Address by Public Protector Adv. Busisiwe Mkhwebane and Deputy Public Protector Adv. Kholeka Gcaleka during a media briefing held on Monday, February 28, 2022 in Pretoria.

Programme Director, Mr. Oupa Segalwe;
Deputy Public Protector, Adv. Kholeka Gcaleka;
Public Protector SA CEO, Ms. Thandi Sibanyoni;
Acting Chief Operations Officer, Ms. Lethabo Mamabolo;
Chief of Staff, Mr. Luther Lebelo;
Executive Managers;
Staff;
Members of the media;
Ladies and gentlemen;

Good morning,

Once again, let me thank you all for always honouring our invite. You play a vital role in bridging the information gap between this independent constitutional institution and the public it serves.

As we often say, the public is constitutionally entitled to the contents of our investigation reports. Accordingly, this interaction serves to give effect to Section 182(5) of the Constitution of the Republic, read with Section 8 of the Public Protector Act 23 of 1994.

These provide that, in the absence of exceptional circumstances requiring confidentiality, our investigation reports must be open to the public or any person, including complainants and implicated parties in the matters concerned.

The law leaves it to us to determine the manner in which we make this information public. We may choose to hold a media briefing as is the case now or we may use any other avenue we deem expedient in particular circumstances, including publishing the information on our website.

Today, we will use both these avenues. Cumulatively, we are releasing findings in respect of 14 investigations that we have finalised since our last briefing session at the end of last month. However, for the purpose of this briefing, we will focus on only half of those.

Specifically, we will deal with matters that have to do with basic education infrastructure in Limpopo and KwaZulu-Natal; the plight of an Eastern Cape woman in respect of public housing challenges; and the conduct of one Western Cape municipality in relation to the investment of municipal funds.

We will also deal with the alleged irregular appointment of a senior official at Department of Correctional Services and one case involving the improper use of public finances in the procurement of goods and services.

These and the rest of the other reports that we may not necessarily deal with in detail in this session will be accessible on our website shortly after this session. Copies will also be dispatched to parties in a while.

For your information, those matters which we will not necessarily deal with in this statement involve the Small Enterprise Development Agency and the Department of Trade, Industry and Competition; Sol Plaatje and Kareeberg Local Municipalities in the Northern Cape; Masilonyana Local Municipality in the Free State; Department of Mineral Resources; the South African Social Security Agency and the North West Transport Investment (SOC) LTD.

These are important reports, which we implore you to have a look at and help us educate the public about our work while also vindicating rights and holding organs and functionaries of state accountable.

They cover themes such as the prejudice that the public often suffers at the hands of public servants, occupation and leasing of land, failure to register staff as members of provident funds and pay their contributions, mining rights and corruption.

This briefing comes just two weeks after we launched the Public Protector Stakeholder Roadshow. The roadshow is our flagship outreach programme during which we interact with parties who have a keen interest in our work in fulfilment of our constitutional mandate to investigate, report on and remedy alleged or suspected improper conduct in all state affairs and to be accessible to all persons and communities.

It provides a platform for us to cement relations and foster collaboration and cooperation between us and other organs of state including provincial legislatures, government departments, municipalities and traditional authorities, with a view to promoting quality service delivery and good governance in state affairs.

We have already been to three provinces, namely the Free State, where we interacted with Speaker Hon. Ntombizanele Sifuba, then Acting Premier Mr Mxolisi Dukwana, the Provincial House of Traditional Leaders and the Makholokoe Traditional Authority; the Northern Cape where met Speaker Newrene Klaaste, Premier Zamani Saul and his Executive Council; and the KwaZulu-Natal Provincial House of Traditional Leaders.

The roadshow has been an eye-opener when it comes to the conditions in which many grassroots communities in those provinces live — from the sewage crisis engulfing Kimberley to the road infrastructure problems that make life difficult for the Makholokoe community in rainy seasons.

This tour of provinces has also presented a platform for us to shine a spotlight on a number of our investigation reports, the implementation of whose remedial action remains outstanding, leaving complainants in the lurch — despite the reports having not been reviewed and set aside by a court of law.

We are, however, encouraged that the Executive in both the Free State and the Northern Cape have undertaken to look into those matters and see to it that justice is done. In the same vein, we are pleased that Speakers in the two provinces warmed up to our proposition that we are available to present the reports in question to the relevant portfolio committees where the respondents concerned will have to be invited to account.

Tomorrow we will be in the North West to meet Speaker, Hon. Susana Dantjie, Premier Bushy Maape and his executive council, the House of Traditional Leaders, the provincial Director-General and Heads of Department in Mahikeng.

We will then proceed to Nyetse and Reagile villages outside Zeerust in the Ramotshere Moiloa Local Municipality, where we will conduct inspections in loco at service delivery problem areas. We look forward to constructive engagements, which will impact positively on service delivery and good governance. The roadshow is scheduled to run until the middle of next month.

