



**Statement by Public Protector Adv. Busisiwe Mkhwebane on the occasion of a
Media Briefing held virtually on Wednesday, June 30, 2021.**

**Programme Director, Mr. Oupa Segalwe;
Deputy Public Protector, Adv. Kholeka Gcaleka;
Chief Executive Officer, Ms. Thandi Sibanyoni;
Chief Operations Officer, Mr. Lucky Mohalaba;
Executive Managers;
Members of the Media;
Members of the Public;
Ladies and Gentlemen;**

Good afternoon!

I wish to thank the media and express this office's appreciation for your unfailing interest in the work of this independent constitutional institution. Our interest is to reach the public, whom we are enjoined by Section 182(4) of the Constitution to be accessible to. It would be nearly impossible to reach them without your help.

Today marks our first quarterly briefing for the 2021/22 financial year. We are releasing a number of investigation reports, covering a variety of themes. These include housing, healthcare, Home Affairs issues, recruitment and selection of staff, whistleblower protection, procurement and contract management, management of municipal finances, cadre deployment and the appointment of Advisors for Ministers.

The public release of our investigation findings is a constitutional and legislative imperative under section 182(5) of the Constitution, read with sections 8(1) and 8(2A)(a) of the Public Protector Act 23 of 1994.

All in all, there are 17 reports. Five are closing reports. These are reports stemming from investigations that we have had to close, owing to reasons such as unsubstantiated allegations, referral to other competent forums or a lack of jurisdiction. The rest of the reports are those in which we have made adverse findings and taken appropriate remedial action.

Between the Deputy Public Protector (DPP), the Chief Executive Officer (CEO), the Chief Operations Officer (COO) and I, we will take turns speaking to different aspects of this statement. I now hand over to the COO to take you through closing reports and those concerning recruitment and selection of staff. He will be followed by the CEO, who will deal with housing, Home Affairs and whistle-blower protection cases. The DPP will deal with public procurement and health matters. I will then deal with the rest.

Closing reports

- a) **Malakoane v Lejweleputswa District Municipality (Report No. 01 of 2021/22)** – The Public Protector investigated allegations of maladministration by the Lejweleputswa District Municipality in relation to the procurement of Personal Protective Equipment (PPE). The complaint was lodged by Cllr. P. Malakoane on 12 October 2020. He alleged that the municipality did not follow correct procurement procedures in the procurement of PPE as part of the fight against the COVID-19 pandemic. The investigation was closed on the grounds that the allegations are unsubstantiated.

- b) **Radle v Free State Department of Treasury (Report No. 02 of 2021/22)** – The Public Protector investigated allegations of maladministration where in the Free State Treasury cancelled a PPE bid after acceptance letters were issued to successful bidders. The matter was closed on the basis that the allegations levelled against the department by Mr. G. Radle, including that the cancellation of the bid was contrary to legislative prescripts and that, despite this, orders were issued to certain companies, could not be substantiated.

- c) **Anonymous Concerned Members of Staff v Department of Transport (Report No. 05 of 2021/22)** – This investigation deals with aspect of the investigation arising out of a complaint by the Anonymous Concerned Members of Staff. The Public Protector investigated allegations of maladministration in connection with the awarding of a contract to C-Squared Consumer Connectedness (Pty) Ltd and other service providers for the supply of PPE by the National Department of Transport, as well as conflict of interest arising from the contract. This is Part A of a two-part report. Part B, which will be dealt with later, concerns another investigation in respect of the appointment of advisors by the Minister, in this regard a formal report is issued. This investigation was closed as there was no evidence to corroborate the allegations that the awarding of the contract to C-Squared Consumer Connectedness (Pty) Ltd and any other service providers for the supply of PPE by the department, as well as conflict of interest arising from the contract, were contrary to any legislation mentioned in the report.

- d) **Ngwenya v CRL Commission (Report No. 12 of 2020/21)** - The Public Protector investigated allegations of maladministration, improper conduct and irregular appointment of Prof David Luka Mosoma (Prof Mosoma) for the position of the Chairperson of the Commission for the Promotion and Protection of the Rights of Cultural, and Religious and Linguistic Communities (CRL Commission). The complainant, Mr. Mthimadi Ngwenya, alleged that Prof. Mosoma was an African National Congress (ANC) office-bearer at the time of his appointment both as Deputy Chair in March 2014 and later to his current position in June 2019. Prof. Mosoma was not a party office bearer. Accordingly, the investigation was closed.

We now turn to deal with investigations that resulted in adverse findings and where the Public Protector has taken appropriate remedial action as contemplated in section 182(1) (c) of the Constitution.

Recruitment and Selection of Staff and Related Matters

Anonymous v Ephraim Mogale Local Municipality (Report No. 34 of 2021/22)

The Public Protector investigated allegations of maladministration by the Ephraim Mogale Local Municipality in Limpopo relating to the appointment of Ms. M. L. Masombuka to the position of Chief Internal Auditor. An anonymous complaint lodged on 10 July 2019 by employees of the municipality gave rise to the investigation.

In the main, the complainants alleged that the former Acting Municipal Manager, Mr. Makoko Lekola decided to appoint Ms. Masombuka even though the Selection and Interview Panel had not recommended her for appointment. According to the complainants, two candidates other than Ms. Masombuka were recommended for appointment in order of performance during the interview process. Ms. Masombuka was the third candidate in order of performance.

The investigation focused on whether the municipality irregularly appointed Ms. Masombuka to the position of Chief Internal Auditor and whether the recommended candidates or any other person(s) suffered any prejudice as a result of the irregular appointment of Ms. Masombuka.

The investigation revealed that both allegations are substantiated. Ms. Masombuka was shortlisted, interviewed and appointed by the municipality despite not being in possession of the relevant Bachelor's Degree in Internal Audit/Accounting or Equivalent, as required by the advertisement at the time she applied for the position of Chief Internal Auditor.

The highest qualification that Ms. Masombuka had at the time she applied for the post (i.e. National Diploma in Internal Auditing) is not equivalent to a Bachelor's Degree in Internal Auditing/Accounting.

