



**Address by Public Protector Adv Thuli Madonsela to The National  
Press Club in Pretoria on Thursday 25 July 2013**

**Programme Director and Chairperson of the NPC, Ms Slabbert;**

**Members of the NPC Executive;**

**Members of the media;**

**Ladies and gentlemen**

I am again honoured to be here. It must be unbearably sad day for the media and the judiciary. As a nation we are still in shock over the loss of one our country greatest legal minds Former Chief Justice Pius Langa. He was just the epitome of what a great lawyer is meant to be. I distinctly recall that his main concern was extreme poverty and hunger in the context of a Constitution that entrenches social and economic rights.

While still reeling from the shock of his untimely passing away, yesterday I came across a wonderful art exhibition at the City of Cape Town. The exhibition tells a story of our transition to constitutional democracy. One of the things that caught my eye was the following quote from a similar great person and legal mind, former President Nelson Mandela

*“Our freedom can never be complete or our democracy stable unless the basic needs of our people are met.”*

My team and I believe that if we tackle maladministration effectively our achievements regarding the delivery of a decent life for all the people of this country would be significantly accelerated. Our stakeholder dialogue for 2013 and related public hearings are informed by that understanding. We are specifically focussing on the impact of maladministration on ending poverty and ensuring access to quality health care services with a view to speeding delivery on Millennium Development Goals.

We are reporting on four cases today and giving you feedback on matters in the pipeline.

The main report titled, “**Pipes to nowhere**” relates to our investigation into allegations of maladministration at Nala Municipality. I will start with short summaries of the other three reports before giving you a fuller overview of the Nala report.

- (i) “**Fair Pay**” is a report of the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).
- (ii) The report communicates the Public Protector’s findings and directives on appropriate remedial action following an investigation into a complaint lodged by Mr SW Chauke on 6 July 2011 alleging unfair dismissal and subsequent deduction of a departmental debt by the Gauteng Department of Education from his pension benefit.

The allegation pertaining to unfair dismissal was not considered by the Public Protector as it was previously adjudicated on by a court of law. The GPAA did not deny making the deduction, leaving the issue to be determined as being the propriety of the deduction. At the time that the investigation took place the capital amount had been refunded.

(iii) The Public Protector considered and investigated the following issues:

(a) Did the deduction of R7 317.81 from the Complainant's pension benefit, without his consent, amount to maladministration?

(b) Was the Complainant entitled to a refund of such deduction together with interest?

(iv) The investigation was conducted by way of telephonic and written correspondence with officials at the Gauteng Department of Education (the GDE) and the Government Pensions Administration Agency (the GPAA) and the perusal of documents received. Applicable legislation, policies and relevant prescripts were also analysed and applied. Subsequent to the provisional report being issued a meeting was held with the Complainant regarding the provisional findings made.

The Public Protector made the following findings:

**(a) Did the deduction of R7 317.81 from the Complainant's pension benefit without his consent amount to maladministration?**

(aa) The GPAA's conduct of deducting money from the Complainant's pension benefit without complying with the provisions of paragraph 3.3.1 of the Procedure Manual for Interaction between Pensions Administration and Government Employers in terms of Section 21(3) of the Government Employees Pension Law, 1996 (GEP Law) was improper. The conduct of the GPAA accordingly constitutes maladministration.

**(b) Was the Complainant entitled to a refund of such deduction together with interest?**

(aa) The above act of maladministration has prejudiced the Complainant in that he was not paid interest to which he was entitled in respect of the amount of R7, 317.81 which was wrongfully deducted from his pension benefit and refunded after 36 months. The Complainant has suffered improper prejudice due to the undue delay by the GDE to pay interest on the sum of R7, 317.81.

(v) The appropriate remedial action to be taken in terms of section 182(1)(c) of the Constitution is that:

(a) The Head of Department should ensure that the GDE pay the Complainant interest in the amount of R5 000.00, as elaborated in the settlement agreement signed between the Complainant and the GDE on 30 May 2013.

