

**REPORT BY THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE CONSTITUTION, 1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT, 1994**



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NO 43 OF 2007/08**

**REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MISMANAGEMENT OF PUBLIC FUNDS GRANTED TO THE *TIRISANO DEVELOPMENT GROUP* BY THE NORTH WEST DEPARTMENT OF HEALTH**

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## EXECUTIVE SUMMARY

The Office of the Public Protector investigated a complaint received from former staff members of the Kgalagadi Crisis Centre / Tirisano Development Group, hereafter called Tirisano, about allegations of improprieties pertaining to public funds allocated to them by the Provincial Department of Health in the North West Province.

It is alleged that:

1. There were discrepancies with the management of public funds received from the Department of Health by the project coordinator appointed by Tirisano;
2. There was allegedly no control and proper auditing of the funds that were allocated to Tirisano by the Department of Health;
3. Despite the fact that a meeting between the complainants and officials of the Department of Health took place on 3 July 2003 at the Local Aids Council, where it was resolved that an investigation would be conducted into the matter, it appeared that the Department, besides appointing a *State Accountant*, did not do anything further to investigate the allegations, and;
4. Although the Department was aware of the alleged discrepancies and mismanagement of funds, the correct procedures in terms of the Treasury Regulations were not followed to report the matter to the South African Police Service.

As a result of the investigation it was found that:

- a. Cognisance must be taken of the findings by the State Accountant that an amount of R18 931.87 could not be accounted for, and the allegations by the complainants that there were discrepancies with regards to the management of public funds allocated to Tirisano should be duly investigated.
- b. There is no indication that the Sub-District Office of the Department of Health ever reported the unaccounted loss of public funds in writing to the SAPS with the view to institute any criminal action against any person.
- c. The office of the Public Protector could not obtain any information from the SAPS about any criminal case that was allegedly reported and investigated in this regard. Should an official of the Department report any criminal case, the reference number of the latter should have been mentioned in further official correspondence or at least have been available on record.
- d. Although mention is made that the Sub-District Office collected some assets as mentioned in paragraph 8.5, there is no evidence as to how the alleged assets were disposed of or accounted for by the Department in any asset register.
- e. With reference to paragraph 8.3 *supra*, it is of concern that the Provincial Department did not monitor, follow up and ensure that the correct procedure is followed in investigating, reporting and finalising the matter by the Kudumane Sub-District Office.

- f. There is no indication that the Department has followed the correct procedures in terms of the Treasury Regulations to report the mismanagement of public funds allocated to Tirisano.
  
- g. The envisaged steps taken by the North West Department to prevent alleged mismanagement of funds allocated to NGOs and CBOs are noted. However, it is still the responsibility of the Accounting Officer of the Department to ensure that an institutional function is effectively and efficiently performed in the public interest or on behalf of the public service and ensuring that state property is appropriately protected against forfeiture, theft, loss, wastage and misuse. Whenever funds are transferred by the Department section 38(1)(j) of the Public Finance Management Act, 1999, should strictly be adhered to.

The Public Protector recommends as follows:

- 1. The Head of the Department of Health in the North West Province should, as a matter of urgency, ensure that:
  - 1.1 A criminal matter is reported in writing by means of an affidavit to the SAPS with regards to the unaccounted public funds for investigation with the view of prosecution; and,
  - 1.2 Any liability is established, and if determined, to recover the value of the loss or damage from the responsible person in terms of regulation 12.5.1 of the Treasury Regulations.

- 1.3 It be established what had happened to the assets confiscated by the Sub-District Office from Tirisano and then dispose of them in terms of regulation 12.5.2 of the Treasury Regulations.
  
2. The Head of the Department of Health in the North West Province should report within 3 months of the date hereof of the steps taken to implement the above recommendations.

# **REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MISMANAGEMENT OF PUBLIC FUNDS GRANTED TO THE TIRISANO DEVELOPMENT GROUP BY THE NORTH WEST DEPARTMENT OF HEALTH**

## **1. INTRODUCTION**

1.1 This report is submitted to the MEC and the Head of the Department of Health in the North West Province in terms of the provisions of section 8(1) of the Public Protector Act, 1994.

1.2 Although the matter was reported to the office of the Public Protector in 2003 for investigation, it is in the interest of justice and good governance deemed necessary to submit this report on the outcome of the investigation.

## **2 BACKGROUND**

2.1 Since 1996 the South African Government has funded National and Provincial Non-Governmental Organisations (NGOs) and Community Based Organisations (CBOs) to conduct HIV/AIDS workshops. During this time, both the Government and NGOs have developed considerable expertise in working together. The Communicable Diseases Directorate would then engage any service provider who would to the satisfaction of all the stakeholders address the identified capacity challenges. The Directorate would be getting into an agreement with the NGOs / CBOs that have been contracted to do the HIV/AIDS related work for communities within the North West Province.