The shortlisting and subsequent appointment of Ms. Masombuka by the Municipality was in contravention of the provisions of section 195(1) of the Constitution, the Municipal Systems Act and the Recruitment, Selection and Appointment Policy of the municipality.

The shortlisting, interview and subsequent appointment of Ms Masombuka prejudiced other applicants who applied on the strength of their qualifications as stated in the advertisement. The decision to appoint the third, but not recommended candidate prejudiced the first and second recommended candidates respectively.

The conduct of the municipality accordingly constitutes improper conduct that resulted in prejudice as envisaged in the Constitution and and the applicable section of the Public Protector Act.

To remedy this improper conduct and maladministration, the Speaker of the Municipal Council in consultation with Municipal Council must within 30 working days from the date of this report, take disciplinary action against Mr Makoko Lekola and current employees who participated in the irregular appointment of Ms. Masombuka.

The Speaker must also, in consultation with the Acting Municipal Manager must, within 30 working days from the date of this report, develop internal controls to safeguard the integrity of the recruitment and selection process in all phases of the recruitment processes to avoid a recurrence of a similar incident.

The Acting Municipal Manager must institute proceedings for judicial review of the appointment of Ms. Masombuka as the Chief Internal Auditor of the Municipality within 60 business days from the date of this report.

The Acting Municipal Manager must also submit a report on the progress made with instituting the judicial review proceedings to the Municipal Council within 90 working days from the date of this report.

The Acting Municipal Manager must further within 30 working days from the date of this report, conduct training and capacitate officials on the recruitment and selection policy/process to avoid a recurrence.

Anonymous v NCGB Lekwene (Report No. 09 of 2021/22)

The Public Protector investigated allegations of improper conduct and maladministration in relation to the secondment and the subsequent appointment of

Mr. Vincent Mothibi as the CEO of the Northern Cape Gambling Board by Mr. Maruping Lekwene, the former MEC for Finance, Economic Development and Tourism in that province.

The investigation followed an anonymous complaint lodged on 03 August 2020, wherein it was alleged that the former MEC's secondment of Mr. Mothibi as Gambling Board CEO for a period of three years, instead of the prescribed twelve months, was not in accordance with the laws and prescripts regulating the secondment of employees in the Public Service.

It transpired during the investigation that the former MEC further appointed Mr. Mothibi for a period of twelve months as Gambling Board CEO with effect from 01 January 2020 to 31 December 2020.

In addition, the current MEC for the same portfolio, Mr. A. Vosloo, allegedly extended Mr. Mothibi's contract to 31 March 2021, or until the post is permanently filled – whichever comes first.

We focused the investigation on whether by Mr. Lekwene's alleged secondment of Mr. Mothibi as Gambling Board CEO was not in accordance with the relevant laws and prescripts regulating the secondment of employees in the public service.

We also looked into whether Mr. Lekwene's appointment of Mr. Mothibi as Gambling Board CEO with effect from 1 January 2020 to 31 December 2020 was not in accordance with the relevant laws and prescripts regulating the appointment of the CEO of the Gambling Board.

The investigation revealed that the allegation that Mr. Lekwene's secondment of Mr. Mothibi as CEO for a period of three years, with effect from 02 September 2019, was not in accordance with the relevant laws and prescripts regulating the secondment of employees in the Public Service.

Moreover, the allegation that the former MEC's appointment of Mr. Mothibi as the Gambling Board CEO for a period of twelve months, retrospective from 01 January 2020 until 31 December 2020, was not in accordance with the relevant laws and prescripts regulating the appointment of a CEO of the Gambling Board.

To remedy this improper conduct and maladministration, Northern Cape Premier, Mr. Zamani Saul, must take appropriate steps in respect of disciplinary action against Mr. Lekwene for his improper conduct relating to the irregular secondment and the subsequent irregular appointment of Mr. Mothibi within 30 days of this report.

The Premier must submit a report to the Northern Cape Provincial Legislature on the action taken against the MEC within 60 days of this report.

Furthermore, the current Economic Development and Tourism MEC, Mr. Vosloo, must institute proceedings for judicial review of the secondment and appointment of Mr. Mothibi within 30 days from the date of this report and submit a report on the progress made with instituting the judicial review proceedings to the provincial Executive Council, Legislature and Gambling Board within 60 days of this report.

One must add that, this office is inundated with complaints pertaining to alleged irregular appointment of staff and failure to follow recruitment and selection policies when filling vacancies in the public sector. We have taken note of the Public Service Commission's (PSC) recent report on similar issues. We are exploring referring all future complaints in this regard to the PSC, with whom we have a Memorandum of Understanding, which covers matters such as the cross-referral of complaints.

Leso v South African Police Service (Report No. 08 of 2021/22)

The Public Protector investigated allegations of maladministration and improper conduct relating to failure by the South African Police Service (SAPS) in Limpopo to provide the Mr. Lesetja Wilfred Leso with reasons why he had not been re-enlisted to the police service.

A 09 January 2019 complaint by Mr. Leso gave rise to the investigation. He, along with other former members of the SAPS, submitted applications for reenlistment following the SAPS's advertisement in June 2016, inviting erstwhile members to apply.

Mr. Leso and others were allegedly informed to wait for communication from the SAPS: Limpopo Province on the outcome thereof. However, the outcome was allegedly never communicated to them.

Attempts to obtain answers from then Minister of Police, Mr. Fikile Mbalula, resulted in the former Minister referring the query to National Police Commissioner, General Khehla Sitole, who allegedly neither responded nor acknowledged Mr. Leso's complaint.

In the light of this, our investigation focused on whether the SAPS in Limpopo failed to provide Mr. Leso with reasons why he had not been re-enlisted to the police service, and if so, whether the conduct constituted maladministration and improper conduct.

The investigation revealed that, indeed, the SAPS in Limpopo failed to provide Mr. Leso with reasons as to why he had not been re-enlisted to the police service.

