

**MEDIA BRIEFING: 18 FEBRUARY 2009, PRETORIA: OFFICE OF THE PUBLIC
PROTECTOR: ADV MABEDLE LAWRENCE MUSHWANA**

1. WELCOME

It is always an honour and privilege for me to welcome you to our media briefing sessions.

I acknowledge and appreciate your continued support of our briefing sessions by honouring our invitations.

It is indeed my pleasure to welcome you to our first media briefing this year.

We value the contributions you've been making by publicising our reports to the broader public out there and in particular we appreciate your engagement with us by asking questions where necessary, we once again invite you to feel free and participate in today's proceedings.

Before we proceed, I would like to extend a special word of welcome and introduce to you our new Chief Executive Officer, Mr Themba Mthethwa. He joined us with effect from the 1st January 2009.

2. INTRODUCTION

As usual we start with our briefing by giving you a brief summary of the progress we are making in some of the most important and complex complaints we are currently investigating, followed by a full briefing on the reports we are releasing and tabling this morning.

Three of these reports have already been issued without any media briefing being held and because of their importance we decided to include them in this briefing.

3. PROGRESS REPORTS

3.1 THE REVIEW APPLICATION BY THE MAIL & GUARDIAN ON THE REPORT ON THE SO CALLED "OIL-GATE" MATTER.

The so called *Oil Gate Report* was issued on 29 July 2005. In January 2006, the *Mail and Guardian* brought an application in the High Court of SA in Pretoria for the review of this Report with a request to set aside our findings, and in particular those that relate to the Newspaper concerned. The application was heard in November 2007.

One year and three months later, judgment of the High Court on this matter is still outstanding, this is despite several requests by attorneys of the parties involved for the Honourable Judge to hand down the long awaited judgment in this matter.

Our office and that of the Applicants in this matter have spent substantial amounts on legal costs and the judgment is in many ways, of particular importance and interest to both of us and the general public at large. I want to believe the Honourable trial judge is aware of this!

I personally have a high regard and respect for the judiciary and it is my humble desire to maintain this noble relationship and deference to these learned friends!

I wish all judges will make it possible for me to continue to respect all of them.

However, it would be a remiss on our part and indeed we would be failing in our duties if we do not express our deepest and grave concern over this unprecedented delay by the Honourable trial judge to deliver his judgment in this matter.

We have since instructed our attorneys to lodge a formal complaint with the relevant authorities.

3.2 MUNICIPAL SERVICE DELIVERY INVESTIGATION

Following on a number of incidences of a display of public dissatisfaction in connection with municipal service delivery, we, on our own initiative, investigated the complaints raised by residents in a number of municipalities in four of the nine provinces.

The intention of the investigation was not to investigate municipal service- delivery in general, but rather to identify the said municipalities as a sample in order to determine the reasons for the complaints and the challenges faced by the authorities concerned.

From our preliminary enquiries it became evident in some areas that some protests over the so-called lack of service- deliveries in these Municipalities are often politicised.

This seems to be particularly the case during the period preceding elections.

We are in the process of drafting our final consolidated report and we hope to release it in the near future.

3.3 PROTECTING THE CHILD INVESTIGATION THEME

Our office identified a child as amongst the most vulnerable member of our society and to that end we took a decision to highlight the plight of children by choosing the investigative theme "***Protecting the Child***" for the current year. This involved: -

- a) Prioritising cases affecting children, and
- b) Identifying systemic issues within the public service that negatively affect children.

- c) In prioritising cases affecting children, a six months period was identified as a reasonable duration within which to finalise all complaints affecting children, it is indeed gratifying to note that most of the complaints in this category are being finalized within the set period.

We identified and decided to conduct an own initiative investigation into the Guardian's Fund and Maintenance matters as part of the Theme.

Our Limpopo and Free State provincial offices are conducting investigations into child maintenance complaints within the Magistrates Courts, after complaints of irregularities were continuously received from members of the Public from those provinces.