The Head of the Department should ensure that the Complainant is provided with a letter of apology for the prejudice he suffered as a result of the conduct of the Department in this matter

Unjust Forfeiture is report of the Public Protector that deals with an employee of the DHA who was recalled from Cuba on account of alleged misconduct, pending a process that was to test the allegations against him. That process never took place.

- (i) “*Unjust forfeiture*” is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector’s Act, 1994.
- (ii) The report communicates the Public Protector’s findings and directives on appropriate remedial action following an investigation into a complaint lodged by Mr R Marimi on 14 February 2011 alleging improper prejudice suffered as a result of the Department of Home Affairs’ decision to withdraw him from posting at the Cuban Foreign Mission in April 2010, based on allegations of acts of misconduct in Cuba. The alleged maladministration involved the Department’s failure to afford him an opportunity to answer to the allegations against him before the decision to withdraw him was

made, the Department's failure to institute a disciplinary hearing against him regarding those allegations subsequent to his return to South Africa and the withdrawal of his Cost of Living Allowance (COLA), (estimated to be USD 42 896), which he was entitled to as a designated official posted in Cuba.

(iii) The Public Protector considered and investigated the following issues:

- (a) Did the Department withdraw the Complainant from a foreign posting in Cuba and was such withdrawal procedurally flawed and improper?
- (b) Was the delay by the Department to hold a disciplinary hearing to deal with the allegations against the Complainant prior to his resignation unreasonable and improper?
- (c) Was the Department's decision to withhold the Complainant's Cost of Living Allowance due to him by virtue of being posted at the Cuban Foreign Mission after withdrawing him improper?
- (d) If the answer to any of the above issues is in the affirmative, was the Complainant prejudiced as envisaged in section 6(4)(a)(v) of the Public Protector Act?

(iv) The investigation was conducted by way of telephonic and written correspondence with officials at the Department of Home Affairs (the Department) and the perusal of documents received. Applicable legislation, policies and relevant prescripts were also analysed and applied. Subsequent to the provisional report being

issued, a meeting was held with the officials from the Department regarding the provisional findings made.

(v) The Public Protector made the following findings:

**(a) Did the Department withdraw the Complainant from a foreign posting in Cuba and was such withdrawal procedurally flawed and improper?**

(aa) The Department withdrew the Complainant from a foreign posting in Cuba.

(bb) The withdrawal was in violation of Clause 5.3 of its contract with him, which required that he be withdrawn on the recommendation of the host country or the Head of the Mission.

(cc) The conduct of the Department was improper as envisaged in section 182(1)(a) of the Constitution and constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act;

**(b) Was the delay by the Department to hold a disciplinary hearing to deal with the allegations against the Complainant prior to his resignation unreasonable and improper?**

(aa) The Department delayed to hold a disciplinary hearing to deal with allegations of misconduct against the Complainant.

(bb) The delay was in violation of Paragraph 7.2(c) of the Public Service Disciplinary Code and Procedures which requires that the disciplinary hearing be held within a maximum period of 60 days.

(cc) The delay was unreasonable and improper as envisaged in section 182(1)(a) of the Constitution and constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act;

**(c) Was the Department's decision to withhold the Complainant's Cost of Living Allowance due to him by virtue of being posted at the Cuban Foreign Mission after withdrawing him improper?**

(aa) The Department withheld the Complainant's Cost of Living Allowance (COLA) due to him by virtue of being posted at the Cuban Foreign Mission after withdrawing him.

(bb) The Department's decision to withhold the Complainant's cost of living allowance due to allegations of misconduct against him contravened Paragraph 6.2.1(iii) (COLA) of the Foreign Service Dispensation which provides that according to the DPSA, letter dated 22/02/2006, if an official is recalled due to a Labour Relations action he/she is regarded as being on official duty and hence that rule will apply.