To remedy this improper conduct and maladministration, the Provincial Commissioner: SAPS Limpopo Province, Lieutenant-General Nneke Ledwaba, must take cognisance of the findings of maladministration and improper conduct mentioned in the report and

ensure that, within 30 days of receipt of this report, Mr. Leso is furnished with a letter providing him with adequate reasons why he had not been re-enlisted to the police service.

General Sitole must take cognisance of the findings of maladministration and improper conduct mentioned in the report and include in his oversight role over the SAPS: Limpopo Province, the monitoring of implementation of remedial action.

Public Housing

Mbeki v Nelson Mandela Bay Metropolitan Municipality (Report No. 14 of 2021/22)

The Public Protector investigated allegations of improper conduct, undue delay and maladministration by the Nelson Mandela Bay Metropolitan Municipality in connection with the allocation of RDP house number 29459, in Missionvale, Port Elizabeth, in the Eastern Cape.

A complaint lodged by Mr Mkhanyiseli Maggelstone Mbeki on 05 April 2019 prompted the investigation. It focused on whether municipality failed to give Mr. Mbeki access to his RDP house after it was approved, in terms of the relevant legal prescripts regulating the allocation, occupation and transfer of ownership of RDP houses; and if so, whether such amounts to improper conduct, maladministration and prejudice. The Public Protector found that the allegations are substantiated.

To remedy this improper conduct and maladministration, the Acting City Manager must take the appropriate steps to ensure that Mr. Mbeki is given lawful occupation in respect of his approved RDP house and, working in conjunction with the relevant Department of Human Settlements, the Acting City Manager must further ensure that Mr. Mbeki receives his title deed document within 90 business days from the date of this report.

The Acting City Manager must also report to the municipal council on the steps to be taken steps to ensure that Mr. Mbeki is given lawful occupation in respect of his approved RDP house within 90 business days from the date of issue of this report.

In addition, the Acting City Manager must apologise in writing to Mr. Mbeki for the delay in enabling him occupation of his approved RDP house and further inform him of the steps to be taken to ensure that he is given lawful occupation in respect of his approved RDP house within 30 business days from the date of issue of this report.

It is important to highlight the fact that the Public Protector has previously conducted a systemic investigation into the problems that plague the provision of RDP houses. The aim was to address the systemic deficiencies that give rise to the prevalence of

complaints such as Mr. Mbeki's, with a view to stemming a recurrence. However, we continue to receive such complaints. We may have to revisit the systemic issues in this regard.

Home Affairs Matters

Gwiji v Department of Home Affairs (Report No. 06 of 2021/22)

The Public Protector investigated allegations of maladministration by the Department of Home Affairs in the registration of the births and irregular issuing of identity numbers to the children of Ms. D. Mtshengu in the surname of the late Mr. S. Gwiji. The investigation was brought about by a complaint lodged in April 2019 by Mr. V. Gwiji.

In his complaint, Mr. V. Gwiji alleged that he discovered in 2002 that Ms. Mtshengu submitted three birth certificates to the Mount Ayliff Magistrates Office to claim from the estate of the late Mr S. Gwiji. All the birth certificates were allegedly registered under the surname of Mr. S. Gwiji and it was later established that the registration took place after the death of the alleged biological father, Mr. S. Gwiji.

According to Mr. V. Gwiji, he lodged a complaint on the matter with the department, requested and was handed a document by an official of the department in 2010 suggesting that the department was investigating the matter internally. He has since been calling and requesting officials in the department for a report on the internal investigation. He was allegedly informed in 2016 that the department could not trace the report or outcome of the investigation.

Based on an analysis of the complaint, the following three issues were identified and investigated:

- a) Whether due process was followed by the department in the registration of the births of the children of Ms. Mtshengu;
- b) Whether the alleged birth registrations are correctly entered on the population register by the department; and
- c) Whether the department has failed to properly investigate a complaint lodged by Mr. V. Gwiji and to inform him about the outcome of such an investigation.

The investigation revealed that due process was not followed by the department in the registration of the births of the children of Ms. Mtshengu; that the birth registrations were incorrectly entered into the population register; and that the department failed to properly investigate and to conclude the investigation of the registration of the births of Ms. Mtshengu's children after a complaint was received from Mr. V. Gwiji and that he was not informed about the outcome of the investigation.

The department has undertaken “to correct this and ensure that the correct surname is used.” According to the department, “Ms. Mtshengu will, in line with the Promotion of Administrative Justice Act, 2000 be informed that the surnames will be amended to her surname on the Population Register” and “the children, who are now majors, can, after the amendment is effected, apply to use the Gwiji surname following the process to amend surnames for majors, providing the required supporting documents and paying the prescribed fee.”

To remedy this maladministration and improper conduct, the Director-General must ensure that the alerts issued with the Standard Operating Procedures (SOPs) are duly implemented and monitored and ensure the SOPs are adhered to by officials as undertaken in the department’s response to the Public Protector’s section 7(9) notice. He must also implement the proposed remedy referred to above.

The DG must also retract any identity card issued in terms of the Identification Act, 1997, with incorrect particulars from the three children, and re-issue them with a corrected documents as contemplated in section 19(3) (b) (ii) of the Act as soon as amendments of the surnames on the population register are effected, and inform the three children, who are now majors, of any further remedy that is available to them.

Lastly, the DG must issue Mr. V. Gwiji with a written apology for not responding to his complaint and supply him with the outcome of the requested investigation report on the matter and, through regular monitoring, ensure that complaints are timely attended to and that complainant are provided with written outcomes on the matters raised.

Whistle-blower Protection

Chauke v Gauteng Department of Economic Development (Report No. 10 of 2021/22)

The Public Protector investigated allegations of maladministration, improper or suspected improper conduct in connection with the Gauteng Office of the Premier’s handling of a protected disclosure lodged in terms of the Protected Disclosures Act, 2000 (PDA).

This was in connection with allegations of irregular conduct by then provincial MEC of Economic Development, Lebogang Maile, and the former Deputy Director-General of provincial Economic Development Department, Mr Steven Ngubeni, on non-adherence to legislation and policy prescripts regulating Supply Chain Management (SCM) in government.