We now turn to the specific reports. Let us start with public housing, an issue we deal with frequently during our briefing sessions. This office has previously conducted a systemic investigation into problems bedevilling the government's housing problem. However, the problems still persist. We urge the government to implement the remedial action in that report in order to stem a recurrence of such complaints.

Mali v Eastern Cape Department of Human Settlements and another (Report No. 93 of 2021/22)

We investigated alleged failure by the Eastern Cape Department of Human Settlements (ECDHS) and the Buffalo City Metropolitan Municipality (BCMM) to provide an RDP house to Ms L. Mali in respect of ERF number 7648, in Khayelitsha, Dimbaza.

The investigation followed a complaint Ms Mali lodged in July 2019. In essence, she alleged failure by the ECDHS and the BCMM to provide a RDP house, which had been approved in 2002, 19 years ago, to her.

Having studied the complaint, we decided to investigate whether the BCMM and the ECDHS failed to provide her with the house in terms of the relevant legal prescripts regulating the allocation and occupation of RDP houses and if yes, whether such conduct amounts to maladministration and/or improper conduct.

We found that, indeed, the ECDHS and BCMM failed to provide Ms Mali with the House. She had on several occasions visited the BCMM requesting that she be provided with the house, without success.

The ECDHS conceded that the house in question belongs to her in terms of the RDP Housing Subsidy Portal (HSS No. CA02060559), which reflects her as an approved beneficiary.

The ECDHS and BCMM have to date not provided her with the house or suitable alternative accommodation and this has resulted in her suffering prejudice.

This failure by BCMM and ECDHS to enable access and occupation of the said house to Ms Mali is in contravention of the provisions of the Constitution and the Housing Act.

It accordingly constitutes improper conduct as envisaged by the Constitution and maladministration as envisaged in the Public Protector Act. It also prejudiced Ms Mali as contemplated in the Public Protector Act.

To remedy this maladministration and improper conduct, the Head of the ECDHS must:

1. Take the appropriate steps to ensure that Ms Mali is given lawful occupation of an approved RDP house, working in conjunction with the BCMM within 180 working days from the date of this report, as envisaged in the Constitution and the Housing Act.

2. Apologise in writing to Ms Mali for the delay in enabling her occupation of the approved house and further inform her of the steps taken as referred to in this report within 90 working days from the date of this report.

The City Manager of the BCMM must:

1. Take appropriate steps within the BCMM's internal policies and in consultation with the ECDHS, to ensure that Ms Mali as an approved beneficiary is assisted and provided with an RDP house within 180 days from the date of issue of this report, as envisaged in the Constitution and the Housing Act.

2. Ensure that the Internal Audit Function of the BCMM conducts regular audits and reviews the adequacy and effectiveness of controls, processes and procedures on the delivery of low cost houses of the municipality and report accordingly as contemplated by the Local Government: Municipal Finance Management Act; and

3. Report to the Council of the municipality on the steps taken to implement the remedial action referred to in this report within 120 working days from the date of this report and submit a copy of the report to us.

Let us now turn our focus to basic education infrastructure. Along with health, education accounts for the largest share of the government budget. However, as a country, we appear to be making slow progress towards ensuring that teaching and learning take place in a conducive environment. The following two reports, looking at two schools apiece in Limpopo and KwaZulu-Natal underscore this point.

Limpopo Department of Education (Report No. 82 of 2021/22)

We investigated, on own initiative, the conditions we observed at Kabela High School and Agishanang Primary School in the Capricorn North District of Limpopo during a visit on 01 September 2020.

We were, at the time, conducting inspections in loco at education facilities to evaluate the conditions and state of readiness of such facilities to respond to the threat that the advent of the COVID-19 pandemic posed to teaching and learning.

The inspection entailed meetings with the two school's management teams and trade union representatives, and interviews with staff members.

Having analysed the available information, we decided to investigate whether the Limpopo Department of Education's provision and administration of education services at the two schools accorded with the obligations that the Constitution and the law impose and, if not, whether such failure amounts to improper conduct and maladministration.

We found that the department's provision and administration of education at both schools does not accord with the obligations imposed by the Constitution and applicable legislation.

Observations made during the on-site inspections at Kabela High on the day as well as on subsequent visits to the facility revealed systemic deficiencies such as inadequate educational tools, inadequate classrooms to cater for social distancing,

supply of poor quality PPE, insufficient ablution facilities, lack of adequate security to safeguard school property and inadequate scholar transport as detailed in evidence.

This failure to provide sufficient, secure infrastructure and learning equipment contravenes the provisions of section 5A of the South African Schools Act, 1996 and Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, particularly regulation 12, regulation 14 and regulation 17.