2.2 The Kgalagadi Crisis Centre / Tirisano Development Group (hereafter called Tirisano), a Non-Governmental Organisation in Kudumane launched an HIV/AIDS project in the Kudumane District of the North West Province during 2002. For the purpose of implementing the project, public funds to the amount of R77 450.00 was channelled to Tirisano by the North West Provincial Department of Health.

2.3 The project fell under the auspices of the Sub-District Office of the North West Department of Health in Kudumane and the latter was to oversee the implementation and management of the project.

2.4 For the purpose of launching the project, Tirisano appointed a project coordinator by the name of Ms Nompumelelo Kwazi who allegedly embezzled some of the funds.

### **3. THE COMPLAINT**

3.1 The Complainants, former staff members of Tirisano, alleged that there were discrepancies with the management of the public funds received from the Department of Health by the project coordinator;

3.2 There was allegedly no control and proper auditing of the funds that were allocated to Tirisano by the North West Department of Health;

3.3 Despite the fact that a meeting between the complainants and officials of the Department of Health took place on 3 July 2003 at the Local Aids Council, where it was resolved that an

investigation would be conducted into the matter, it appeared that the Department, besides appointing a State Accountant, did not do anything further to investigate the allegations, and;

- 3.4 Although the Department was aware of the alleged discrepancies and mismanagement of funds, the correct procedures in terms of the Treasury Regulations were not followed to report the matter to the South African Police Service.

#### **4. THE POWERS AND FUNCTIONS OF THE PUBLIC PROTECTOR**

- 4.1 The Public Protector is one of the constitutional institutions established in terms of Chapter 9 of the Constitution, 1996 to strengthen constitutional democracy.
- 4.2 These institutions are independent, subject only to the Constitution and the law. They must be impartial and exercise their powers and perform their functions without fear, favour or prejudice.
- 4.3 In terms of section 182(1) of the Constitution, 1996 the Public Protector has the power to investigate any conduct in state affairs or in the public administration in any sphere of government that is alleged or suspected to be improper or to result in an impropriety or prejudice.
- 4.4 For the purpose of the powers, functions and mandate of the Public Protector, improper conduct would include allegations of mal-administration, abuse or unjustifiable exercise of power, improper or unlawful enrichment when performing public

functions, improper or dishonest acts in respect to public funds, improper prejudice and undue delay.

- 4.5 Appropriate remedial action includes resolving disputes and or rectifying acts or omissions by mediation, conciliation, negotiation and making recommendations to the responsible state department/institution and/or functionary.
- 4.6 Section 8 of the Act provides that the Public Protector may, in the manner that he or she deems fit, make known to any person any finding, point of view or recommendation in respect of a matter being investigated by him or her.
- 4.7 The Public Protector has the jurisdiction to investigate any acts or omissions by the Department of Health.

## **5. THE INVESTIGATION**

The investigation was conducted in terms of Section 7 of the Public Protector Act, 1994 and comprised of:

- 5.1 Written and telephonic communication with the Provincial Department of Health,
- 5.2 Written and telephonic discussions with the Department of Health, Kudumane Sub-District office,
- 5.3 Written and telephonic discussions with the South African Police Services.

## **6. LEGISLATION CONSIDERED**

### **6.1 The Public Finance Management Act, 1999.**

#### 6.1.1 Section 38 (1) (b) and (j) provides that:

“The accounting officer for a department, trading entity or constitutional institution –

(b) is responsible for the effective, efficient, economical and transparent use of the resources of the department, trading entity or constitutional institution;

(j) before transferring any funds (other than grants in terms of the annual Division of Revenue Act or to a constitutional institution) to an entity within or outside government, must obtain a written assurance from the entity that that entity implements effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems”.

#### 6.1.2 Section 76 (1) stipulates that: “The National Treasury must make regulations or issue instructions applicable to departments, concerning -

(a) any matter that must be prescribed for departments in terms of this Act;

(b) the recovery of losses and damages;

- (c) the handling of, and control over, trust money and property;
- (d) the rendering of free services;
- (e) the writing off of losses of state money or other state assets or amounts owed to the state;
- (f) liability for losses and damages and procedures for recovery;
- (g) the cancellation or variation of contracts to the detriment of the state;
- (h) the settlement of claims by or against the state;
- (i) the waiver of claims by the state;
- (j) the remission of money due to the Revenue Fund, refunds of revenue and payments from the Revenue Fund, as an act of grace;
- (k) the alienation, letting or other disposal of state assets; and
- (l) gifts or donations by or to the state”.