The investigation was triggered by a complaint lodged on 09 May 2017 by Mr. Ronald Giyani Chauke, a former employee of the Gauteng Department of Economic

Development. He alleged that he lodged a protected disclosure with Premier David Makhura and Director-General Ms. Phindile Baleni in terms of the PDA.

The Public Protector has powers under the PDA to receive protected disclosures and thus serves as a safe harbour for whistle-blowers. In terms of the PDA, employees who make protected disclosures are protected from suffering occupational detriment as a result of their reporting of suspected improper conduct.

Occupational detriment refers to, among other things, being dismissed, suspended, demoted, harassed or intimidated in retaliation for having made a protected disclosure.

Mr. Chauke's disclosure related to allegations of improper or suspected improper conduct by MEC Maile and Mr. Ngubeni regarding non-adherence to legislation and policy prescripts regulating procurement of goods and services and payment of service providers.

According to Mr. Chauke, no action was taken by the Office of the Premier to investigate the allegations and to protect him from those against whom he made the disclosure.

A thorough assessment of the complaint led to the confinement of the investigation to three issues, namely whether the Office of the Premier received a protected disclosure in terms of the PDA as lodged by Mr. Chauke against MEC Maile and Mr Ngubeni; whether the office failed to act on Mr. Chauke's protected disclosure; and whether Mr. Chauke was subjected to occupational detriment as a result of the protected disclosure.

The investigation revealed that the Office of the Premier received the protected disclosure in terms of the PDA. Mr. Chauke's complaint lodged with the Office of the Premier on 13 April 2016 constituted a protected disclosure in terms of section 9(1) of the Protected Disclosures Act, 2000 read with Clause 9 of the Whistle Blowing Policy of the department.

The allegation that the Office of the Premier failed to act on Mr. Chauke's protected disclosure is unsubstantiated. Evidence shows that the provincial Economic Development Department was engaged on the matter and investigation firm Rakoma and Associates Incorporated was subsequently contracted to conduct a forensic investigation into the allegations.

However, it was observed that despite repeated requests for feedback and progress by Mr. Chauke, the Office of the Premier failed to provide him with a prompt response, communicating its receipt of the complaint and assuring him that the complaint was received.

The allegation that Mr. Chauke was subjected to occupational detriment as a result of the protected disclosure is unsubstantiated. He was issued with written warnings in December 2015 and February 2016. Both warnings were issued prior to him lodging the protected disclosure with the Office of the Premier on 13 April 2016. Accordingly, there is no link between the warnings and the disclosure.

It has been observed that Mr. Chauke approached the General Public Service Sector Bargaining Council (GPSSBC) with regard to the written warnings issued to him without being afforded an internal opportunity to make representations in response to the allegations of misconduct. He also approached the GPSSBC over not being consulted and afforded the opportunity to make representations relating to the decision to transfer him to the post of Chief Director: Risk Management.

When the GPSSBC conciliation outcome was not in his favour, Mr. Chauke opted to resign without taking the process further. However, the conduct of the department's functionaries in not affording him an internal opportunity to make representation prior to the issuing of the written warnings and the implementation of the decision to transfer him to another business unit was not in line with, among other things, relevant provisions of the Labour Relations Act, 1995 and the Public Service Act, 1994.

To remedy the improper conduct and maladministration as uncovered by the investigation, Premier Makhura must, within 60 days of this report, consider putting measures in place to ensure that protected disclosure complainants are not subjected to secondary persecution by those against whom they have made a disclosure and are updated regularly on the progress of their complaints.

The Director-General must, within 30 days of this report, furnish Mr. Chauke with a written acknowledgement, confirming receipt of the protected disclosure and a letter of apology for not promptly responding to his request for feedback.

The head of the provincial Economic Development Department must, within 90 days of this report, ensure that the forensic investigation conducted by Rakoma and Associates Incorporated is finalised, and consider providing Mr. Chauke with the outcome of the investigation in respect of the matters he raised in the protective disclosure.

The HOD must also provide training to the relevant functionaries of the department on the Labour Relations Act, 1995 and the Public Service Act, 1994, with emphasis on the requirements to consistently afford employees the opportunity to make representations in response to the allegations of alleged misconduct or matters where an employee may be adversely effected.

Public Procurement and Contract Management

Sekilane v Ngwathe Local Municipality (Report No. 48 of 2020/21)

The Public Protector investigated allegations of failure by the Ngwathe Local Municipality in the Free State to compensate Phambili Corporate Clothing CC for services rendered. The investigation was triggered by a complaint lodged on 16 July 2018 by Mr Mziwabantu Mbhele, on behalf of Mr Peter Selikane, a Director of Phambili Corporate Clothing CC.

Mr. Sekilane alleged that the municipality awarded his company a tender for the provision of protective clothing. The tender was in three batches, namely Bid Ref: 01(01/2018), Bid Ref: 02(01/2018) and Bid Ref: 03(01/2018), with values of R49 662.00, R34 99.80 and R79 139.28 respectively.

He allegedly delivered in terms of the first batch, which was received by Ms. Mahlodi Motale, an official of the municipality. Upon enquiring about payment four weeks later, he was allegedly informed that the clothing items he delivered did not meet the specifications even though, bar the reference to “two-piece overalls generally used by blue collar workers” during a mandatory briefing session, no further specifications were referred to in the request for quotations.

He further alleged that the municipality failed to issue purchase orders for Bid Ref: 02(01/2018) and Bid Ref: 03(01/2018). Instead, the municipality informed him that the clothing he delivered was rejected and he should submit a revised quotation, which he did. Purchase orders were allegedly not issued for the rest of the job.

We studied the complaint and, upon analysis, resolved to confine the investigation to whether the municipality unduly delayed to compensate Phambili Corporate Clothing CC for services rendered and, if so, whether such conduct amounted to maladministration. We also looked into whether the failure by the municipality to issue purchase orders in respect of Bid Ref: 02(01/2018) and Bid Ref: 03(01/2018) amounted to maladministration.