At Agishanang Primary, systemic deficiencies such as staff shortages, lack of adequate educational tools, aging physical infrastructure such as dilapidated buildings and old furniture, insufficient classrooms, insufficient ablution facilities as detailed in the evidence were observed.

As in the case of Kabela High, this failure to provide sufficient infrastructure also contravenes the provisions of section 5A of the South African Schools Act, 1996 and Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, particularly regulations 9 and 12.

The department's failure in respect of conditions at both schools amounts to a contravention of section 195(1) (e) and (f) and section 237 of the Constitution. Such failure further constitutes improper conduct, as envisaged in the Constitution and amounts to maladministration in terms of the Public Protector Act, 1994.

A notice in terms of Section 7(9) of the Public Protector Act, 1994 was issued to the department on 16 November 2021, for its response on 18 November 2021 but was not responded to. Subsequently, meetings were arranged with the MEC and Head of Department, leading to consensus on the following remedial action.

In relation to Kabela High:

1. Within 90 working days from the date of this report provision for the construction of additional classrooms to meet the increased enrolment of learners and to prepare the school for any social distancing needs that may arise as a result of possible future revision of disaster management regulations.

2. Ensure and/or monitor that schools procure quality face masks for learners that comply with set health standards in terms of the DBE Guidelines for Schools on Maintaining Hygiene during COVID 19 Pandemic and the Standard Operating Procedure for the Prevention, Containment and Management of Schools and Communities as well as applicable Supply Chain Management policies.

3. Within 60 working days from the date of this report, provide a report of all identified schools with specialised equipment and those susceptible to burglaries as well as an implementation plan of the security measures, with the view of fortifying security in those identified schools.

4. Within 90 working days from the date of this report provide additional ablution facilities to the school.

In relation to Kabela High School, the Public Protector takes the following remedial action:
The HOD must:

1. Within 90 working days from the date of this report provision for the construction of additional classrooms to meet the increased enrolment of learners and to prepare the school for any social distancing needs that may arise as a result of possible future revision of disaster management regulations.

2. Ensure and/or monitor that schools procure quality face masks for learners that comply with set health standards in terms of the DBE Guidelines for Schools on Maintaining Hygiene during COVID 19 Pandemic and the Standard Operating Procedure for the Prevention, Containment and Management of Schools and Communities as well as applicable Supply Chain Management policies.

3. Within 60 working days from the date of this report, provide a report of all identified schools with specialised equipment and those susceptible to burglaries as well as an implementation plan of the security measures, with the view of fortifying security in those identified schools.

4. Within 90 working days from the date of this report provide additional ablution facilities to the school.

In relation to Kabela High School, the appropriate recommendation that the Public Protector is making in pursuit of section 6(4)(c)(ii) of Public Protector Act to the Provincial Commissioner of Limpopo South African Police Services is as follows:

1. Ensure that the Matlala Police Station provides quarterly reports to the cluster commander and to her (Provincial Commissioner) office on the effectiveness of the Schools Safety Programme which has already been implemented at the school;

2. Ensure that the Matlala Police Station attends to safety and security-related at the school, including any other criminal incidents, through the assigned police officer or any other officer to whom an incident may be reported.

In relation to Kabela High School, the appropriate recommendation that the Public Protector is making in pursuit of section 6(4)(c)(ii) of Public Protector Act to the Provincial Commissioner of Limpopo South African Police Services is as follows:

1. The Public Protector, in terms of section 6(4)(c)(ii) of the Public Protector Act, recommends that the Provincial Commissioner, should consider additional

support in relation to issues of safety and security (including visible policing) and oversight, where it appears necessary, in relation to the all schools and other public education facilities in the Province of Limpopo.

In relation to Agishanang Primary School, the HOD must

2. Within 180 working days from the date of this report procure additional school furniture, in accordance with applicable Supply Chain Management Policy, section 217 of the Constitution, 1996 and the PFMA, to meet the sitting requirements given the merger of the two schools, which has also been exacerbated by the state of disrepair of the school furniture previously used at Agishanang Primary School;

3. Ensure and/or monitor that schools procure quality face masks for learners that comply with set health standards in terms of the DBE Guidelines for Schools on Maintaining Hygiene during COVID 19 Pandemic and the Standard Operating Procedure for the Prevention, Containment and Management of Schools and Communities;

4. Within 90 working days from the date of this report, after consultation with the Head of the LDPWRI, make a submission to the Limpopo Provincial Treasury for assistance in upgrading and improving the conditions at the two schools, to ensure that the LDoE complies with the relevant provisions of the SASA and the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure.

In relation to both Kabela High School and Agishanang Primary School, the appropriate recommendation that the Public Protector is making in pursuit of section 6(4)(c)(ii) of the Public Protector Act to the Head of LDPWRI is as follows:

1. The Head of LDPWRI should consider the provision of technical infrastructural support to the renovation needs of the respective schools as enjoined by Sections 4(2) and 13(1) (d) of the Government Immovable Assets Management Act, 2007. The provision of support should also be extended to other schools in the Province of Limpopo where the need is identified.

