voluminous communications. There is constant update and reports from DAC to SARA, Office of the Public Protector and to the Parliamentary Portfolio Committee on Arts and Culture about this case on a regular basis. The Office of the Public Protector has also been conveying regular feedback to SARA from DAC about this matter through emails, meetings and telephone calls.
- (cc) The Public Protector accordingly could not find any improper conduct on the part of the Department in relation to acknowledging receipt and responding to correspondences from SARA.

**(e) Whether the Complainant was prejudiced by the conduct of the Department in the circumstances.**

- (aa) Based on the above findings the Public Protector finds that the Complainant (SARA) was prejudiced by the conduct of the Department (DAC) with regard to **Paragraph (a) of the above**, which is renovate SARA House in terms of the Settlement Agreement. Had the Department acted properly, SARA would have been able to conduct its business of training the South African youth in Live Events and Technical Skills Production in an environment and in a building that is not exposed to safety, health, occupational and security risks.
- (bb) The Public Protector also finds that SARA and its learners were prejudiced by the conduct of the Department (DAC) with regard to **Paragraph (b) (ii) of the above**, which is to deny SARA the funding for operational and administrative costs. Had the Department acted properly, SARA would have enabled SARA to set up satellite training centres in all nine provinces in the country, maintain its facilities, devices, equipment, components and to service other related operational resources required for its training needs.
- (cc) The Public Protector further finds that SARA was prejudiced by the conduct of the Department (DAC) with regard to **Paragraph (c) of the above** by unfairly

discriminating against SARA while orchestras are funded for both operational and administrative costs on an annual basis (by way of a ring fenced budget) through special arrangements as provided for in the White Paper on Arts, Culture and Heritage of 1996.

**(j) The appropriate remedial actions that the Public Protector is taking in the light of the above evidence and findings as contemplated in section 182(1)(c) of the Constitution are the following:**

- (aa) The Settlement Agreement concluded between SARA and DAC, in accordance with section 6(4) (a) and (b) of the Public Protector Act, 1994 (Act No. 23 of 1994, constitutes remedial action of the Public Protector.

**With Regard to the Renovation of SARA House:**

- (bb) The Director-General of Department of Arts and Culture (DAC)
- a) DAC must provide funding for the renovation of SARA House in the amount of R15 000 000.00 (Fifteen million rand) as per Settlement Agreement.
- b) The grant amount of R15 000 000.00, as allocated to SARA for renovation is a huge amount which cannot be transferred to a private entity, considering that SARA does not have capacity to implement the renovation of this magnitude.
- c) In order to ensure that Public Funds are spent appropriately and for the purpose it is intended for, DAC must appoint Development Bank of Southern Africa (DBSA), as a Government infrastructure implementing agent, to implement and manage the renovation at SARA house.
- d) The funding of R15 000 000.00 (Fifteen Million Rand) allocated by DAC for renovations of SARA House must paid directly to the Development Bank of Southern Africa (DBSA) within thirty (30) days of signing of the implementation agreement between DAC and DBSA.
- e) Development Bank of Southern Africa must be paid 10% of the grant amount by DAC, being the management fees for management of the renovations at SARA House.

**With regard to the funding of operational and administrative costs of SARA:**

(cc) **The Minister of Department of Arts and Culture (DAC)**

- a) The Minister must amend the White Paper on Arts, Culture and Heritage of 1996, within three (3) months of this report to ensure that SARA is not unfairly discriminated against when it comes to the allocation of operational and administrative costs.
- b) DAC must further ensure that within three (3) months of receipt of this report, a written policy informing this type of funding is developed for future and put in place to align the criteria that should be followed in this funding model. The Public Protector issues this remedial action against the backdrop of inconsistencies in DAC's approach towards funding of administrative and operational costs. This should help this funding model to be more coherent and consistent in its approach.

***KwaZulu-Natal Provincial Government/ SAPS/ Glebelands***

My office intervened in the carnage that has been taking place at Glebelands Hostel in Umlazi outside Durban in KwaZulu-Natal. The aim was to ensure accountability by relevant state organs for their roles in redressing the situation at the hostel.

The intervention followed a complaint lodged by Professor Mcquoid-Mason, the President of the Commonwealth Legal Education Association in which he complained about frequent and unabated killings that were taking place at the Glebelands Hostel in Umlazi, Durban and the unlawful eviction and displacement of hundreds of hostel residents from rooms that had been allocated to them. He stated that the murders and unlawful evictions were a flagrant violation of the right to life, the right to personal security and the right of access to housing as enshrined in the 1996 Constitution and Bill of Rights.