(cc) The conduct of the Department in withholding the Complainant's COLA after withdrawing him due to allegations of misconduct against him was improper as envisaged in section 182(1)(a) of the Constitution and constitutes maladministration in terms of section 6(4)(a)(i) of the Public Protector Act; and

**(d) Was the Complainant prejudiced as envisaged in section 6(4)(a)(v) of the Public Protector Act by the Department's decision to withdraw him from the Cuban Foreign Mission, the delay in holding a disciplinary hearing against him regarding allegations of misconduct in Cuba and the withholding of his COLA due to him by virtue of being posted at foreign mission?**

(aa) The Complainant suffered an injustice or prejudice as envisaged in section 6(4)(a)(v) of the Public Protector Act, in that:

- I. He was treated unfairly;
- II. He unfairly lost his cost of living allowance that he was legally entitled to;
- III. His name and reputation remain tarnished due to the failure to afford him an opportunity to clear his name; and
- IV. His human dignity was impaired.

(vi) Appropriate remedial action to be taken in terms of section 182(1)(c) of the Constitution is that:

(a) The Director-General of the Department should ensure that the Complainant's allowances which accrued to him in terms of his contract of placement in the Cuban Foreign Mission entered into with the Department, is paid to him together with interest at the prescribed rate of 15,5% per annum from the date of his

withdrawal from Cuba until the date he transferred to Correctional Services;

- (b) The Director-General of the Department should investigate the reasons why the case was not dealt with properly and take the necessary action against any person who may have failed to act as required by law and policy; and

The Director-General of the Department should ensure that the Complainant is provided with a letter of apology for the prejudice he suffered as a result of the conduct of the Department in this matter

- (i) **“A missed opportunity”** is the report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector’s Act, 1994.
- (ii) The report communicates the Public Protector’s findings and directives on remedial action following an investigation into a complaint lodged by Mr S Mdluli on 15 February 2011, alleging prejudice suffered by Cathula Mining CC (his company) as a result of maladministration involving unjustified refusal of the Department of Mineral Resources (formerly Department of Minerals and Energy) to grant its application for mineral prospecting rights. The Complainant alleged that he submitted an application for mineral prospecting rights in May 2005, to which he did not receive a refusal letter and that upon enquiring he was told to re-apply. He further alleged that he submitted another application on 15

September 2005 which was rejected and another in 2007 to which he was told that the mineral rights had been granted to a third party. He allegedly appealed to the Minister of Mineral Resources and his appeal was rejected.

(iii) The Public Protector considered and investigated the following issues:

(a) Was the Department's handling of the Complainant's company's applications improper?

(b) Was the Minister's handling of the Complainant's company's appeal improper?

(c) If the answer to any of the above issues is in the affirmative, it must be established whether the Complainant was prejudiced by the improper conduct or maladministration.

(iv) The Public Protector makes the following findings:

**(a) Was the Department's handling of the Complainant's company's Applications improper?**

(aa) The Department failed to provide the Complainant with timely, accessible and accurate information regarding his company's first and second applications; and

(bb) The Department's conduct violated section 195(1)(g) of the Constitution which provides that public administration must be governed by democratic values and principles enshrined in the Constitution including

that transparency must be fostered by providing the public with timely, accessible and accurate information. Such conduct constitutes maladministration.

- (cc) The Department admitted that it failed to deal with the Complainant's company's first and second applications in accordance with section 16(2)(a) and (b); section 6(1); and section 17(a) and (b) of the Act, and such failure constitutes maladministration;
- (dd) The Department dealt with the Complainant's company's third application and Isibaya Mining Resources (Pty) Ltd's application in the order in which they were received;

**(b) Was the Minister's handling of the Complainant's company's appeal improper?**

- (aa) The Minister failed to afford the Complainant an opportunity to make representations regarding his company's appeal; and
- (bb) The Minister's conduct in this regard violated section 3(2)(b)(ii) of PAJA which provides for the right to be provided with an opportunity to make representations regarding administrative action. Such conduct constitutes maladministration.