2. In relation to both Kabela High School and Agishanang Primary School, the appropriate recommendations that the Public Protector is making in pursuit of section 6(4)(c)(ii) of Public Protector Act to the Head of Limpopo Provincial Treasury is as follows:

3. The Head of the Limpopo Provincial Treasury, should consider the provision of financial support and oversight, where it appears necessary, in relation to the identified schools and other public education facilities in the Province of Limpopo in the 2022/23 Medium Term Expenditure Framework (MTEF).

4. In a case where additional financial support is not feasible in the short term, the Head of Limpopo Provincial Treasury is called upon to assist the LDoE with reprioritisation of funds within the current budget allocation of the latter to address the short term remedial action and recommendations of the Public Protector.

KwaZulu-Natal Department of Education (Report 101 of 2021/22)

We investigated, on own-initiative, allegations published by media outlets regarding the worsening conditions at public schools in KwaZulu-Natal (KZN). In order to obtain clarity as to the conditions at public schools in KZN, our investigation team visited Nokweja High School in Ixopo and Impande High School in Eshowe in KZN and conducted site inspections. The inspections entailed interviewing School Principals and management teams.

Based on the analysis of the information that came to our attention and observations made at the two schools, we decided to investigate whether the provincial Department of Education's provision and administration of education services at both schools accords with the obligations imposed by the Constitution and the law and if not, whether such failure amounts to improper conduct and maladministration.

In respect of Nokweja High, we found that the department's provision and administration of education does not accord with the obligations imposed by the Constitution and the law.

Observations made during the on-site inspection revealed systemic deficiencies, such as staff shortages, lack of adequate teaching and learning equipment, poor physical infrastructure such as severely dilapidated buildings, pit latrine toilets, lack of ICT infrastructure and lack of adequate desks and chairs in the classrooms.

Failure to provide sufficient infrastructure and learning equipment contravenes the South African Schools Act, 1996 and Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, particularly regulation 10, regulation 11, regulation 12, regulation 13, regulation 14, regulation 16, regulation 17 and regulation 18.

The failure of the department accordingly amounts to a contravention of the Constitution and constitutes improper conduct, as envisaged in the Constitution and maladministration in terms of the Public Protector Act, 1994.

Regarding Impande High too, we found that the department's provision and administration of education does not accord with the obligations imposed by the Constitution and the law.

Observations made during the on-site inspection revealed systemic deficiencies such as staff shortages, lack of adequate teaching and learning equipment, lack of ICT infrastructure and lack of adequate fencing and security.

Failure to provide sufficient infrastructure and learning equipment contravenes the South African Schools Act, 1996 and Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, particularly Regulation 13 (1), Regulation 14 (1), Regulation 16 (1), and Regulation 17(1).

The failure of the department accordingly amounts to a contravention of the Constitution and constitutes improper conduct, as envisaged in the Constitution and maladministration in terms of the Public Protector Act, 1994.

We must note that during a second visit to the schools on 15 February 2022, we observed improved conditions. KwaNokweja High now has 18 Educators comprising of 3 males and 15 females. The school also has 12 Educator Assistants. As per the Post Provisioning Norm for 2022 at the school there is no shortage of educators, the learner teacher ratio is 30:1. The school has one security guard, three food handlers and two cleaners and one screener. In addition, the school has had general repairs on three front school blocks.

With regard to Mpande High, the school now has a borehole. It also has an Admin Intern contracted for 18 months. Further the school has further contracted three Educator Assistants.

To remedy this maladministration and improper conduct, the Head of the KZN Department of Education must:

1. Within 120 working days, conduct an assessment of the overall schooling infrastructure needs within the province to ensure prioritisation of the Department's infrastructure budget as advised by the Provincial Treasury;

2. Apportion the allocated budget in accordance with the priorities as determined by the assessment envisaged in remedial action above, and consider prioritising Nokweja and Impande High Schools to ensure compliance with the relevant provisions of the SASA and the Regulations Relating to Minimum Uniform Norms and Standards for Public School Infrastructure, within 60 working days from the date of the issuing of the report once the assessment has been conducted; and

3. Consult with the KZN Department of Public Works for technical assistance and to ensure alignment of Infrastructure priorities of the Department of Education in the province of KZN with those of the Department of Public Works as well as ensure that the two schools i.e. Nokweja and Impande High Schools are included in current infrastructure plan.

Another regular feature in our briefings is the issue pertaining to the processing and payment of public sector employee pension benefits. We have opened a channel of communication with the Government Pensions Administration Agency (GPAA), which we hope to exploit to address this challenge. Again, learning from our previous reports, officials in government and at the GPAA should not be subjecting more people to the kind of hardships the complaint in this next case went through.