- (i) Having considered the evidence uncovered during the course of the intervention against the relevant regulatory framework, the Public Protector makes the following findings:
  - (a) **Whether the Ethekwini Municipality administered the Glebelands Hostel in accordance with the law and the applicable policies and prescripts and if not whether such failure amounted to maladministration, the finding is that:**
    - (aa) The Ethekwini Municipality failed to promote a safe and healthy environment within the Glebelands Hostel as required by section 152(1)(d) of the Constitution and envisioned in its own Hostel Policy approved in 1998.
    - (bb) The Ethekwini Municipality failed to give members of the local community equitable access to the municipal services to which they are entitled as envisaged in section 4(2)(f) of the Local Government Municipal Systems Act.

- (cc) The Ethekwini Municipality failed to provide services to the Glebelands Hostel community in a financially and environmentally sustainable manner as required by section 152(1)(b) of the Constitution and Section 4(2)(d) of the Local Government Municipal Systems Act.
- (dd) The failure by the Ethekwini Municipality as outlined above constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6 (4)(a)(i) of the Public Protector Act.
- (b) **Whether the handling of the security situation at the Glebelands Hostel by the Security Cluster accorded with the duties imposed on it by the Constitution and the law and if not whether such amounted to maladministration, the finding is that:**
  - (aa) The South African Police Service (SAPS) failed to live up to the object to prevent, combat and investigate crime, to maintain public order, to protect and secure the residents of the Glebelands Hostel and their property and to uphold and enforce the law as required by section 205(3) of the Constitution.
  - (bb) The SAPS failed to uphold the rights of the Glebelands residents to be free from all forms of violence as enshrined in section 12(1)(c) of the Constitution.
  - (cc) The failure by the SAPS as outlined above constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6 (4) (a) (i) of the Public Protector Act.
  - (dd) The Ethekwini Metropolitan Police Service failed in its role to prevent crime at the hostel as required by section 64E of the South African Police Service Act, 1995 and such failure constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
- (c) **Whether the Department of Social Development fulfilled its mandate in relation to the victims and survivors of the Glebelands Hostel violence and if not, whether such failure amounted to maladministration, the finding is that:**
  - (aa) The Department of Social Development (DSD) failed to fulfil its responsibility to the victims of the Glebelands Hostel violence as required by section 27(1)(c) of the Constitution and is contrary to its Policy on Social Relief of Distress.
  - (bb) The failure by the DSD as outlined above constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

- (ii) The appropriate remedial action the Public Protector is taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the victims as close as possible to where they would have been had the improper conduct or maladministration not occurred, while addressing administrative deficiencies in the relevant organs of the state, is the following:**
- (a) The Municipal Manager of Ethekekwini Municipality must take appropriate measures to promote a safe and healthy environment at the Glebelands Hostel and in this regard ensure that:
    - (aa) A database of the evicted and displaced people is compiled and that in the event that these people cannot be returned to their allocated rooms, that suitable alternative accommodation is provided to them;
    - (bb) Access control is implemented as provided for in the Hostel Policy; and
    - (cc) The regularisation of residency is implemented as provided for in the Hostel Policy.
  - (b) The Municipal Manager of Ethekekwini Municipality is to ensure that the community of the Glebelands Hostel is allowed equitable access to the municipal services to which it is entitled and in this regard must ensure:
    - (aa) That refuse is collected and removed at regular intervals;
    - (bb) That damaged infrastructure, like water and sewage pipes, is repaired timeously and, where necessary, replaced;
    - (cc) That the hostel grounds are adequately maintained with grass verges and fields are trimmed on a regular basis; and
    - (dd) That lighting both inside and outside the blocks is improved.
  - (c) The Municipal Manager of Ethekekwini Municipality is to ensure that services to the hostel are provided in a financially and environmentally sustainable manner and in this regard ensure that:
    - (aa) The collection of rental is implemented as provided for in the Hostel Policy; and
    - (bb) Trading within the hostel premises is controlled as per Hostel Policy.
  - (d) The Provincial Commissioner of the South African Police Service is to ensure that the SAPS meet its object to prevent, combat and investigate crime, to maintain public order, to protect and secure the residents of the Glebelands Hostel and their property and in this regard must:

- (aa) Consider the establishment of a satellite police station within the hostel premises;
  - (bb) Ensure that sufficient numbers of police officers are deployed to do static duties inside the hostel whenever the threat of violence is reported;
  - (cc) Ensure that all reported incidents of police brutality that were reported some of which are outlined in this report are referred to the Independent Police Investigative Directorate (IPID) and all other cases of police misconduct are thoroughly investigated.
  - (dd) Ensure that all serious crimes like murder and illegal evictions are investigated by police detectives from outside the Umlazi Police Station in order to address perceptions of partiality.
- (e) The SAPS must take all necessary measures to uphold the rights of the Glebelands community to be free from all forms of violence and in that regard:
- (aa) Ensure that perpetrators of violence are arrested and brought to book.
  - (bb) Take all measures necessary to improve the relationship between the local police station and the residents of the hostel.
- (f) The Member of the Executive Council (MEC) responsible for Social Development in KwaZulu-Natal is to ensure that:
- (aa) The Department implements the action plan referred to in paragraphs 1.5.18.3 and 4.4.8.2.4 of this report and indicates how it intends to assist the victims, survivors and their families that may have relocated outside the Province of KwaZulu-Natal.
  - (bb) That the MEC establishes the reasons why the Department failed to act timeously and come to the assistance of the victims of the Glebelands Hostel and take appropriate action against the officials found to have been responsible for the inaction.
- (g) The Provincial Head of the IPID must note that the Public Protector will monitor the investigation of the allegations of police torture and killing of Glebelands Hostel residents and in that regard should provide the Public Protector with a copy of the IPID's final report.

## ***North West Provincial Government / Bapo Ba Mogale***

I investigated allegations of improper prejudice suffered by the Bapo Ba Mogale Community as a result of maladministration by the former Bapo Ba Mogale Administration and the Department of Local Government and Traditional Affairs in the management of the so-called Bapo Ba Mogale D-Account.

The complaint was lodged on 26 March 2012 by Mr Freddy Mogale and Ms Itumeleng Moerane, who are Members of the Royal Six, and Mr A Mafatane, who is a member of the community.

In the main, the complainants alleged that the former Bapo Ba Mogale Administration and the then North West Department of Local Government and Traditional Affairs improperly caused Bapo Ba Mogale Community to suffer prejudice as a result of maladministration in the management of Bapo Ba Mogale D-Account.

I have made the following findings:

The allegation that the HOD for the Department of Local Government and Traditional Affairs in North West and Bapo Administration failed in the management of Bapo Ba Mogale is substantiated.

The process of the procurement in the construction of the palace was done without going out on tender or calling for quotations. Accordingly it was irregular to have proceeded with the construction without going on tender because the Bapo Administration would have received and considered other competitive bidders who would have provided value for money.

The total construction work of the palace complex amounted to over R115m (R115.088 916.57), which was well above the budgeted amount of R29.8m. There was gross misuse of funds by the Department to have exceeded the budget by approximately R85m and no reasons were advanced for such a huge increase.

There were no municipal-approved building plans at the commencement of the construction of the palace complex. Despite the negative report or remedial work to be done on the palace, no action was taken against the main contractor, Nhluvuko Civil Works. It was improper for the Department to have allowed the construction of the palace without having obtained the relevant approvals.

Administrators are expected to perform their functions and responsibilities in terms of statutory law and the Constitution which include diligent administration, advancing the well-being of the members of the traditional community, proper administration of finances, act in efficient and effective manner and conducive to good governance and administration. It is evident in the circumstances that the Bapo Administration and the Department failed in the abovementioned fiduciary duties and obligation in terms of sections 9 and 10 of the North West Traditional Leadership and Governance Act.

Further, the Traditional Councils are expected to perform their functions in good faith, diligently, efficiently, honestly and in a transparent manner. The performance of the functions were not adhered to in terms of paragraph 2 of the schedule to the Act.

The Bapo Administration and the Department had an obligation to exercise a high level of professionalism and ethics including accountability in the performance of their duties. These principles are enshrined in section 195 of the Constitution.

Failure by Department and Bapo Administration to ensure that the Multi-purpose Centre, Wonderkop Community Hall and are Segwaelane Community Centre utilised for the purpose for which it was built constituted fruitless and wasteful expenditure contrary to the provisions of section 38 of PFMA and the community has benefitted nothing out of the project.