**(c) Did the Complainant suffer prejudice due to the conduct of the Minister and the Department?**

- (aa) The Complainant's company was prejudiced by the Department's failure to deal with its initial application in terms of section 16(a) and (b); section 6(1); and section 17(a) and (b) of the Act;
  - (bb) The Complainant's company was prejudiced by the Minister's failure to deal with its appeal in terms of section 6(1) of the Act read with section 3(2)(b) of PAJA; and
  - (cc) The Complainant's right to administrative action that is lawful, reasonable and procedurally fair was infringed.
- (v) The appropriate remedial action to be taken in terms of section 182(1)(c) of the Constitution is that:
- (a) The Director-General of the Department should write a letter to the Complainant within 30 days from the date of this report and apologise for the manner in which his company's applications for mineral prospecting rights were handled;
  - (b) The Minister should write a letter to the Complainant within 30 days from the date of this report and apologise for the manner in which she handled his company's appeal; and

- (c) The Department should consider assisting the Complaint's Company to identify an alternative mineral prospecting opportunity and provide the necessary support in that regard.
- (i) **"Pipes to Nowhere"** is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector's Act, 1994.
- (ii) The report communicates the Public Protector's findings and directives on remedial action following an investigation into a complaint lodged by a group of concerned citizens from Nala Local Municipality, in the Free State Province, on 14 March 2012, alleging maladministration and undue delay against Nala Local Municipality and the non-implementation of recommendations of a KPMG forensic investigation report submitted to the Nala Local Council during September 2010. The Public Protector decided to conduct a systemic investigation into the alleged maladministration against the Nala Local Municipality.
- (iii) The Public Protector considered and investigated the following issues:
- (a) Alleged lack of service delivery and maladministration;
- (b) Alleged lack of Communication between the Municipality and the Community;

- (c) Alleged incomplete and non-operational sewerage plant;
  - (d) Alleged unconnected flush system toilets, leading to implementation of the bucket system that is not regularly collected;
  - (e) Alleged sewerage spillage in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems;
  - (f) Alleged incomplete public park at the entrance of Monyakeng;
  - (g) Allegations that the new community hall was not built according to tender specifications;
  - (h) Allegations that Municipality is accepting tender bids from companies with invalid tax clearance certificates;
  - (i) Allegations of payment of R3 936 822.69 to a law firm to conduct the disciplinary hearing of the suspended Municipal Manager, Mr D Shongwe;
  - (j) Alleged irregular payment of a R90 000.00 bonus to the new Municipal Manager, Mr Chris Mokomela permanently appointed on 1 December 2012;
  - (k) Alleged irregular appointment of the Municipal Manager, Mr Chris Mokomela as acting, and subsequently as a permanent incumbent;
  - (l) Alleged irregular payments on the Payroll system to officials;
  - (m) Alleged unfinished housing project in Marantha; and
  - (n) Alleged lack of security at Mmabana School.
- (iv) The investigation involved inspections *in loco*, correspondence and the perusal of documents received, including the KPMG Report. Meetings were held with the residents and municipal

officials and other provincial authorities. Applicable legislation, policies and regulations were also considered and applied.

(v) The Public Protector made the following findings:

(a) Lack of service delivery and maladministration

(aa) Most of the systemic service delivery failure and maladministration complaints are substantiated, including the failure to expeditiously implement the recommendations of the forensic investigation report of KPMG.

(bb) The Municipal Manager at the time, Mr D Shongwe, (Former Municipal Manager) received the KPMG report during 2010 and failed to table the report in the Council or to release the outcome of a KPMG forensic investigation that was conducted in respect of the Nala Local Municipality.

(cc) The executive summary of the report was only tabled in the Council on 14 November 2011, whereas the report was received by the Municipal Manager, Mr D Shongwe on 20 September 2010. This is in contravention of section 6(2) of the Municipal Systems Act, 2000 (MSA) and section 32 of the MFMA and constitutes improper conduct and maladministration.

(dd) The Former Municipal Manager did not adhere to Supply Chain Management (SCM) Policies and in some cases engaged in events amounting to manipulation of the SCM Process such as in the case of the Bucket Eradication

Phase 3 tender. This is in contravention of sections 62 and 95 of the Municipal Finance Management Act (MFMA), the Municipal SCM Regulations and section 217 of the Constitution of the Republic of South Africa (Constitution) and constitutes improper conduct and maladministration.