At our Head Office, an investigation into the Guardian's Fund on matters affecting children negatively was initiated.

We are glad to report that we are receiving cooperation from various Masters' offices in the country.

We still have to meet with relevant Portfolio Committee(s) in Parliament and conclude a comparative study on Guardian's Fund in other parts of the world. This will assist us in making practical and sound recommendations to parliament should the needs be.

3.4 INVESTIGATION INTO THE DELAY IN THE ISSUING AND RELEASE OF 2008 MATRIC RESULTS

Mr Ernest Roests, the Chairperson of Afriforum lodged a complaint with us on the delay of the release of 2008 Matriculation results in some provinces.

We are in communication with the Department of Education (Office of the DG) with a view to determining reasons for the delay in the release of the results.

According to the Department they have experienced challenges in this regard due to (but not limited to) the following:

- a) Failure of some of the students to sit for their examinations;
- b) Various irregularities which included cheating in some cases;

According to the Department, an investigation has been launched into these matters and decisions are being taken about these candidates who have not received their results and when resolved, results are released accordingly.

We were also requested to advise students affected to contact their schools and most of them have already been informed of the status of their results.

Since we are an office of last instance, we have allowed the Department to finalise its investigation and to report back to us. We are at the same time avoiding duplication of services and resources which is unnecessary and of course costly.

The Department undertook to provide us with results its investigation once it is completed.

3.5 NANDONI DAM COMPLAINTS

My office investigated complaints by people and communities who were allegedly and adversely affected by the construction of the Nandoni Dam in Vhembe District, Limpopo Province.

The investigation is finalised and a report will be issued and released at the end of the month in Limpopo.

4. REPORTS

4.1 HOUSING SUPSIDIES IN LEBOWAKGOMO/DEPARTMENT OF LOCAL GOVERNMENT AND HOUSING

Our office investigated a complaint lodged by Councillor FJ Ledwaba acting on behalf of the residents of Unit R and S Lebowakgomo in connection with their applications for Reconstruction and Development Programme (RDP) housing subsidies.

This report has already been issued and released. We however thought it prudent and appropriate to include this report into today's briefing because of the interest that it has so far generated.

The complainants applied for housing subsidies during 1996 and 2006. Their applications were approved by the Department of Local Government and Housing at amounts ranging between R 9 500 and R16 000. The subsidy program under which the applications were approved was called Project Linked Subsidy.

The Department allegedly failed to build the houses or to supply building material to the Complainants so that they could build their houses.

From the investigation it was found that:

- a) The Complainants' applications for housing subsidies were approved from 1997 to 2006;
- b) The project was allocated to a company called COMDEV, which failed to build houses or provide building materials to the Complainants;

- c) Some houses were partly built and only half of the materials were delivered to some beneficiaries;
- d) Some Complainants decided to put up some shelters at their own expenses, whereas others completed the incomplete houses using their own resources;
- e) Some of the Complainants' houses are still incomplete or not built at all; and
- f) One complainant is now employed and has built a modern house.

We recommended that the Department should:

- a) Build houses for all the Lebowakgomo Unit R & S beneficiaries whose applications were approved on or before 2006;
- b) Complete the houses which were abandoned before they could be completed;
- c) Supply building materials to all the beneficiaries who were approved for such materials;
- d) Assist the Complainants who have started building their own houses, but are unable to complete them;
- e) Use the subsidy amounts which are currently applicable to assist the Complainants, as the prices of building materials have increased over the years; and
- f) Compensate all the Complainants who have built their houses without the assistance of the Department, after they were approved as beneficiaries.

4.2 FAILURE TO REWARD INFORMER R75 000.00/SAPS

We investigated a complaint relating to a failure to pay a reward to an informer by the South African Police Services. The informer alleged that the SAPS failed to pay him a R75 000.00 reward which was promised to him for successfully assisting the SAPS and the National Prosecuting Authority (NPA) in arresting and securing convictions on certain criminal matters. The said R75 000.00 was allegedly paid to SAPS by Khulani Security, even though the offer was made by SAPS on their behalf.