The HoD should have ensured that the Bapo Administration develop a sound policy or framework governing the awarding of bursaries and a detailed register of beneficiaries to obviate and lack of controls and systems. Such policy would have guided them in the allocation of bursaries to deserving students and be accountable to the community at large. If such controls and systems were in place the issue relating to overspending by R6 million by the Administrator could have been avoided.

The Administrators were paid exorbitant amounts by Bapo Administration and the Department and such payments should be investigated further to determine whether such payments were justified or not. It was improper, in one instance, for Mr Moloto to have approved his own invoice amounting to R719, 534.00. Such payment should have been done by the next Senior Authority and not the Administrator himself.

The payments for professional and legal fees were exorbitant because of instability within the royal family and parties were suing one another. The Bapo Administration should have kept records of parties who lost and ordered to pay costs. It is not clear whether such costs ever recovered, if any, or whether the Bapo Administration was responsible to pay such costs. If the Administration paid such costs for losing parties they should be recovered from the relevant such parties.

The payment of personnel costs increased by seventy three percent and the Bapo Administration and the Department have to explain and provide justification of such huge increases. Proper records should have been kept safely by the then Bapo Administration.

There was payment of allowances to the value of R12.7 million where there is no policy governing the payment of allowances. Mr R Mabale was paid an allowance of R297 290.00 for participating in the land claim committee. The Bapo Administration and the Department must explain such huge increases and payments to Mr Mabale. Proper payment records should have been kept safely by the then Bapo Administration.

The investigation into the Poverty Alleviation programme revealed that the financial controls around this project were appalling because there are allegations that staff was carrying hard cash in the range of more than a million rands in their cars to pay members of the community. There was also lack of controls in monitoring the budget as evidenced by the

expenditure of about R38 million in the 2011/2012 financial year during Mr Lerefolo's tenure. The investigation revealed that the professional fees increased over the years and there were no controls in place. The Department represented by various Administrators failed to put controls and systems in place that would have guided them in the allocation and management of budgets and be accountable to the community at large. If such controls and systems were in place the issue relating to overspending and lack of accountability by the Administrator could have been avoided.

The security costs increased sharply in 2011/2012 to about R3.2 million and went as high as R8.9 million in the 2013/2014 financial year. Adequate justification was not provided for such huge increases.

The investigation revealed that cemeteries, halls and Multi-Purpose Centres have been vandalised and grass and bushes are growing on the paved roads due to lack of maintenance. It was incumbent upon Department to maintain the facilities at the cemeteries and failure to do so may lead to having to incur unnecessary costs to replace vandalised property. This falls short of the Batho Pele principles.

The Department failed to safeguard the funds held in the Bapo ba Mogale D-Account and for that reason, certain amounts cannot be accounted for as and in some instances there is over expenditure as well as fruitless and wasteful expenditure contrary to the applicable legislative prescripts.

The Department failed to submit the Bapo Administration books and accounts for auditing by the Auditor General who would have provided opinions and guidelines on how the funds in the Bapo ba Mogale D-Account should have been managed and made certain findings and recommendations.

The Administrators appointed by the Department either did not understand their mandate or they just used the funds of Bapo Administration without taking into account the interests of the community at large, did not perform their duties in good faith, diligently, honestly, efficiently and did not comply in most cases with applicable legislative prescripts under which they were appointed.

In respect of Trunk Roads, the matter requires further investigation to ascertain the maladministration that was committed in the circumstances.

The conduct of the Department and the Bapo ba Mogale Administration in the circumstances constitutes maladministration in terms of section 6(4)(a) of the Public Protector Act and improper conduct as envisaged in terms of section 182(1) of the Constitution.

The allegation that failure by the Department and Bapo Administration to properly manage the D-Account led to the Community suffering prejudice is substantiated.

As a result of the failure by the Department to properly manage the D-Account millions of rand cannot be accounted for.

Furthermore, the conduct of the Department deprived, the community of the financial resources which would have been used for the community's benefit with regards to additional decent housing, proper health care facilities, food, water and social security, employment opportunities, more bursaries to deserving students, infrastructure, employment projects; poverty alleviation; etc.

As a result of poor workmanship and vandalism on the multi-purpose Centre and other halls the community is unable to use them for meetings and recreational purposes. The actions of the Department and the Bapo Administration is contrary to the ethos laid out in the Batho Pele principles.