The investigation revealed that the allegation that the municipality unduly delayed to compensate Phambili Corporate Clothing CC for services rendered and therefore amounted to maladministration was substantiated.

On the other hand, the second allegation that the failure by the municipality to issue purchase orders in respect of Bid Ref: 02(01/2018) and Bid Ref: 03(01/2018) amounted to maladministration was unsubstantiated.

To remedy the maladministration established in terms of the first allegation, the Municipal Manager, Mr. Bruce William Kannemeyer, must ensure that Mr. Sekilane is paid the full outstanding amount of R49 662.50, with interest calculated in terms of the Prescribed Rate of Interest Act 55 of 1977.

This should be in accordance with the official appointment letter in respect of Bid Ref: 01(01/2018) and the delivery of goods accepted by Ms. Mahlodi Motale of the Municipality as per delivery note number 06/030.

Mr. Kannemeyer must also apologise in writing to Mr. Sekilane. Both these pieces of remedial action must be actioned within 30 days from the date of the report.

Alberts v e-Government (Report No. 08 of 2021/22)

The Public Protector investigated allegations of maladministration relating to the irregular award of a R30million Security Operations Centre (SOC) Services tender by the Gauteng Department of Finance and e-Government (e-Gov) to In2IT Technologies (In2IT).

This followed a 20 May 2020 complaint from Adv. Anton Alberts, in which he alleged that e-Gov awarded a suspicious R30million express tender in 24 hours to In2IT; and that e-Gov used the cover of the COVID-19 pandemic to rush the contract through without following proper tender processes.

Mr. Alberts further alleged that provincial MEC for Education, Mr. Panyaza Lesufi, may have unduly influenced the award of the tender, considering that he allegedly, on several occasions, tried to insert In2IT Technologies into government services.

The investigation focused on the following three issues after a thorough analysis of the complaint:

- a) Whether e-Gov advertised and awarded the SOC tender amounting to R30 million to In2IT without following proper procurement processes and whether such action amounts to improper conduct and/or maladministration;
- b) Whether Mr. Lesufi unduly influenced the award of the R30 million tender to In2IT; and
- c) Whether the State Information Technology Agency (SITA) has insufficient capacity and capability to procure SOC services on behalf of e-Gov.

The investigation revealed that e-Gov advertised and awarded the SOC tender to In2IT without following proper procurement processes and this constituted improper conduct and/or maladministration.

In addition, SITA has insufficient capacity and capability to procure SOC services on behalf of e-Gov. Evidence in our possession revealed that SITA failed to procure SOC

services on behalf of the e-Gov, without justifiable grounds, since e-Gov's first request which was made in 2017.

The former CEO of SITA conceded that SITA does not have the capacity to procure SOC service on behalf of the e-Gov. The Executive Caretaker of SITA, Mr Luvuyo Keyise did not delegate his obligation and duties to procure SOC services to e-Gov as e-Gov is not a subsidiary company of SITA.

However, SITA was required to delegate its procurement functions to a subsidiary company as required by section 3A(2) of the SITA Act, when they were unable to procure SOC service before they could recommend exemption to Ms NdabeniAbrahams. The failure, inability and delay by SITA to procure SOC service led to e-Gov requesting exemption from Ms Ndabeni-Abrahams.

Regarding Mr. Lesufi, the allegation that he unduly influenced the award of the R30million tender to In2IT was found to be unsubstantiated. There is no evidence indicating that Mr. Lesufi was involved in any procurement process of the SOC tender or that he disregarded the provisions of the Code of Conduct for Members of the Provincial Executive Council.

To remedy this improper conduct and maladministration appropriately, the provincial MEC of Finance and e-Government must ensure that Mr Cyril Baloyi, the departmental head, conducts training in respect of all the executive officials of e-Gov and officials involved in supply chain processes. This must happen within thirty working days of the report.

Mr. Baloyi must institute disciplinary steps against Mr. Muthivhi for advising IN2IT of the tender award before a letter of appointment was issued and the contract signed by e-Gov and IT2IT and against Ms. Koyana for failing to follow supply chain processes in that she evaluated only two Request for Quotations on her own, outside the prescribed Supply Chain Management (SCM) policy.

It is noted that Mr. Rashid Seedat, the former Acting Head of Department of eGovernment, has since returned back to his position at the Gauteng Premier's office and that disciplinary steps have already been taken against him by Mr. David Makhura, the Gauteng Premier and that he was also issued with a sanction of a final written warning in November 2020. Therefore no remedial action will be taken against Mr Seedat in this instance.

It is also noted that Mr. Sanele Zondo, the former Acting Chief Financial Officer of e-Gov, has since returned back to his position at the Gauteng Department of Roads and Transport and subsequently resigned from the department at the end of October 2020. Therefore no remedial action can be taken against him.

Mr. Baloyi must also provide training to all the executive officials of e-Gov and SCM officials who are involved in procurement processes. All these must happen within thirty working days of the report.

Mr. Keyise must, within 30 working days after the date of this report, submit a close out report outlining the implementation of the remedial action of the Public Protector.

It is noted that SITA undertook to implement my remedial action by engaging Ms Ndabeni Abrahams regarding the lack of capacity issue at SITA in the following manner:

- a) SITA has appointed three (3) HOD's in the SCM division –HOD: Contract Management, HOD: Demand Management and HOD: Centre of Excellence which will commence work at SITA on 01 June 2021.
- b) SITA has advertised 19 more positions that are being filled and this will be completed within the next three (3) to four (4) months.
- c) SITA further commits to conduct training and create additional awareness to Supply Chain Management staff and Customer Relations Managers on the process for IT requirements from government departments.

Lastly, Mr. David Makhura, the Premier of Gauteng Provincial Government, must note that I did not find any wrongdoing against Mr. Lesufi with regards to the allegation that he may have influenced the award of SOC services to IN2IT and as such, there is no remedial action taken against him.