This report has already been issued and released for urgent implementation of our recommendations and because of its importance we decided to include it in today's briefing.

From our investigation we found that:

- a) The complainant provided SAPS with information that led to the arrest and conviction of suspects in a robbery case;
- b) SAPS offered a reward of R75 000.00 to the person who would provide it with information that would lead to the arrest and conviction of the suspects in a robbery case;
- c) The investigating officer in this case was aware of the reward that was promised to the complainant;
- d) SAPS failed to pay the reward to the complainant.

It was recommended that SAPS pay the complainant the sum of R75 000.00; and in future SAPS should desist from renegeing from its undertaking as this conduct brings its image into disrepute. People would be reluctant to assist Police in future in particular that such assistance involves security risks to such individuals and their families.

The prevalence of violent crimes in this country demands that we all work in partnership against crime if we want to succeed in reducing violent crimes.

4.3 SUSPENSION OF SOCIAL SECURITY GRANT. ARREARS OF R29820.00 PAID IN SEPTEMBER AFTER INTERVENTION.

We investigated on own initiative the plight of Ms NS Mphephu, from Limpopo Province whose old age pension grant was suspended by the South African Social Security Agency for almost three years because she allegedly shared an identity number with someone in the Free State Province.

The beneficiary's plight was reported by the *Capricorn Voice* newspaper of 9-11 April 2008. We commend the newspaper concerned for publishing the plight of the pensioner.

Our investigation revealed that:

- a) The beneficiary's old age pension grant was suspended because it was alleged that she shared an identity number with someone in the Free State Province;
- b) The beneficiary was provided with food parcels for three months only when SASSA indicated that it was sorting out the problem;
- c) The beneficiary was issued with a new identity document, bearing the same identity numbers;
- d) There was no valid reason for the suspension of the beneficiary's grant, and therefore the conduct by SASSA was improper and irregular;
- e) It took SASSA almost three years to reinstate the grant, and no alternative means of subsistence was put in place to sustain the beneficiary and her family while the grant was suspended as it is the practice in cases of this nature;
- f) The beneficiary's grant was reinstated in September 2008, after our intervention. She was paid arrears of R29 820.00; and
- g) SASSA did not pay interest on the arrears amount of R29 820.00.

We recommended that:

- a) The Regional Executive Manager of SASSA Limpopo must appoint a task team, as undertaken, to investigate the issue of suspended grants due to the alleged sharing of identity numbers, with immediate effect;
- b) When a grant is suspended, SASSA should provide the recipient with food parcels for the entire period of the investigation in order to sustain him/her while it resolves the problem that led to the suspension of the grant;

- c) SASSA should device means to finalise its investigations within three months after the suspension of a grant; and
- d) SASSA should pay interest on the arrear amount of R29 820.00 at the prescribed rates.
- e) Our office will monitor the implementation of our recommendations. We consider it unfair for SASSA to refuse to pay the outstanding interest as the complainant was not to blame for the alleged duplication of numbers.

UNLAWFUL DEDUCTION OF PENSION BENEFITS : MRS N NIEMAND

We investigated a complaint relating to the alleged improper deduction of pension benefits of a former member of the South African Police Service (SAPS), Ms N Niemand (the Complainant).

It was found that the procedure prescribed by the Government Employees Pension Fund (GEPF) in its Procedure Manual for the recovery of a departmental debt in terms of section 21(3) of the Government Employees Pension Law, 1996 (GEP Law) from the pension benefits of the Complainant was not complied with.

It was furthermore found that the decision to recover the departmental debt from the Complainant's pension benefits did not comply with the requirements of section 3 of the Promotion of Administrative Justice Act, 2000 (PAJA) and was therefore procedurally unfair.

We therefore recommended that the GEPF take urgent steps to ensure that the amount deducted from the pension benefit of the Complainant, referred to in this report, is paid to her, together with interest thereon at the rate prescribed in the GEP Law, calculated from the date of the deduction to date of payment.