- (ff) The Former Municipal Manager, Mr D Shongwe, the Mayor, Ms Mpai Mogorosi and the Nala Council failed to take the required steps to implement the recommendations of the report. This is in contravention of section 32 of the MFMA and section 152 of the Constitution and constitutes improper conduct and maladministration.
- (gg) The Former Municipal Manager failed to ensure that disciplinary proceedings were conducted in respect of officials implicated in the KPMG report in accordance with the MFMA and other the relevant prescripts. The conduct was unlawful, improper and constitutes maladministration.
- (hh) The Former Municipal Manager, Mr D Shongwe, the Mayor of the Council, Ms Mpai Mogorosi and the Nala Local Municipal Council failed to ensure that the use of a government credit card for private expenditure by the Speaker of the Council Ms N Mashiya and the allocation of public funds by the ex-mayor Ms Mpai Mogorosi to build a wall at a private home, were referred to the Council for investigation in terms of section 32 of the MFMA. This constitutes maladministration.

(b) Lack of Communication between the Municipality and the Community

(aa) The Speaker of the Nala Local Municipal Council, Ms N Mashiya and the Council did not fulfill their constitutional duties in terms of section 152 of the Constitution, section 16 of the MSA and section 19(3) of the Structures Act to ensure public participation by the community in the affairs of the Municipality, resulting in a major trust deficit between the people and the municipality and protest action by the community. The conduct was improper and constitutes maladministration.

(c) Incomplete and non-operational sewerage plant

(aa) The allegation was confirmed during the Public Protector's two visits to the plant and conceded by the Municipal authorities during meetings with them.

(aa) The KPMG forensic investigation report's finding that the mess was due to the Former Municipal Manager's failure adhere to the Supply Chain Management Policy and other prescripts was substantiated by documentary evidence relating to the relevant procurement process.

(bb) This is in contravention of sections 62 and 95 of the MFMA, the Municipality Supply Chain Management Regulations and section 217 of the Constitution, which essentially prescribe an open, competitive and cost effective procurement process. As a result the cost has

escalated enormously. The conduct was accordingly unlawful, improper and constitutes maladministration.

(d) Unconnected flush system toilets, leading to implementation of the bucket system that is not regularly collected

(aa) The allegation regarding unconnected flush toilets, was confirmed during the first *inspection in loco*, which included a visit to the home of a senior citizen frustrated by a dysfunctional bucket system while having a waterborne sanitation system that has become a white elephant. The pipes from some of the toilets are not connected to any main system. In addition the entire piping system has many defects, including inferior piping unable to support the sewage flow meant to be supported.

(bb) The evidence indicates that the company responsible for the incomplete and non-operational flush toilet system was paid for work not done resulting in irregular, fruitless and wasteful expenditure. This is regarded as financial misconduct by the Former Municipal Manager, Mr D Shongwe.

(cc) The situation was exacerbated by the Municipality's failure to implement the KPMG report. Had the report been implemented earlier, some of the irregular payments could have been reversed and /or assets of wrongdoers targeted expeditiously.

(cc) The Municipal Manager's conduct is in contravention of sections 62 and 95 of the MFMA, the Municipality Supply Chain Management Regulations and section 217 of the Constitution. Such conduct is accordingly unlawful, improper and constitutes maladministration.

(e) Sewerage problems in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems

(aa) The sewerage spillage had been temporarily rectified when the area was visited by the Public Protector on 19 April 2012. However, evidence indicated that the spillage was cleared up shortly before the Public Protector's visit.

(bb) The failure of the Municipality to attend to the complaints in respect of the sewerage spillage expeditiously is in contravention of section 152 of the Constitution that requires local government to ensure the provision of services to communities and to ensure a safe and healthy environment.

(cc) However, a long term solution to the spillage is linked to corrective action regarding the sewage purification plant and the piping in the entire area. This requires a lot of money that the provincial and national governments need to assist with.