Madlingozi v Eastern Cape Provincial Department of Health and another (Report No. 92 of 2021/22)

We investigated allegations of undue delay by the Eastern Cape Provincial Department of Health and the GPAA to process and pay Ms N V Madlingozi's pension benefits for the period from 5 March 1982 to 30 November 1985.

The investigation followed a complaint Ms Madlingozi lodged in November 2018. Essentially, she alleged undue delay by the department and the GPAA in processing and paying her pension benefits for the said period.

We focused our investigation on whether the department unduly delayed to submit Ms Madlingozi's amended exit documents to the GPAA to effect payment of her pension benefits and if yes, whether its conduct was improper and amounts to maladministration.

We also looked into whether the GPAA unduly delayed to pay her pension benefits for the period 5 March 1982 to 30 November 1985 and if yes, whether the conduct of the GPAA is improper and amounts to maladministration.

We found that the department, indeed, unduly delayed to submit Ms Madlingozi's amended exit documents to GPAA. The investigation revealed that Ms Madlingozi approached the department in July 2018, requesting them to claim the outstanding pension benefits from GPAA without any success.

Only on 4 August 2021 the department advised that it had submitted her amended exit documents namely, Z102 and Z125 forms to the GPAA. However GPAA rejected the documents, contending that there was no proof of pension contribution for the period in dispute.

The undue delay on the part of the department was in violation of the Constitution and Principle 7 of the Batho Pele Principles. Accordingly, the conduct of the department constitutes improper conduct as envisaged in the Constitution and maladministration as envisaged in the Public Protector Act. It also prejudices Ms Madlingozi.

We also found that the GPAA did unduly delay to pay Ms Madlingozi's pension benefits for the period 5 March 1982 to 30 November 1985.

Based on the evidence at hand namely, available State Information Technology Agency (SITA) print-outs or cash book records, the GEPF's membership certificate

that was provided to her indicating that indeed her pensionable service period commenced on 5 March 1982 and the weight of the case law discussed in the report, Ms Madlingozi has produced sufficient evidence to conclude, on a balance of probabilities, that she was a contributing member of the Ciskei Civil Servant Pension Fund as from 5 March 1982. She has also confirmed as per her affidavit dated 24 February 2022 that she never claimed her pension benefits when she left her first employer, Nompumelelo Hospital in 1985.

In the *Mmileng* case, it was clearly found that, to expect a complainant to obtain proof from an employer (that is no longer even in existence) for a period dating back more than 30 years, in circumstances where it is not clear if accurate and correct service records were kept (during the country's transitional period) in the first place, "is to demand the impossible".

In addition, the approach by the GPAA/GEPF to shift the responsibility to provide documentary proof onto the complainant and the employer department, when it failed to ensure the accuracy of its own internal records during the integration process, is not only unfair and therefore improper, but also constitutes a dereliction of its statutory ("constitutional") duties as observed by the court in the *Hangana* matter.

The evidence obtained during the investigation indicates that the department could not trace Ms Madlingozi's original file but managed to retrieve the records from SITA archives and the GPAA rejected them.

The conduct of the GPAA was in violation of the Constitution, the GEP Law and Principle 7 of the Batho Pele Principles.

The GPAA's conduct thus constitutes improper conduct as envisaged in the Constitution and maladministration as envisaged in the Public Protector Act. It further prejudices Ms Mandlingozi.

To remedy this improper conduct and maladministration, the Head of Department (HOD) must within 30 working days from the date of this report, apologise in writing to Ms Madlingozi for the undue delay to process the amendment of the Z102 and the Z125 pension forms for the period in dispute as envisaged in Principle 7 of the Batho Pele Principles.

In addition, the HOD must, within 30 working days from the date of this report, commence the process of resubmitting Ms Mandlingozi's amended records to GPAA in line with the reasoning of the court in both the *Mmileng* and *Hangana* court cases referred to above and the GEP Law.

The Chief Executive Officer the GPAA, on the other hand, must within 60 working days from the date of this report, commence the process of recognising and effecting the necessary payment in respect of Ms Madlingozi's pensionable service period from 05 March 1982 to 30 November 1985, with interest in line with the reasoning of the court in both the *Mmileng* and *Hangana* court cases and the GEP Law.

The issue of how and where municipal funds are invested became a big talking point at the height of the VBS scandal. The next case is different but falls within the broader question of irregularities when it comes to investing public funds, especially at the local sphere of government.

De Lille v George Local Municipality (Report No. 94 of 2021/22)

We investigated allegations of improper conduct and maladministration by the George Local Municipality with regard to the alleged irregular investment of public funds in the amount of R350 million with Old Mutual Limited during 2017.

The investigation resulted from a complaint lodged in April 2019 by Ms Patricia de Lille MP, the Minister of Public Works and Infrastructure in her capacity as the Leader of the GOOD Party.