We received a number of similar complaints from other ex-public servants. Further enquiries revealed that while the GEPF rely on employer departments to comply with the required prescripts when submitting claims to GEPF for outstanding departmental debt from pension benefits, the employer departments generally fail to advise the members in advance of their financial liabilities towards the employer and the intention to claim the departmental debt from the employee's pension benefits.

In many instances the deduction of the debt occurred without the knowledge or consent of the employee or without an order of a court of law, depending on the applicable provision of the GEP Law.

It was found that employer departments generally fail to furnish the GEPF with sufficient information and documentation to enable it to exercise its discretion properly and independently, to determine the members' liability either in terms of the relevant provisions of the GEP Law in respect of the amount claimed from the pension benefits by the employer department.

The current internal procedures and practices of the GEPF are falling short of some of the mandatory requirements for good administrative practice and that these shortcomings may amount to system-wide procedural deficiencies in the decision-making process by the GEPF in respect of claims in terms of the relevant provisions of the GEP Law.

We recommended that:

- a) The GEPF take urgent steps to ensure that the amount deducted from the pension benefits of the Complainant, is paid to her, together with interest;

- b) Measures are implemented to ensure compliance by the GEPF as well as contributing employer departments with the relevant provisions of the GEP Law and the mandatory requirements for the recovery of departmental debt in terms of the Procedure Manual;
- c) The GEPF review the policy documents, including the Procedure Manual and the GEPF Rules that determine the nature, form and manner in which the employer departments are entitled to claim departmental debt from pension benefits to ensure that it meets the mandatory requirements and legal guidelines for the protection of the pension interests of members of the GEPF and the set-off of debt payable to employer departments; and
- d) The GEPF formally and adequately record its decisions in terms of the relevant provisions of the GEP Law and the reasons for allowing or refusing a claim to indicate diligent compliance with its legal obligations.

The GEPF has already indicated that it would urgently review its policy and practices in respect of the deduction of departmental debts.

We will monitor the progress in this regard and the implementation of the recommendations made in this report on a quarterly basis.

4.4 PRELIMINARY INVESTIGATION RELATING TO ELECTRICITY LOAD SHEDDING IMPLEMENTED BY ESKOM

We conducted a preliminary investigation, on own initiative into incidences of electricity shortages and power outages due to load shedding by Eskom, that affected the large parts of South Africa from November 2007 to January 2008.

Shortly after the preliminary investigation commenced, the National Government informed the public of the causes of the electricity shortages and the measures taken to resolve the crisis.

The National Energy Regulator of South Africa also investigated the matter concerned and issued a detailed report in May 2008.

We therefore made the following observations and conclusions from the preliminary investigation:

- a) It was noted that the former President, the former Deputy President and the Minister Of Minerals and Energy acknowledged that there was a delay on the part of the Government to improve Eskom's power generating capacity in time and that a public apology was offered in this regard for the inconveniences caused by the load shedding referred to in this report.
- (b) The causes of the electricity load shedding by Eskom have been comprehensively addressed by the National Government in terms of action plans, electricity saving initiatives and the allocation of funding for capital expansion programmes;
- (c) The investigation conducted by NERSA into the national electricity supply shortage and load shedding comprehensively considered its causes, impact, and the challenges and solutions;
- (d) As the custodian and enforcement agent of the regulatory framework provided for by the Electricity Regulation Act, 2006, it is within the powers and mandate of NERSA to ensure that the recommendations made in its report on the said Investigation are implemented and that Eskom complies with the conditions of its license and the relevant provisions of the Act; and
- (e) The Power Conservation Programme developed by the National Electricity Response Team should go a long way in accelerating the achievement of energy savings, once it is finalised and implemented.

We recommended that the Speaker of the National Assembly take steps to ensure that the relevant Parliamentary Portfolio Committee(s) monitor and report on the timeous and effective implementation of the recommendations made by NERSA in its Report of 12 May 2008.