Public Healthcare

Eastern Cape Health Facilities/ Hospitals (Report No. 11 2021/22)

The Public Protector investigated, on own-initiative, allegations of worsening conditions within the health facilities/hospitals in the Eastern Cape. The investigation commenced on 30 July 2020. It was based on information that came to the attention of the Public Protector through media reports relating to the poor conditions at health facilities/hospitals in the province.

In order to obtain clarity as to what was alleged in the media, we visited certain identified health facilities in the province and conducted site inspections on 04 and 05 August 2020. The inspections entailed indiscriminately interviewing staff members, union representatives and patients.

The investigation sought to examine a number of factors, including the availability of health care, human resources, physical infrastructure and vital equipment, machinery,

PPE and staff morale in hospitals, in the light of the strain added by outbreak of the COVID-19 pandemic.

The following hospitals were visited and inspected:

- a) Uitenhage Hospital;
- b) Livingstone Hospital;
- c) Mthatha Hospital; and
- d) Sulenkama Hospital (also known as the Nessie Knight Hospital).

On the basis of an analysis of the allegations and available information, we investigated whether the administration of health by the Eastern Cape Department of Health (ECDoH) at the Nessie Knight, Mthatha, Livingstone and Uitenhage Hospitals accords with the obligations imposed by the Constitution and the law and if not, whether such failure amounts to improper conduct and maladministration.

The investigation revealed that the administration of health by the ECDoH at Nessie Knight, Mthatha, Livingstone and Uitenhage Hospitals does not accord with the obligations imposed by the Constitution and the law.

At Nessie Knight, the investigation team observed systemic deficiencies, such as staff shortages, lack of adequate medical equipment, insufficient supply of PPE, poor physical infrastructure such as dilapidated buildings, lack of vehicles, lack of laundry services and poor supply of water as detailed in evidence.

In respect of Mthatha, observations made during the on-site inspection that was undertaken by the PPSA investigation team revealed acute systemic deficiencies such as inadequate physical infrastructure, the lack of a mortuary, shortage of office space, inadequate office equipment, shortage of human resources, lack of vehicles, inadequate medical equipment or machinery and inadequate supply of other essential resources like PPE which are all necessary to sustain an effective health facility, as detailed in evidence.

With regard to Livingstone, systemic deficiencies such as acute staff shortages, inadequate physical infrastructure, shortage of medical equipment or machinery and insufficient supply of other resources like PPE which are all necessary to sustain an effective health facility, as detailed in evidence, were observed.

Regarding Uitenhage, it was observed that there were systemic deficiencies such as acute staff shortages, shortage of vehicles and inadequate supply of resources like PPE which are all necessary to sustain an effective health facility, as detailed in the evidence.

The same systemic deficiencies were echoed in the submissions by the hospital management and by union representatives and, in some instances, staff members that were engaged during interaction with the investigation team in the case of all four facilities.

The observations and findings were not disputed by the ECDoH. The ECDoH failed to ensure appropriate conditions for the enjoyment, delivery and access to adequate as well as effective health care services for the communities of Sulenkama, Mthatha, Port Elizabeth and Uitenhage.

Such failure by ECDoH amounts to contravention of the relevant sections of the Constitution, relevant sections of the National Health Act and the Regulations, as shown in evidence. Accordingly, the conduct of the ECDoH constitutes improper conduct as envisaged in the Constitution and maladministration in terms of the Public Protector Act.

The Public Protector notes and acknowledges the challenges and constraints faced by the ECDoH, as well as the context within which health services are delivered in the Eastern Cape namely, the serious infrastructure backlogs from the former homelands.

As part of remedial action in respect of the Nessie Knight Hospital, the Head of the ECDoH must take appropriate steps to ensure that within the 2021/22 Medium Term Expenditure Framework (MTEF), the ECDoH and where appropriate in consultation with the provincial Public Works and Infrastructure (department as well as the provincial Treasury finalises several projects.

These include the construction of the new residences for the staff; fencing of the hospital grounds; installing water supply in the residences; renovation of the male, female and TB wards; construction of a concrete drive way; renovation of the kitchen and Central Sterile Supply Department; installation of new ceilings in the ward's passage(s) as part of and the main hospital building renovations; refurbishment of hospital equipment and installation of piped oxygen, among other things.

Regarding Mthatha, the Head of ECDoH must ensure, among other things, that vehicles from other health care facilities are reassigned for the benefit of the Mthatha Hospital, within thirty days from the date of this report and a submission is made to the Provincial/National Treasury for assistance with the timely settlement of medico legal claims relating to the hospital to avoid the further attachment of the assets of the hospital, within thirty days from the date of this report.

At Livingstone, the Head of the ECDoH must take appropriate steps to ensure, among other things, that the recruitment process for the vacant leadership positions at the hospital is finalised within sixty days from the date of this report; the filling of other critical positions at the hospital is prioritised; interns appointed as from April 2021 are

placed at the hospital to assist; and the organogram for the hospital is finalised within ninety days from the date of this report and the relevant Treasury engaged for additional funds to fill vacant positions.

As far as Uitenhage is concerned, the Head of the ECDoH must take appropriate steps to ensure, among other things, that the organogram of the hospital with the correct classification of posts is completed within ninety (90) days from the date of this report; the recruitment process for the leadership positions at the hospital is completed within sixty (60) days from the date this report and the filling of other critical vacant positions at the hospital is prioritized.

The remedies in respect of all these facilities are not exhaustive. The full details thereof can be found in the full report.

Cadre Deployment

Schreiber v National Cabinet (Report No. 38 of 2020/21)

The Public Protector investigated allegations of an attempt by the ANC to instruct its deployed cadres in the national government to influence appointments for the positions of Directors-General, Chief Executive Officers, Chairpersons and Board Members in State-Owned Entities.

The allegations were spelt out in a 22 July 2020 complaint by Dr. Leon Schreiber, MP, of the Democratic Alliance. The complaint was referred to the Speaker of the National Assembly in terms of section 6(4) (c) (ii) of the Public Protector Act, read with section 92(2) and (3) and/or 93(2) of the Constitution to consider referring the matter to the Joint Committee on Ethics and Members' Interests, or nay appropriate committee for further consideration and action in terms of sections 56 and 69 of the Constitution.