(dd) The dysfunctional bucket system and the conduct of the Municipal Manager and Council of Nala is in contravention of section 152 of the Council in that

sustainable services are not delivered and a healthy and safe environment for the community is not created. This constitutes maladministration.

(f) Incomplete public park at the entrance of Monyakeng

(aa) An incomplete park does indeed exist. However, the Municipality did not build the park but received it as a donation from the provincial government.

(bb) The project was part of Arbor Week celebrations by the Department of Agriculture, Fisheries and Forestry during 2007. The action plan and budget for the week was obtained from the Department of Agriculture, Fisheries and Forestry.

(cc) The Council took a decision during 2006 to donate land for the project and the Department of Agriculture, Fisheries and Forestry donated trees to be planted. It was the responsibility of the community to plant and maintain the trees in terms of a Council decision. But the failure to communicate such decision and to take measures to address the situation in the absence of any action was improper and constitutes maladministration.

(g) New community hall allegedly not built according to tender specifications

(aa) The Multi-Purpose Centre was indeed erected.

(bb) While the information obtained during the investigation indicates that the funds allocated through the Municipal

Infrastructure Grant were insufficient to complete the project as specifications were altered, this on its own constitutes poor planning and accordingly, maladministration.

(cc) The Department of Human Settlements, undertook in writing to Mr Chris Mokomela that funds will be allocated in the 2013/2014 financial year to complete the building according to original specifications with transferred funds during the next financial year. The Municipal Manager Mr D Shongwe did not ensure that funds were requested from Provincial Government to ensure the completion of the building according to original specifications.

(h) Alleged Municipality's irregular acceptance of tender bids from companies with invalid tax clearance certificates

(aa) The allegation regarding the acceptance of bid with invalid tax clearance is substantiated, in that the names on the tax certificates differed from the names on the tender.

(bb) Treasury Regulation 16A3 requires that accounting officers of municipalities and municipal entities must ensure that the preferred bidders' tax matters are in order and the municipal rates and taxes or municipal charges owed by the preferred bidder or any of its directors to the municipality or municipal entity, or to any other

municipality or municipal entity, are not in arrears for more than three months.

(cc) Treasury Regulation 16A3 further requires that accounting officers of municipalities and municipal entities must ensure that the names of the preferred bidders and their directors, trustees or shareholders are not listed on the Register for Tender Defaulters and the Database of Restricted Suppliers and a process is conducted to determine whether the preferred bidders have the capability and ability to execute the contract.

(dd) The failure by the Municipal Manager to properly assess bids during December 2012 in terms of SCM legislation and policies constitutes maladministration.

(i) Alleged payment of R3 936 822.69 to a law firm to conduct the disciplinary hearing of the suspended Municipal Manager

(aa) The evidence shows that the Municipality spent R2 800 000.00 as fees for a law firm instructed to, implement the KPMG report by:

I. recovering funds from the former Mayor inappropriately used R230,000.00 to erect a wall at a private residence;

II. recovering funds in the amount of R10,000.00 from the current Speaker inappropriately used for private purposes;

III. ensuring that disciplinary and criminal charges against the Former Municipal Manager, Mr D Shongwe and Former Manager Technical Services for alleged theft, fraud, corruption and other criminal charges are instituted; and

IV. advising whether appropriate disciplinary and criminal action needs to be taken against the Former Municipal Manager, Mr D Shongwe.

(bb) Evidence further shows that the Municipality approached COGTA during July 2012 for financial assistance in respect of legal fees for the implementation of the KPMG report, amounting to R900 000.00, which could not be covered by its own budget.

(cc) The allegation that an amount of R3 936 822.69 was paid to a law firm solely to conduct the disciplinary hearing of the suspended Municipal Manager is, accordingly, not substantiated.

(j) Alleged irregular payment of R90 000.00 as bonus to the Municipal Manager

(aa) The Municipal Manager was indeed initially paid the alleged bonus on 25 January 2013, within 2 months of employment.