A preliminary investigation was conducted in terms of section 7(1) of the Public Protector Act for the purpose of determining the merits of the complaint and the manner in which the matter should be dealt with.

This was because the information submitted along with the complaint indicated that the former Municipal Manager, Mr Trevor Botha, had reported the allegations of financial misconduct pertaining to the Portfolio Councillor for Financial Services, Councillor D L Cronje, the municipality's former Chief Financial Officer (CFO), Mr Keith Jordaan in respect of certain investments with Old Mutual and to the South African Police Service's Directorate for Priority Crime Investigation (DPCI).

He had also reported the matter to the Western Cape Minister for Local Government, Environmental Affairs and Development Planning, Mr Anton Bredell (MEC), the Head of Department of the Western Cape Provincial Treasury, the Director-General of the National Treasury and the Executive Mayor of the Municipality.

The DPCI and the National Prosecuting Authority advised that charges of fraud and corruption were proffered against the former CFO, Councillor DL Cronje Sr and, his son, Mr DL Cronje Jr, and that the NPA had declined to prosecute the matter in 2020/21.

The MEC advised that the former CFO, Mr Jordaan, was dismissed following a disciplinary hearing in connection with the matter and vacated his office on 8 July 2019 and that the council appointed a Special Committee to investigate and make a finding on the alleged breach of the Code of Conduct for Councillors by Councillor Cronje.

In addition, the municipality advised that the Municipal Council had resolved on 25 March 2021 that Councillor Cronje "made himself guilty of the breach of Items 2 and 5(2) of the Code of Conduct for Councillors" and "Council imposes a sanction of a fine

equivalent to one month's salary on Councillor Cronje along with a written apology to be provided to the Speaker."

In light of the above, our investigation focused on the allegations that in July 2017 the municipality entered into an agreement with Old Mutual, giving rise to the irregular investment of an initial amount of R200million of public funds with the financial services company, and the subsequent investment in November 2017 of a further amount of R150 million with the company.

The investigation specifically focused on the alleged contravention of the Municipal Finance Management Act, the Municipal Investment Regulations and the Cash and Investment Policy of the municipality caused by the investment transactions the municipality concluded with Old Mutual.

Accordingly, the issues we identified for investigation were whether the municipality irregularly invested public funds with Old Mutual, and if so, whether the conduct of the municipality was improper and constitutes maladministration; and whether the systems and processes of the municipality, governing the investment of public funds by the municipality, were efficient and provided adequate checks and balances to prevent improper investment of municipal funds.

We found that the Municipality did invest municipal funds with Old Mutual irregularly. The investments were in violation of section 13(1) of the Local Government: Municipal Finance Management Act (MFMA), the Municipal Investment Regulations and the Cash and Investment Policy of the Municipality.

The conduct of the municipality accordingly constitutes improper conduct as envisaged in the Constitution and maladministration in terms of the Public Protector Act. The conduct of the officials and councillor involved were also not in accordance with the standard of ethics and diligence contemplated in section 195 of the Constitution.

We further found that the municipality's systems, processes, internal control measures and checks and balances governing its investment of public funds were not entirely efficient and provided inadequate checks and balances to prevent the improper investment of municipal funds.

The internal control mechanisms and checks and balances provided for by the Local Government: Municipal Systems Act, 2000 (MSA), the MFMA, the relevant Regulations and the Investment Policy were either deficient or if available, were not effectively applied by the municipality to safeguard it from the irregular investments made with Old Mutual.

The effectiveness of the Investment Policy is dependent on the accuracy and integrity of a municipality's cash management programme, which must identify the amount surplus to the municipality's needs, as well as the time when and period for which such revenues are surplus.

The above is subject to the underlying standard of due care being taken by the municipality in regard to the investment of the municipal funds, as contemplated by the Regulations, which was clearly absent in this case.

The conduct of the municipality accordingly constitutes improper conduct as envisaged in the Constitution and maladministration in terms of the Public Protector Act.

To remedy this maladministration and improper conduct, the Municipal Manager must:

1. Evaluate and identify what were the main deficiencies in regard to the municipality's investment policy and procedure, its internal financial controls and risk management policies and procedures, which made the irregular investment possible and then take steps to address these deficiencies in order to prevent a recurrence of a similar incident within 90 working days from the date of the report;

2. Take disciplinary action against the municipal officials who were implicated in non-compliance with the municipality's policies and procedures that resulted in the irregular investments of municipal funds with Old Mutual within 60 working days from the date of the report;

3. Engage with the Financial Sector Conduct Authority (FSCA) to assist with the identification of the deficiencies and assist with training of the relevant municipal officials and councillors responsible for oversight regarding municipal investments, on the relevant provisions of the MFMA and the Regulations, within 90 working days from the date of this report;