**6.2 Treasury Regulations for departments, trading entities, constitutional institutions and public entities issued in terms of the Public Finance Management Act, 1999<sup>1</sup>.**

6.2.1 Regulation 12.5 of the Treasury Regulations regulates any losses or damages through criminal acts or omissions in terms of Section 76(1)(f) of the PFMA. The relevant sub sections read:

“12.5.1 When it appears that the state has suffered losses or damages through criminal acts or possible criminal acts or omissions, the matter must be reported, in writing, to the accounting officer and the South African Police Service. If liability can be determined, the accounting

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<sup>1</sup> Published in Government Gazette No. 23463 dated 25 May 2002.

officer must recover the value of the loss or damage from the person responsible. (Own emphasis added).

12.5.2 The accounting officer may write off losses or damages arising from criminal acts or omissions if, after a thorough investigation, it is found that the loss or damage is irrecoverable. (Own emphasis added)

12.5.3 When movable assets are written off, this must be noted in the asset register”.

**7. ACTIONS TAKEN BY THE DEPARTMENT OF HEALTH PERTAINING TO THE ALLEGED MISMANAGEMENT OF FUNDS BY TIRISANO**

7.1 The Office of the Public Protector through its North West office raised the issues complained about with the Provincial Department of Health in a letter dated 31 March 2003, on which the Department reacted as follows:

*“An instruction by the Provincial Department of Health was issued on 2 July 2003 to the Sub-District Manager in Kudumane to commence investigation into the allegations, and to appoint a State Accountant to audit the books and to check the movements of funds in the bank account of Tirisano<sup>2</sup>”.*

7.2 On 21 July 2003 the State Accountant reported to the District Manager Kudumane as follows:

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<sup>2</sup> Letter by Mr Vusi Ka Moyakhe, Provincial NGO Unit Co-ordinator, to Ms Kaotsane the Sub-District Manager of the Department in Kudumane.

7.2.1 *“The organisation does not have sufficient accounting measures over cash withdrawals and purchases. The requisitions were not approved by all signatories in most instances. Not all requisitions were supported by evidence of the amounts spent. Consequently, we did not obtain all the information we considered necessary to satisfy ourselves as to validity of expenses. A substantial amount of receipts were not validated by the official stamp from the supplier”, and;*

7.2.2 *“That there is an amount of R18 931,87 that cannot be accounted for”.*

7.3 On 20 October 2003 the Provincial NGO Funding Unit Co-ordinator alerted the Sub-District Manager, Kudumane, of the provisions of section 76(1)(e) of the Public Finance Management Act and regulation 12.5 of the Treasury Regulations.

7.4 On 4 May 2004 the HIV Care and Support Manager again directed a letter to the District Manager where it was stressed that the matter should be facilitated, and that law enforcement agencies in the Kudumane District should be approached.

## **8. SUBSEQUENT MONITORING BY THE OFFICE OF THE PUBLIC PROTECTOR**

8.1 On 6 August 2004 the office of the Public Protector in Kuruman requested the Provincial Department of Health to indicate what the outcome of the matter was and how it was finalised. In response, the Deputy Director, Legal Services, indicated in a letter dated 14 September 2004 that:

*“We are of the view that this is purely a criminal matter which should have been reported to the police”. Furthermore, “We do not understand why this matter was referred to us. It is for the police to investigate the matter and decide whether there is any person who has to be charged”.*

- 8.2 Having regard to the response mentioned in paragraph 8.1 the Regional Office of the Public Protector in Kuruman requested the Department to indicate:
- 8.2.1 Whether or not the alleged mismanagement of funds by Tirisano was reported to the police, and;
- 8.2.2 What steps have been taken to prevent a similar occurrence of the mismanagement of public funds?
- 8.3 Despite numerous reminders and letters as to how the issue of Tirisano was dealt with, the Provincial Department’s Legal Section responded on 9 May 2005 that no response on the matter was received from the Sub-District Manager as to what steps were taken to recover the loss of the public funds.
- 8.4 With reference to the steps taken to prevent alleged mismanagement of funds allocated to an NGO and CBO the Provincial Department<sup>3</sup> responded that the NGO sector in the North West Province would be trained on project planning, implementation, financial management, fundraising, monitoring and evaluation to limit the Department’s liability in transgressing

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<sup>3</sup> Letter to the Kuruman Regional office of the Public Protector dated 2 June 2005.

the Public Finance Management Act and Treasury Regulations. Workshops in this regard were arranged for June and July 2004.