4.5 MISAPPROPRIATION OF PUBLIC FUNDS BY THE DEPUTY MINISTER OF HOME AFFAIRS, MR M K N GIGABA

We conducted an own initiative investigation into allegations that the Deputy Minister of Home Affairs, Mr M K N Gigaba MP, misappropriated public funds.

It was alleged that Mr Gigaba sent flowers to his wife at the expense of the Department of Home Affairs and that the Office of the Deputy Minister paid for flight tickets and car rentals of several private individuals, on several occasions.

The finalisation of the investigation was delayed because of an enquiry into these allegations by the Parliamentary Portfolio Committee on Home Affairs and the failure of Mr Gigaba to cooperate properly or at all with our office.

The investigation revealed that the allegations of misappropriation of public funds by Mr Gigaba were investigated by the accounting officer of the Department, as he was required to do in terms of the Public Finance Management Act, 1999.

It was noted that the error in respect of the flowers sent to his wife was admitted and that the expenditure concerned had been reimbursed by Mr Gigaba.

From the investigations and deliberations of the Portfolio Committee, it appeared that the financial control mechanisms of the Office of the Deputy Minister need to be improved.

No further evidence of irregular, unauthorised or fruitless and wasteful expenditure by the Office of the Deputy Minister could be found.

Mr Gigaba's failure, without any just cause, to cooperate properly and diligently and without delay with the investigation was improper and unnecessarily delayed the conclusion a matter that was in the public interest.

From the investigation it was found that:

- (a) The expenditure incurred by the Office of the Deputy Minister in respect of flowers sent to Mr Gigaba's wife was irregular and fruitless and wasteful; and
- (b) The allegations relating to travelling expenses incurred by the Office of the Deputy Minister were unfounded.

We recommended that:

- (a) The Speaker of the National Assembly takes appropriate steps to ensure that Mr. Gigaba's failure to comply with his constitutional obligation to cooperate properly with our office is addressed; and
- (b) The Director General of the Department improves the financial control mechanisms of the Office of the Deputy Minister.

4.6 ALLEGED IMPROPER CONDUCT BY THE FORMER CHAIRPERSON OF THE BOARD OF DIRECTORS OF ESKOM, MR VALLI MOOSA

We investigated on own initiative into an allegation made by a newspaper of improper conduct by the former Chairperson of the Eskom Board of Directors, relating to the awarding of a contract.

It was alleged that a contract for the construction of boiler works for new coal fired power station to be built in the Lephalale area, known as the Medupi Power Station, was awarded by Eskom to a company in which the African National Congress (ANC) has an interest.

At the time of the awarding of the contract, Mr. Moosa was the Chairperson of the Eskom Board of Directors, but also a member of the National Executive Committee of the ANC, and therefore, so it was alleged, had a conflict of interest.

Ms H Zille of the Democratic Alliance also lodged a complaint, based solely on a newspaper report, in connection with the said matter. She furthermore requested an investigation of several other allegations relating to private business dealings and the affairs of the ANC.

Eskom is a public entity that falls under our jurisdiction. However, due to the fact that we do not have the powers to investigate the affairs and relationships of private entities, such as political parties, private institutions and businesses, the other allegations referred to by Ms Zille could not be investigated.

We therefore found that:

- (a) There was a conflict between the personal interest of Mr. Moosa in the ANC and his duty towards Eskom at the time when the Board resolved to award the Medupi Boiler Contract to the Hitachi Consortium, in which the ANC had an interest;
- (b) Mr. Moosa failed to manage his said conflict of interests in compliance with the Conflict of Interest Policy of Eskom and therefore acted improperly;
- (c) The contract that was awarded to the Hitachi Consortium was not in any way affected by Mr. Moosa's improper conduct;

- (d) The awarding of the contract by Eskom to an entity in which the ruling party has an interest was not unlawful; and
- (e) It is desirable that the conducting of business between government institutions and public entities and political parties should be regulated by legislation.