4. Ensure that the municipality's administrative units and processes are capacitated to detect and prevent gaps and threats in regard to the Municipality's investment transactions involving internal and external parties as envisaged by the relevant provisions of the MFMA, MSA, the relevant Regulations and the Investment Policy of the Municipality regulating investments, within 90 working days of the date of the report;

5. Ensure that investments by the municipality are included as a risk in the operational and strategic Risk Register of the municipality, as contemplated by the MFMA, which would serve as an early warning indicator in order to avert irregular investments and audit queries;

6. Report to the Council on a quarterly basis on the status of investments made or to be made by the Municipality;

7. Ensure that the Internal Audit Unit of the Municipality conducts regular audits, and reviews the adequacy and effectiveness of controls, processes and procedures on the investment account of the Municipality and report accordingly, as envisaged by section 165 of the MFMA; and

8. Report to the Council on the implementation of the remedial action referred to above within 120 working days from the date of this report and submit a copy of the report to us.

The Executive Mayor, on the other hand, must take the appropriate steps to ensure that the Audit Committee of the Municipality is properly constituted as contemplated by section 166 of the MFMA with members that are competent and that they have the necessary skills, qualifications and experience to perform their statutory responsibilities.

Going around the provinces as part of the roadshow, one of the issues we have been bringing to the attention of authorities is the problem of irregular appointment of staff and the frequency of complaints about the issue. The next report deals with one such matter.

Mdluli v Department of Correctional Services (Report No. 100 of 2021/22)

We investigated allegations of improper conduct and maladministration by functionaries of the Department of Correctional Services relating to the appointment of Mr Sihle Zikalala (not to be confused with the Premier of KwaZulu-Natal) in the post of Deputy Commissioner: Intergovernmental Relations in June 2018. The investigation followed a complaint Ms Busisiwe Jeniffer Mdluli lodged in December 2019.

Ms Mdluli alleged that the department advertised the post of Deputy Commissioner: Intergovernmental Relations, inviting applicants to submit applications before the closing date of 24 February 2017.

The requirements for the advertised post were amongst others that applicants should be in possession of an undergraduate qualification (NQF level 7) in Public Management or equivalent as well as five years' experience at a senior managerial level in a similar environment.

She further alleged that Mr Zikalala was appointed in the post of Deputy Commissioner: Intergovernmental Relations with effect from June 2018, despite him not having the five years' experience at senior managerial level in a similar environment.

Our investigation focused on whether Mr Zikalala was appointed in the post of Deputy Commissioner: Intergovernmental Relations without him having five years' experience at a senior managerial level in a similar environment, and if so, whether the conduct amounts to improper conduct and maladministration.

We found that, indeed, Mr Zikalala was appointed to the post of Deputy Commissioner: Intergovernmental Relations without having five years' experience at senior managerial level in a similar environment.

At the time of submitting his application for the position, Mr Zikalala had three years and two months' experience at senior managerial level. The shortlisting and interviewing panel and the executive authority disregarded the minimum number of years of experience required as stipulated in the advertisement for the post which favoured the shortlisting of Mr Zikalala.

The Shortlisting and Interviewing panel:

a) Failed to promote the basic values and principles governing public administration as stipulated in section 195 of the Constitution, which obliges organs of state to amongst others, uphold and maintain high standard of professional ethics, engage in employment and personnel practices based on ability, objectivity, fairness and render services impartially, fairly, and equitably and without bias;

b) Breached section 11 of the Public Service Act, 1994 by recommending appointment of a candidate who did not meet all the inherent requirements for the post as advertised; and

c) Breached section 3(5) (g) of the Correctional Services Act by recommending appointment of a candidate who did not meet all inherent requirements as stipulated in the Job advertisement.

The executive authority did not satisfy himself in conformity with Regulation 67(9) of the Public Service Regulations that Mr Zikalala qualifies in all respects for the post of Deputy Commissioner: Intergovernmental Relations.

The conduct of the Shortlisting and Interviewing panel and the executive authority rendered the appointment of Mr Zikalala in the post of Deputy Commissioner: Intergovernmental Relations: Head Office irregular.

In this regard, the conduct of the Shortlisting and Interviewing panel and that of the executive authority constituted improper conduct as envisaged in the Constitution and maladministration as envisaged in the Public Protector Act, 1994.

To remedy this improper conduct and maladministration, the Minister of Justice, Constitutional Development and Correctional Services must within a reasonable time, but not later than 90 days of receiving this report, take action to address the irregular

appointment of Mr Zikalala in the post of Deputy Commissioner: Intergovernmental Relations in conformity with the Public Service Act or take any other steps provided for the Labour Relations Act 66 of 1995.