In the circumstances the conduct of the Department and the Bapo Administration amounts to maladministration and improper conduct as envisaged in section 182(a) of the Constitution and section 6(4) of the Public Protector Act.

In the light of the above findings the Public Protector is directing the following remedial action as contemplated in section 182(1)(c) of the Constitution:

**1. The Premier of the North West Province to:**

1.1.1. Approach the SIU with a view in terms of section 2 of the Special Investigating Units and Special Tribunals Act No. 74 of 1996 to:

1.1.1.1. Initiate a process to ascertain the irregular amounts paid as listed hereunder and determine which amounts may be recovered through a civil process and further provide the Public Protector with a report on steps taken in that regard within a period of sixty (60) days from the date of the issuing of the final report:-

- a. The irregular payment of an amount of **R 78 863 670.73 million** paid to Nhluvuko Civil Works on the construction of the Palace complex;
- b. The payment of an amount of **R 21 570 011.99 million** paid to Ndzalama Interiors on the construction of the Palace complex;
- c. The payment of an amount of **R 8 705 233.85 million** paid to ProjexConsult on the construction of the Palace complex;
- d. The payment of an amount of **R 20 243 146.85 million** paid to Nkambule and Associates on the construction of the construction of trunk roads in Wonderkop and Greater Bapong areas;
- e. The payments of an amount of **R8 123 949.08 million** and R4 125 670.38 to Mr Abel Dlamini and Junius Moloto respectively during their tenure as Administrators, as well as Mr Moloto's payment to himself of an amount of R719 534;

- f. The payments of an amount of **R3.7 million** from Madisa and Associates CC who were contracted to provide marketing and communication services. Included in these services was the drafting of strategies and plans, design and lay-out of the annual report. No proof of such work was produced;
- g. The payments of an amount of **R5.1 million** from Mosiamise Business Consulting for its consulting work which included among others the review of mining activities and consultants. No tangible out put on these services could be provided;
- h. The payments of an amount of **R36.3 million** from Matlapa Construction Consulting (Pty) when it was evident there was no value for money in running the project;
- i. The payments of an amount of **R 4 052 328.72 million** paid to Dire Accounting Practice CC for failing to deliver on the implementation of the Enterprise Resource Planning System;
- j. The payments of an amount of **R8 098 313-81 million** from Thaba Consulting who were Project Managers for the construction of the Multipurpose Centre for poor workmanship;
- k. The payments of an amount of **R13 million** from Queens Building Construction CC who were Project Managers for the construction of the Multipurpose Centre for poor workmanship;
- l. The payments of an amount of **R5.2 million** from Thaba Consulting Engineers (Pty) who was the consultant during the construction of the Multipurpose Centre which the investigation revealed to be of poor workmanship;
- m. The payments of an amount of **R7 180 409.69 million** from Kgatelopele Consulting Engineers who was the consultant during the construction of the Segwaelane Community Centre which the investigation revealed to be of poor workmanship;
- n. The payments of an amount of **R7 863 052.52 million** from Kgatelopele Consulting Engineers who were appointed to constructed Segwaelane Community Centre for poor workmanship;
- o. The payments of an amount of **R7 014 990.59 million** from Kgatelopele Consulting Engineers who was the consultant during the construction of the Wonderkop Community Hall Centre which the investigation revealed to be of poor workmanship; and
- p. The payments of an amount of **R8 098 313.81 million** from the Service Provider who constructed Wonderkop Community Hall for poor workmanship.

1.1.1.2. The Premier must approach the SIU with a view in terms of section 2 of the Special Investigating Units and Special Tribunals Act No. 74 of 1996 to conduct a forensic investigation on the following:

- a. Serious maladministration, unlawful appropriation and expenditure of public money by the Administrators and Directors of companies (service providers) who were awarded tenders with the view of the recovery of losses suffered by the State and institute criminal charges in terms of Section 86 of the Public Finance Management Act;
- b. The role played by the then Administrator, Mr Abel Dlamini, in the appointment of Nhluvuko Civil Works (Pty) Ltd, to build the palace without going out on tender or calling for quotations;
- c. Administrators who might have benefitted improperly in their capacities as Bapo Administrators and to recover monies lost by Bapo Administration during their tenure;
- d. The circumstances leading to the establishment of BBMI and to investigate but not limited to the following:
  - (aa) To establish whether before the establishment of BBMI there was a Community/Tribal resolution taken at a community meeting for its establishment and to determine whether other legal prescripts and were followed;
  - (bb) To investigate who are the owners of BBMI, equity deal between BBMI and Lonmin shareholding agreements, share certificates and the processes followed in the appointment of Directors and members of the Executive Committee;
  - (cc) To investigate whether or not board members, Executive members, Royal members, Traditional Committee members have a financial relationship and whether they benefit financially from BBMI and whether there is a conflict of interest in their dealings with BBMI; and
- e. Serious maladministration in connection with all the D- Accounts in the Republic of South Africa to ascertain whether all mines entrusted with payment of royalties, in North West and other Provinces, are indeed paying royalties to the correct recipients, including management of royalty payments to communities

## 1.2. **The Director General of the Province to:**

- 1.2.1. The Director-General must ensure that the Bapo Administration must within a period of 60 days from the issuing of the report provide the necessary maintenance and security to guard the cemeteries, halls and Multi-Purpose Centres; they must also make sure that the necessary repairs are effected so that these facilities are used for the benefit of the community at large.
- 1.2.2. The Director-General must ensure that the Bapo Administration must within a period of 60 days from the issuing of the report develop, adopt and implement Policies relating to effective, efficient, economic and transparent system of financial risk and internal control, financial controls, allowances and bursaries, appropriate

procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective; They must also develop systems that would curb and prevent unauthorised, irregular, fruitless and wasteful expenditure;

- 1.2.3. The Director-General must within a period of 60 days from the issuing of the report follow up on cases that were opened at Brits Police Station relating to allegations of enrichment by certain individuals who were involved in the Poverty Alleviation project;
- 1.2.4. The Director-General must further conduct an investigation to establish whether the conduct of Mr Lerefolo, the then Administrator, who is still in the employment of the North West Provincial Department of CATA contravened the Public Service Act and the Regulations thereof.
- 1.2.5. The Director-General must refer aspects of legal costs incurred by the Bapo Administration to the Law Society of South Africa to assess and verify the fairness of the legal costs incurred.
- 1.3. The Public Protector refers the matter to the Auditor General in terms of section 6(4)(c)(ii) to audit the D-Account of the Bapo Ba Mogale Administration.
- 1.4 The Public Protector, in terms of section 6(4)(c)(i) of the Public Protector Act, brings to the notice of the National Prosecuting Authority and the DPCI those matters identified in this report where it appears crimes have been committed.

## **CIEX**

I investigated allegations that CIEX Ltd (hereto referred to as CIEX), a covert UK based asset recovery agency headed by Mr Michael Oatley was contracted by the South African Government to assist in investigating and recovering misappropriated public funds and assets allegedly committed during the apartheid regime.

The Complainant, Adv. Paul Hoffmann, alleged that a memorandum of agreement was signed by Mr Billy Masetlha on behalf of Government of the Republic of South Africa and Mr Michael Oatley on behalf of CIEX on 06 October 1997 allowing CIEX to investigate and recover public funds on behalf of Government.

He also alleged that what is of concern is part of the CIEX report that deals with the **“lifeboat”** allegedly afforded by way of an illegal gift, by the South African Reserve Bank (herein called the SARB) to Bankorp Limited, now ABSA Bank, during the apartheid regime.

The Complainant alleges that, the Government of the Republic of South Africa and the SARB failed to implement the CIEX report and to recover misappropriated money from Bankorp Limited without providing any reasons to that effect.

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

**1. Whether the South African Government improperly failed to implement the CIEX report, dealing with alleged stolen state funds, after commissioning and duly paying for same:**

- (a) The allegation whether the South African Government improperly failed to implement the CIEX report, dealing with alleged stolen state funds, after commissioning and duly paying for same is substantiated;
- (b) CIEX Ltd. was paid 600 000 British Pounds for services which were never used by the South African Government. No evidence could be found that any action was taken specifically in pursuit of the CIEX report;
- (c) Failure by the South African Government was inconsistent with duties imposed by section 195 of the Constitution requiring a high standard of professional ethics;
- (d) The failure was also inconsistent with section 231 of the Constitution that requires that all Constitutional obligations must be performed diligently and without delay;
- (e) In addition the conduct was contrary to the Batho Pele Principles in that there was no value for money; and
- (f) The failure by the South African Government and constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act.