It is recommended that:

- (a) Eskom's Company Secretary takes urgent steps to ensure that all the members of the Board of Directors are provided with a copy of Eskom's Conflict of Interest Policy and the Guidelines for Directors, and briefed on its application and on the law applicable to conflict of interests that are referred to in this report; and
- (b) The Minister of Public Enterprises considers developing legislation for submission to Parliament to regulate the conducting of business between government entities and political parties.

4.7 MISAPPROPRIATION OF PUBLIC FUNDS BY THE GAUTENG PROVINCIAL DEPARTMENT OF SOCIAL DEVELOPMENT

We investigated a complaint lodged by a Member of Parliament, in connection with an advertisement placed in a newspaper by the Gauteng Department of Social Development (the Department).

The advertisement contained an edited version of the 2008 Budget Vote Speech of the Member responsible for Social Development of the Provincial Executive Committee, presented to the Gauteng Provincial Legislature.

It was alleged that a reference to the African National Congress (ANC) in the said speech, as published in the advertisement, was improper and unlawful as it amounted to party political propaganda paid for by public funds.

The investigation revealed that:

- (a) The Department is constitutionally obliged to inform the public that it serves of the performance of its functions and how the public funds allocated to it would be spent;
- (b) The expenditure incurred in placing the advertisement in question in a newspaper to inform the public of the contents of the MEC's speech, cannot be regarded as unauthorized or irregular;
- (c) It is not unusual or improper for political heads of departments to refer to their perceptions of the achievements of the political party that they represent, when they address legislatures on matters of public interest;
- (d) The expenditure incurred could only be regarded as fruitless and wasteful in terms of the Public Finance Management Act, 1999, if it could be found that it was made in vain and would have been avoided had reasonable care been taken;
- (e) The main context of the speech, as advertised, was to inform the public of the achievements, programmes and plans of the Department;
- (f) The two references to the ANC (as it also appeared in the advertisement) did not impact on the purpose of the speech, as the reasonable overall

impression of the ordinary reader would be of information relating to the operations and core business of the Department, rather than of political Propaganda; and

(g) Under the circumstances, the expenditure incurred in respect of the advertisement was not made in vain and cannot be regarded as fruitless and wasteful.

It was therefore found from the investigation that the allegation of misappropriation of public funds by the Gauteng Department of Social Development is unfounded.

4.8 ALLEGATIONS OF ABUSE OF POWER, BRIDGE OF TRUST AND FAVOURITISM AGAINST LIMPOPO PROVINCIAL MEC FOR EDUCATION, DR P A P

4.9 P A MOTSOALEDI

We investigated allegations of improper conduct made against the Member of the Executive Council responsible for Education of the Limpopo Provincial Government (MEC) and officials of the Limpopo Provincial Department of Education.

The anonymous complaint alleged that Dr P A Motsoaledi, the MEC had abused his powers and breached trust imposed on him by virtue of his office in that he favoured certain suppliers of school furniture and mobile classrooms that were contracted at his request to supply goods to the Department.

The allegations stated that the said suppliers belonged to friends of the MEC and that he received an expensive car from one of them.

It was further alleged that officials of the Department, acting on instructions of the MEC, violated the Supply Chain Management Regulations, issued in terms of the Public Finance Management Act, 1999 (PFMA).

The investigation revealed that the Department does not have a procurement policy in place, as is required by the PFMA.

The following key findings were made from the investigation:

- (a) The allegations of improper conduct made against the MEC and officials of the Department are unfounded; and
- (b) The failure of the Department to develop and implement an effective and efficient supply chain management system, as required by the PFMA is a matter of grave concern.

It was recommended that the Head of the Department:

- (a) Complies with section 38(1)(a)(iii) of the PFMA by ensuring that the Department develops and maintains an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and
- (b) Reports on the progress made with the development and implementation of an appropriate procurement and provisioning system for the Department to the Public Protector within 6 months of date of this report.

CONCLUSION

I would like to take this opportunity to thank all investigators who assisted me with these investigations.

I thank you

Adv Mabedle Lawrence Mushwana

Public Protector of South Africa

18 February 2009. PRETORIA.