Appointment of Advisors for Ministers

Anonymous Concerned Members of Staff v Department of Transport (Report No. 13 of 2021/22)

The Public Protector investigated allegations of maladministration and improper conduct in the irregular appointment of Ministerial Advisors by the National Department of Transport. The investigation resulted from a complaint lodged on 5 August 2020 by a group calling themselves "Anonymous Concerned Members of Staff". This is Part B of the two-part report referred to earlier, stemming from the investigation of the complaint by the Anonymous Concerned Members of Staff at the department.

They alleged that the Minister of Transport, Mr. Fikile Mbalula, and the Director-General of the department, Mr. Alec Moemi, irregularly appointed Advisors in the Ministry of Transport. The officials so appointed were alleged to be, among others, Messrs. L. Venkile, K. Khoza and B. Mpondo and Ms. T. Mpondo.

The specific allegations include the appointment of Messrs. Mpondo, Venkile and Khoza to positions of Advisor without prior confirmation of the appointments by the Department of Public Service and Administration as required in terms of the applicable regulations. With regard to Mr. Mpondo, questions were also raised about his secondment to the Passenger Rail Agency of South Africa (PRASA).

In the case of Ms. Mpondo, it was alleged that she was appointed immediately after the elections as a Parliamentary Liaison Officer in the Ministry at the level of Deputy Director whilst she only had a matric certificate. It was also alleged that when she subsequently completed her Diploma in Administration in April 2020, Mr. Moemi issued an instruction that she be elevated to the position of Senior Manager.

A thorough analysis of the complaint led to the narrowing down of the investigation to the following four issues:

- a) Whether the appointments of Messrs. Venkile, Khoza and Mpondo were contrary to the provisions of the Public Service Act and other prescripts applicable to the National Department of Transport;
- b) Whether Messrs. Venkile and Khoza were irregularly paid salaries which are equivalent to that of a Deputy Director General (DDG) level even though their appointments were not approved by the Minister of Public Service and Administration;
- c) Whether Mr. Mpondo's secondment to PRASA was done contrary to the provisions of the Public Service Act, and other prescripts applicable to the department; and
- d) Whether Ms. Mpondo was elevated to the position of Senior Manager contrary to the provisions of the Public Service Act and other prescripts applicable to the department.

The investigation revealed that the appointments of Messrs. Venkile, Khoza and Mpondo were contrary to the provisions of the Public Service Act and other prescripts applicable to the department.

It also revealed that and Messrs. Venkile and Khoza were irregularly paid salaries which are equivalent to that of a Deputy Director General (DDG) even though their appointments were not approved by the Minister of Public Service and Administration.

Messrs. Venkile and Khoza were appointed at salary ranges of R1 446 378.00 and R1 521 591.00 – R1 714 074 per annum, respectively. Their offers in respect of contracts of appointment are dated 1 June 2019 and 21 March 2019 and Public Service and Administration Minister Senzo Mchunu approved them later on 27 August 2019 and 11 November 2020, respectively.

Mr. Venkile has undertaken to pay back the money determined as a salary overpayment. Minister Mbalula and the Mr. Moemi undertook to recovery all overpayments that have been effected on Mr. Khoza's salary.

The investigation further revealed that Mr. Mpondo's secondment to PRASA was done contrary to the provisions of the Public Service Act, and other prescripts applicable to the department. However, contrary to the allegations, we found no irregularities in the appointment of Ms. Mpondo to the position of Director Parliamentary and Cabinet Support in the office of the Minister.

To remedy this improper conduct and maladministration, Minister Mbalula must take urgent and appropriate steps to ensure that when making future Special Advisor appointments, he submits proposals/recommendations for the appointment of individual Special Advisors to the Minister for the Public Service and Administration for approval of the individual's compensation level before the appointment/upgrade is effected.

He must also see to it that all future contracts of employment, Performance Agreements and security clearance of Special Advisers are submitted to the Minister of Public Service and Administration for record purposes as required by the Dispensation Policy.

Mr. Moemi must take urgent and appropriate steps to ensure that all the overpayments, salaries and emoluments that were paid to Mr. Venkile by the department before his position as Special Advisor to the Minister of Transport was approved by the Minister of Public Service and Administration, are recovered in full, as per the agreement concluded with Mr. Venkile.

He must also ensure that the department recovers in full and/or enters into a repayment agreement with Mr. Khoza in order to recover all outstanding overpayments that were made to him as a result of the remuneration irregularly received prior to the concurrence of his remuneration level by the Minister of Public Service and Administration.

The Minister of Public Service and Administration must take urgent and appropriate steps to ensure that all Ministers and Deputy Ministers are aware and trained in the

procedures and processes to be followed in the appointment of Ministerial Special Advisers.

Management of Municipal Finances

Venda Building Society Mutual Bank (Report No. 17 of 2021/22)

The Public Protector investigated, on own-initiative, allegations of improper conduct and maladministration by municipalities in the Limpopo, North West and Gauteng provinces relating to investments made with the Venda Building Society Mutual Bank (VBS).

The investigation commenced on the grounds of information that came to the Public Protector's attention from media reports relating to the investment of public funds by several municipalities with VBS. This followed the publication of a forensic report commissioned by the Prudential Authority in connection with the alleged improprieties and unlawful conduct at VBS.

It was widely reported from 2018 onwards that municipalities' investment, with VBS, of large amounts of public money meant for service delivery was improper, unlawful and resulted in the misuse of public funds.

Based on the analysis of the allegations and the information obtained, the investigation focused on whether municipalities in Limpopo, North West and Gauteng irregularly invested public funds with VBS, and if so, whether the conduct of the municipalities was improper and constituted maladministration.