- 8.5 On 3 February 2006 the Sub-District Manager in Kudumane informed the Public Protector's office in Kuruman that:

*"According to the letter dated 04/05/2004 from the Provincial Department of Health the matter has been closed. The responsibility of the Sub District was to collect all office equipments which were bought. Office equipments collected were computer and the printer. Others like fax machine and office desk could not be found".*

- 8.6 The Office of the Public Protector however pursued the matter further. Following this, Mr Molejane, the acting Sub District Manager in Kudumane reported on 6 July 2006 as follows:

*"According to the information this office has regarding this matter, a case was reported with the SAPS and the Crime Intelligence Unit confiscated some office furnisher (sic) from Tirisano. An attempt was made to try and find out as what exactly has been taken and to also get the case number but the police officer in charge of this case said he does not remember the details thereof and all that he remembers is that indeed confiscation did occur".*

Furthermore, *"it will be appreciated if your kind self engages further with the SAPS and particularly the officer in charge. Further be informed that the department is currently following it's internal procedures in terms of the PFMA and Treasury*

*Regulations to investigate irregularities if indeed there are any. Progress will be communicated to you in due course.”*

- 8.7 Since the correspondence referred to in paragraph 8.6, no further response or correspondence was received from either the Provincial Department or the Sub-District Office in Kudumane about the matter.
- 8.8 The South African Police Service indicated to the office of the Public Protector that they have no record of any matter reported to them about the alleged mismanagement of funds and denies that they ever seized any assets from Tirisano as alleged.

## **9. OBSERVATIONS AND FINDINGS**

In lieu of the aforementioned the following observations and findings are made:

- 9.1 Cognisance must be taken of the findings by the State Accountant that, there is an amount of R18 931.87 that cannot be accounted for and the allegations by the complainants that there were discrepancies with regards to the management of public funds allocated to Tirisano, should be duly investigated.
- 9.2 There is no indication that the Sub-District Office of the Department of Health ever reported the unaccounted loss of public funds in writing to the SAPS with the view to institute any criminal action against any person.
- 9.3 The office of the Public Protector could not obtain any information from the SAPS about any criminal case that was

allegedly investigated or assets confiscated from Tirisano. It is worth mentioning that should an official of the Department report any criminal case, the reference number of the latter should have been mentioned in further official correspondence or at least have been available on record at the office.

- 9.4 Although mention is made that the Sub-District Office collected some assets as mentioned in paragraph 8.5, there is no evidence as to how the alleged assets were disposed of or accounted for by the Department in any asset register.
- 9.5 With reference to paragraph 8.3 supra, it is of concern that the Provincial Department did not monitor, follow up and ensure that the correct procedure is followed in investigating, reporting and finalising the matter by the Kudumane Sub-District Office.
- 9.6 There is no indication that the Department has followed the correct procedures in terms of the Treasury Regulations to report the mismanagement of public funds allocated to Tirisano.
- 9.7 The envisaged steps taken by the Department to prevent alleged mismanagement of funds allocated to NGOs and CBOs mentioned in paragraph 8.4 are noted. However, it is still the responsibility of the Accounting Officer of the Department to ensure that an institutional function is effectively and efficiently performed in the public interest or on behalf of the public service and ensuring that state property is appropriately protected against forfeiture, theft, loss, wastage and misuse. Whenever funds are transferred by the Department section 38(1)(j) of the Public Finance Management Act, 1999, should be strictly adhered to.

## **10. RECOMMENDATIONS**

In terms of the provisions of section 182(1) (c) of the Constitution, 1996 and section 6(4)(c)(ii) of the Public Protector Act, 1994, it is recommended that :

- 10.1 The Head of the Department of Health in the North West Province should, as a matter of urgency, ensure that:
  - 10.1.1 A criminal matter is reported in writing by means of an affidavit to the SAPS with regards to the unaccounted public funds for investigation with the view of prosecution; and,
  - 10.1.2 Any liability is established, and if determined, to recover the value of the loss or damage from the responsible person in terms of regulation 12.5.1 of the Treasury Regulations.
  - 10.1.3 It be established what had happened to the assets confiscated by the Sub-District Office from Tirisano and then dispose of them in terms of regulation 12.5.2 of the Treasury Regulations.
- 10.2 The Head of the Department of Health in the North West Province should report within 3 months of the date hereof of the steps taken to implement the above recommendations.

**ADV M L MUSHWANA  
PUBLIC PROTECTOR OF  
THE REPUBLIC OF SOUTH AFRICA**

**DATE:**

Assisted by: Mr E Madumo, Investigator, Mafikeng, and Ms A Pule, Investigator, Kuruman Regional Office.