(bb) The Public Protector is satisfied with the explanation that this was an administrative error in the capturing of the Municipal Manager's salary structuring instructions at the

Municipality's payroll section. Evidence shows that the Mayor of the Council was informed about the discrepancy on 28 January 2013 and the error corrected before the Public Protector's second visit to Nala on 6 February 2013, when this additional complaint was lodged.

(cc) Repayment of the amount was done on 4 February 2013 and proof was submitted to the Public Protector.

(k) Alleged irregular appointment of the Municipal Manager as acting and permanently

(aa) No evidence supports the allegation that the Municipal Manager's secondment to and appointment at the Municipality was irregular.

(bb) The Municipal Manager, Mr Chris Mekomela was seconded as Acting Municipal Manager from COGTA on request of the Nala Local Municipal Council for three periods of three months in terms of section 54A of the MSA. Council Resolutions were taken to request secondment and to extend the secondment after the first three months, during January 2012 and during June 2012 respectively.

(cc) The post of Municipal Manager was advertised by the Nala Local Municipal Council. Mr Chris Mekomela, then Acting Municipal Manager applied, was interviewed and appointed.

(dd) Council resolved to appoint the Acting Municipal Manager and the letter of appointment to be signed by MEC of COGTA. He was appointed permanently as a municipal employee from 1 December 2012.

(l) Alleged irregular payments on the Payroll system to officials

(aa) The KPMG report indicated that possible discrepancies and overpayments exist on salary payments to officials.

(bb) The Municipal Manager decided to do a total audit on salary payments by the Municipality. Numerous cases of maladministration such as double salaries, bonuses among others being paid were found.

(cc) Due to the discrepancies found the Municipality requested VIP payroll on 5 October 2012 to submit a proposal for the conducting of a forensic audit of the payroll system to determine the extent of the misappropriation of funds on the payroll system.

(dd) The irregularities in the payments by the then Municipal Manager on the payroll system to officials are in contravention of section 6 of the MSA and constituted maladministration.

(m) Unfinished housing project in Marantha

(aa) The evidence indicates that the Marantha Housing Project is a Land Restitution project. The land claim was finalised and the project for the building of units for the

successful claimants was registered with the Free State Department of Human Settlements on 14 April 2009.

(bb) Only four units to date were completed and the appointed contractor abandoned the site. Infra-structure development of the site was also not completed.

(cc) The Municipality will receive R2.8 million from the Free State Department of Human Settlements for the financial year 2013/14 for infra-structure development in Marantha. The building of the remaining units will commence as soon as the infra-structure is completed. The Special Investigative Unit is currently investigating all contractors that were appointed by the Free State Department of Human Settlements who did not complete projects.

(n) Alleged lack of security at Mmabana School

(aa) Evidence indicates that the Free State Department of Education is responsible for the security at the school.

(bb) After the commencement of the Public Protector's investigation, the Department of Education took corrective measures at the school and the security was improved.

(vi) In terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, the following remedial action should be taken:

**(a) The Municipal Manager should ensure that:**

- (aa) The Municipality's supply chain management framework and practices are aligned with the provisions of the applicable legislation in respect of Supply Chain Management as well as section 217 of the Constitution;
- (bb) Supply Chain Management Officials of the Municipality and the members of bid committees are properly trained in respect of the proper application of the procurement system as contemplated by the provisions of section 217 of the Constitution, the MFMA, Treasury Regulations and prescripts and the relevant procurement policies;
- (cc) All outstanding officials implicated in the forensic investigation are expeditiously charged in terms of the disciplinary policy of the Municipality. The current evaluation by the Municipality of the KPMG forensic report will reveal the names of further officials to be charged;
- (dd) The irregularities in the payments by the then Municipal Manager on the payroll system to officials is investigated in terms of the MFMA and if the investigation warrants such a step, disciplinary proceedings must be instituted against the official responsible in accordance with systems and procedures referred to in section 67 of the MSA, read with Schedule 2 of that Act;

