



PUBLIC PROTECTOR
SOUTH AFRICA

Media Statement

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For immediate release

Attention: Editors/ News desks

Subject: Public Protector welcomes Mandela report court challenge

Public Protector Adv. Busisiwe Mkhwebane has noted that the Director-General of the Eastern Cape Provincial Government (ECPG), Ms. Marion Mbina-Mthembu has taken part of the findings in the Nelson Mandela funeral investigation on judicial review.

Adv. Mkhwebane investigated allegations of misappropriation of public funds, improper conduct and maladministration by the ECPG and several other organs of state in connection with expenditure incurred for the funeral.

The investigation found among other things evidence of widespread irregular, fruitless and wasteful expenditure in the procurement of goods and services for the memorial and funeral. Such expenditure was found to have failed to meet the test of fairness, equity, transparency, competitiveness and cost-effectiveness.

Adv. Mkhwebane welcomes the move by Ms. Mbina-Mthembu as it is in line with case law on the powers of the Public Protector, in particular the provision that the institution's remedial action is binding unless reviewed and set aside by a court of law.

At the heart of Ms. Mbina-Mthembu's quarrel with the findings is the determination by Adv. Mkhwebane that the ECPG improperly diverted public funds amounting to R300m from the Eastern Cape Development Corporation's (ECDC) social infrastructure delivery programme towards the memorial and funeral services and that the provincial Executive Committee took this decision on her advise as then head of the provincial treasury.

Adv. Mkhwebane stands by this finding and reiterates that the provincial Executive Committee was misdirected by Ms. Mbina-Mthembu, who was at the head of the provincial treasury and therefore an expert and voice of authority on public procurement matters. She maintains that the recommendation was both irrational and unlawful, and amounted to improper conduct and maladministration.

Ms. Mbina-Mthembu has further distorted this finding, suggesting that Adv. Mkhwebane found that the ECPG spent R300m on the funeral when it is clearly stated in paragraph 7.1.1 of the report that the funds in question were diverted from the purpose for which they had been appropriated, namely the acceleration of social infrastructure delivery, to the funeral.

Nowhere in the report did Adv. Mkhwebane hold that R300 million was spent on the funeral. Instead, she referred to the diversion, which refers to the use of funds for purposes other than those for which they were meant. Accordingly, this is not to be confused with the Auditor-General's finding that only R35.9 million was spent on the funeral by the ECPG. The simple reading of the last paragraph on page 16 of the report will show that the Public Protector held that the ECDC lost more than R22 million, which was originally appropriated for the acceleration of social infrastructure development in the province.

Adv. Mkhwebane further noted with gratitude that the rest of the implicated organs of state in the matter are implementing the remedial action. It is hoped that they have drawn important lessons from this experience and that, in the future, they will be circumspect, tactful and follow the relevant laws, policies and prescripts in their use of public funds.

Having said this, Adv. Mkhwebane noted with disappointment disturbing utterances attributed to Ms. Mbina-Mthembu in the weekend newspapers. In one article, Ms. Mbina-Mthembu is quoted as calling the Public Protector "idiotic". Adv. Mkhwebane would like to caution Ms. Mbina-Mthembu against using demeaning language against the person of the Public Protector to express her frustration with the findings. While criticism is always welcome, it should be remembered that insulting a Public Protector is prohibited by law and offenders run the risk of being fined or serving a jail term.

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