**2. Whether the South African Government and the South African Reserve Bank improperly failed to recover from Bankorp Limited/ABSA Bank an amount of R3.2 billion, cited in the CIEX report, owed as a result of an illegal gift given to Bankorp Limited/ABSA Bank:**

- (a) The allegation whether the South African Government and the South African Reserve Bank improperly failed to recover from Bankorp Limited/ABSA Bank an amount of R3.2 billion cited in the CIEX report, owed as a result of an illegal gift given to Bankorp Limited/ABSA Bank between 1986 and 1995 is substantiated;
- (b) The correct amount of the illegal gift granted to Bankorp Limited/ABSA Bank is in the amount of R1.125 billion;

- (c) Two investigations into the matter established that the financial aid given to Bankorp Limited/ABSA Bank was irregular;
- (d) The South African Reserve Bank in granting the financial aid failed to comply with section 10(1)(f) and (s) of the South African Reserve Bank Act No. 90 of 1989. The Ministry of Finance had a duty as obliged by section 37 of the South African Reserve Act of 1989 to ensure compliance of the Act by the South African Reserve Bank. The Ministry failed to comply with the obligation;
- (e) The South African Government failed to adhere to section 195 of the Constitution by failing to promote efficient and effective public administration; and
- (f) In the circumstances the conduct of the South African Government and the South African Reserve Bank constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act.

**3. Whether the South African public was prejudiced by the conduct of the Government of South Africa and the South African Reserve Bank and if so, what would it take to ensure justice:**

- (a) The allegations whether the South African public was prejudiced by the conduct of the Government of South Africa and the South African Reserve Bank is substantiated;
- (b) The South African Government wasted an amount of 600 000 British Pounds on services which were never used;
- (c) The amount given to Bankorp Limited/ABSA Bank belonged to the people of South Africa. Failure to recover the “gift” resulted in prejudice to the people of South Africa as the public funds could have benefitted the broader society instead of a handful of shareholders of Bankorp Limited/ABSA Bank;
- (d) The conduct of the South African Government and the South African Reserve Bank goes against the ethos laid in the preamble of the Constitution and section 195 of the Constitution in respect of redressing social injustices and promoting efficiency;

- (e) The conduct further is contrary to the Batho Pele Principles that requires redress and the view held in the *Khumalo* case requires a public functionary to arrest reported irregularities; and
  - (f) The conduct of the South African Government and the South African Reserve Bank constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6 of the Public Protector Act.
- (i) The appropriate remedial action that the Public Protector is taking in terms of section 182(1) (c) of the Constitution is the following:

**(1) The Special Investigating Unit:**

- (a) The Public Protector refers the matter to the Special Investigating Unit in terms of section 6(4)(c)(ii) of the Public Protector Act to approach the President in terms of section 2 of the Special Investigating Units and Special Tribunals Act No. 74 of 1996, to:
  - (aa) Re-open and amend Proclamation R47 of 1998 published in the Government Gazette dated 7 May 1998 in order to recover misappropriated public funds unlawfully given to ABSA Bank in the amount of R1.125 billion; and
  - (bb) Re-open and amend Proclamation R47 of 1998 published in the Government Gazette dated 7 May 1998 in order to investigate alleged misappropriated public funds given to various institutions as mentioned in the CIEX report.
- (b) The South African Reserve Bank must cooperate fully with the Special Investigating Unit and also assist the Special Investigating Unit in the recovery of misappropriated public funds mentioned in (aa) and (bb).

**(2) The Portfolio Committee on Justice and Correctional Services:**

- (a) The Chairperson of the Portfolio Committee on Justice and Correctional Services must initiate a process that will result in the amendment of section 224 of the Constitution, in pursuit of improving socio-economic conditions of the citizens of the Republic, by introducing a motion in terms of section 73(2) of the Constitution in the National Assembly and thereafter deal with matter in terms of section 74(5) and (6) of the Constitution.

Section 224 of the Constitution should thus read:

**224. (1) *The primary object of the South African Reserve Bank is to promote balanced and sustainable economic growth in the Republic, while ensuring that the socio-economic well-being of the citizens are protected.***

**(2) *The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, while ensuring that there must be regular consultation between the Bank and Parliament to achieve meaningful socio-economic transformation.***

These reports will be uploaded on the Public Protector website by close of business today after all the affected parties have been favoured with copies.

Thank you.