- (ee) The irregular payments by the then Municipal Manager on the payroll system are recovered from recipients of irregular payments;
- (ff) All irregular and fruitless or wasteful expenditure in terms of the forensic report is recovered from implicated defaulting contractors and implicated officials;
- (gg) The irregular and fruitless or wasteful expenditure by the Speaker of the Council must be referred to the Council for an investigation in terms of section 32 of the MFMA and if the investigation warrants such a step, disciplinary proceedings must be instituted against the Speaker in accordance with systems and procedures referred to in the MFMA;
- (hh) The irregular and fruitless or wasteful expenditure by the ex-mayor of the Council must be determined and recovered; and
- (ii) The lack of technical capacity at the Municipality in respect of project management and project monitoring is addressed urgently.

(b) The Nala Local Municipal Council should ensure that:

- (aa) The Council and Municipality adhere to the objects of local government as set out in section 152 of the Constitution;

- (bb) The Municipality adheres to the prescripts of section 217 of the Constitution and contract for goods or services in accordance with a system that is fair, equitable, transparent, competitive and cost-effective;
- (cc) The Municipality's supply chain management framework and practices are aligned to the provisions of the applicable legislation in respect of Supply Chain Management as well as section 217 of the Constitution;
- (dd) All irregular and fruitless or wasteful expenditure in terms of the forensic report is recovered from implicated defaulting contractors and implicated officials;
- (ee) The recommendations of the KPMG forensic report are fully implemented expeditiously;
- (ff) Quarterly reports are submitted to the Public Protector on the status of criminal investigations in respect of officials and companies implicated;
- (gg) Quarterly reports are submitted to the Public Protector on the status of civil proceedings in respect of wasteful and irregular expenditure;
- (hh) The irregular and fruitless or wasteful expenditure by the Speaker of the Council is investigated in terms of section 32 of the MFMA and if the investigation warrants such a step, disciplinary proceedings must be instituted against the Speaker in accordance with systems and procedures referred to in the MFMA; and

(ii) The Speaker of the Nala Local Municipal Council and the Council fulfil their constitutional duties in terms of the Constitution, MSA and Structures Act in respect of public participation. The Council must submit the programme for public participation for the 2013/14 financial year to the Public Protector. The Council must also submit attendance registers after all the meeting on the programme submitted.

(d) The Member of the Executive Council for the Free State Department of Co-operative Governance, Tradition Affairs and Human Settlements should ensure that;

(aa) The support needed by the Municipality to strengthen its capacity is assessed and the challenges experienced by the Nala Local Municipality in general and specifically in respect of the bucket eradication system and the waste water treatment plant is addressed with the National Government and the National Council of Provinces;

(bb) The Turnaround Strategy submitted after performance assessment of the Municipality in 2010 by National and Provincial Departments of Cooperative Governance and Traditional Affairs, is implemented and the action plan for implementation monitored;

(cc) The implementation of the recommendations of the KPMG forensic report is undertaken and civil action in respect of defaulting contractors and officials for recovery

of fruitless and wasteful expenditure is instituted expeditiously; and

- (dd) Regular follow up with the National Prosecuting Authority on the investigation and prosecution in terms of the KPMG forensic report.

In conclusion, I wish to highlight that over R200 million of state funds was spent in the installation of a sanitation system that is not working due to maladministration. More millions are being spent on a dysfunctional bucket system. Many projects were started and not completed. All of this is due to maladministration including incompetence, fraud and possible corruption.

The Municipality's failure to implement the KPMG report constitutes further maladministration which exacerbated the situation. With the loss of time, it will be difficult to recover monies paid unlawfully.

My team and I hope that government will elicit and use lessons learnt from the Nala fiasco to improve procurement management. We also expect swift action to ensure there is no impunity for anyone.

Together we can turn the tide against maladministration and corruption in pursuit of the consolidation of our democracy. Let us all do our part so that we can realise the ideal of an accountable state that operates with the highest level of integrity while being responsive to the needs of its citizens and residents.

Thank you.

**Adv Thuli Madonsela**

**Public Protector of the Republic of South Africa**