The municipalities in question were Makhado Local Municipality, Vhembe District Municipality, Collins Chabane Local Municipality, Elias Motsoaledi Local Municipality, Greater Giyani Local Municipality, Ephraim Mogale Local Municipality, Tubatse Fetakgomo Local Municipality and Lepelle-Nkimpf Local Municipality, all in Limpopo.

There were also Madibeng Local Municipality, Mahikeng Local Municipality, Moretele Local Municipality and Dr Ruth Segomotsi Mompati District Municipality in the North West as well as Merafong City Local Municipality and West Rand District Municipality in Gauteng.

The investigation confirmed that the implicated municipalities did in fact irregularly invest public funds with VBS. Details of each investment and losses of public funds as a result of the irregular investments per municipality are as follows:

- a) Makhado Local Municipality irregularly invested **R155million** from 2016 to 2017 with VBS. The investment resulted in the loss of more than **R60million** of public funds.

- b) Vhembe District Municipality irregularly invested **R1 070 000 000 (one billion and seventy million Rand)** from 2015 to 2017 with VBS. The investment resulted in the loss of more than **R300million** of public funds.
- c) Collins Chabane Local Municipality irregularly invested **R120million** on 23 October 2017 with VBS. The investment resulted in the loss of more than **R120million** of public funds.
- d) Elias Motsoaledi Local Municipality irregularly invested **R190million** during 2016/2017 and 2017/2018 financial years, respectively with VBS.
- e) Greater Giyani Local Municipality irregularly invested **R153 254 435.42** with VBS in September and October 2017, respectively. The investment resulted in the loss of **R153 254 435.42** of public funds.
- f) Ephraim Mogale Local Municipality irregularly invested **R80million** from 2016 to 2017 with VBS. The investment resulted in the loss of more than **R80million** of public funds.
- g) Fetakgomo Tubatse Local Municipality irregularly invested **R230million** from 2016 to 2018 with VBS. The investment resulted in the loss of more than **R230million** of public funds.
- h) Lepelle-Nkumpi Local Municipality irregularly invested **R100million** for a period of twelve months and **R50million** for a period of three months with VBS on 29 November 2017. The investment resulted in the loss of more than **R150million** of public funds.
- i) Madibeng Local Municipality irregularly invested **R60million** with VBS in 2017. **R30million** was paid back by VBS. The investment resulted in the loss of more than **R30million** of public funds.
- j) Mahikeng Local Municipality irregularly invested **R 89 191 000 (excluding interest)** with VBS. The investment resulted in the loss of more than **R82million** of public funds.
- k) Moretele Local Municipality irregularly invested **R258million** with VBS from July 2017 to January 2018. The investment resulted in the loss of more than **R50million** of public funds.
- l) Dr Ruth Segomotsi Mampati District Municipality irregularly invested **R210 million** with VBS from July 2017 to March 2018. The investment resulted in the loss of more than **R150million** of public funds.
- m) Merafong City Local Municipality irregularly invested **R50 million** in 2017. The investment resulted in the loss of more than **R51million** of public funds.

- n) West Rand District Municipality irregularly invested made 19 investments with VBS from February 2015 to February 2018 in the amount of **R389 114 645**. The investment resulted in the loss of **R227 114 645** of public funds.

These investments were made in violation of the provisions of section 13(1) of the Municipal Finance Management Act, the Municipal Investment Regulations and the policies regulating investments by the municipalities. The funds lost could have been used to improve service delivery to the communities.

The conduct of the municipalities concerned was accordingly improper as envisaged in the Constitution and constituted maladministration in terms of the Public Protector Act.

To remedy this improper conduct and maladministration, the Municipal Managers of the municipalities referred to in this report must:

- a) Ensure that the relevant officials responsible for and dealing with investments by the municipality attend a workshop and training sessions on the relevant provisions of the MFMA, the Regulations and the policy of the municipality that regulates investments, within 90 days from the date of this report;
- b) Report to the Council on a quarterly basis on the status of investments made or to be made by the municipality;
- c) Ensure that the Internal Audit Unit of the municipality conducts regular compliance audits on the investment accounts of the municipality and report accordingly; and
- d) Report to the Council on the implementation of the remedial action referred to above within 120 days from the date of this report and submit a copy of the report to the Public Protector.

The Speakers of the municipalities referred to in this report must:

- a) Ensure that quarterly reports are submitted to the Provincial Members of the Executive Councils (MEC's) responsible for local government and the Provincial Treasuries of the respective Provincial Governments on the implementation of the remedial action taken above.
- b) Take the appropriate steps to ensure that the Audit Committees of the respective municipalities are properly constituted, as contemplated by section 166 of the MFMA with members that are competent and that have the necessary skills, qualifications and experience; and

- c) Take the appropriate steps to ensure that any outstanding recommendations made by the forensic investigation reports on the investments by the implicated municipalities with VBS referred to in the respective reports on the municipalities, including disciplinary action against officials and councillors, are considered by the Council for implementation, within 90 days from the date of this report.

Lastly, the Limpopo, North West and Gauteng MEC's responsible for local government must submit regular reports to the Director-General of the National Treasury with their comments where appropriate, on the implementation of the remedial action above.

As I conclude, I wish to invoke the following salient points coming out of the seminal Constitutional Court judgment in the case of the Economic Freedom Fighters v Speaker of the National Assembly and others:

- Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles;
- An appropriate remedy must mean an effective remedy, for without effective remedies, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced;
- Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints which was the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of [our] report and findings, [we are] constitutionally empowered to take action that has that effect, if it is the best attempt at curing the root cause of the complaint;
- The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow;
- Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to;
- The Public Protector's power to take appropriate remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of the investigation and the type of findings made;

- Implicit in the words “take action” is that the Public Protector is ... empowered to decide on and determine the appropriate remedial measure. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in these words suggests that [the Public Protector] necessarily has to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence;
- The Public Protector has the power to determine the appropriate remedy and prescribe the manner of its implementation;
- “Appropriate” means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case.
- The remedial action taken by the Public Protector has a binding effect. When remedial action is binding, compliance is not optional, whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.

Thank you.