The National Commissioner of the Department of Correctional Services, on the other hand, must within 90 days of receiving this report take disciplinary action in terms of the Public Service Act and Regulations against the Shortlisting and interviewing panel members for breaching the Code of Conduct for the Public Service relating to shortlisting, interviewing and recommending appointment of a candidate who did not meet all the inherent requirements for the post of Deputy Commissioner: Intergovernmental Relations.

Gilfillan v Department of Sport, Arts and Culture (Report No. 95 of 2021/22)

We investigated allegations of maladministration and improper conduct in connection with the appointment of private law firms by the Department of Sport, Arts and Culture for litigation in which the department was not a party, as well as the failure by the department to take appropriate action against those responsible following allegations of financial misconduct by the Culture and Creative Industries Federation of South Africa (CCIFSA).

Two complaints by Messrs Graeme Douglas Gilfillan and Eugene Mthethwa in September 2018 and August 2019 respectively gave rise to the investigation. Mr Gilfillan alleged that the department contravened the provisions of the Public Finance Management Act, 1999, National Treasury Regulations and the State Attorneys Act, 1957.

According to him, the department entered into agreements with various private law firms, including but not limited to Messrs Edward Nathan Sonnenbergs Incorporated, Spoor and Fisher Attorneys and LM Attorneys at the exclusion of the State Attorneys between 2009 and 2018.

It allegedly did so with a specific mandate to, among other things ensure the removal of the two existing trustees (ostensibly Messrs Graeme Gilfillan and Dumisani Motha) of the ZM Makeba Trust (which oversees Ms Makeba's affairs and appointed by Ms Miriam Makeba); and oversee the department's reclaiming of Ms Makeba's legacy from third parties.

Mr Gilfillan also alleged that the department incurred irregular, fruitless and wasteful expenditure by making direct payments to private law firms and other intermediaries for the implementation of the above agreements and, in so doing, breached the Culture Promotion Act, 35 of 1983.

Mr Eugene Mthethwa, on the other hand, based his complaint on a media report dated 14 July 2019, published in the City Press newspaper under the headline "The R100m arts funding scandal".

According to the article, the Department allocated R36 million over a period of three years to Ladysmith Black Mambazo for the purpose of teaching traditional Zulu song and dance and to record an album with the former President of the Republic of South Africa, His Excellency President Jacob Zuma.

This amount, according to the article, was among the questionable funding deals amounting to more than R100 million to have been spent by the department, led by Minister Nathi Mthethwa, for the 2018/2019 funding period alone.

It was also reported in the article that, further funding allocations which senior officials in the Department claimed were questionable included R50 million paid to the National Empowerment Fund without the required committee approvals, R20 million over a period of two years assigned to the Indoni South Africa Cultural Organisation, R12 million for the USIBA Cultural Awards show, R10 million to the Living Legends Trust Fund, and another R3 million, which the department allocated to private lawyers.

Mr Eugene Mthethwa alleged that, CCIFSA, a non-profit company set up with the assistance of and funded by the department to promote and develop the social and economic interests of the cultural and creative industries and to act as the controlling body for these sectors, misappropriated public funds in connection with the hosting of the USIBA Creative and Cultural Industries Awards and the Downtown Music Hub.

It is the contention of Mr Eugene Mthethwa that the conduct of the CCIFSA and the Department constituted fruitless and wasteful expenditure as envisaged by the PFMA.

Having analysed the two complaints, we decided to investigate whether the department contravened the provisions of the PFMA and the Culture Promotion Act by providing funding for litigation in which it was not a party, and if so, whether the conduct constituted maladministration and improper conduct.

We also investigated whether the department failed to take appropriate action against the CCIFSA following allegations of financial misconduct, subsequent to media reports and Mr Eugene Mthethwa alleging same and, if so, whether the conduct constituted maladministration or improper conduct.

Our investigation confirmed that the department contravened the provisions of the PFMA, 1999; the National Treasury Regulations and the CPA, 1983 by providing funding for litigation in which it was not a party.

In terms of section 2(1)(a)(iv) of the CPA, 1983, the Minister of Arts and Culture may, in order to develop and promote arts and culture in the Republic, establish, launch or finance any organisation or project whose objects are likely to have an impact throughout the country.

Irregular expenditure is defined in section 1 of the PFMA, 1999 as “expenditure, other than unauthorised expenditure incurred in contravention of or that is not in accordance with a requirement of any applicable legislation”.

The interpretation of section 2(1)(a)(iv) of the CPA, 1983 by the department to include the provision of funding for litigation in which it was not a party, in particular in the removal of the trustees of the Trust, is misdirected on the basis that the removal of the trustees does not, in any way, advance the development nor promotion of arts and culture in the Republic and the objects thereof have no impact throughout the country.

It is evident that the funding provided to the beneficiaries of the Trust and the Foundation by the Department was defrayed out of monies appropriated by Parliament.

Notwithstanding the above, the funds were utilised for litigation for the removal of the two (2) trustees of the Trust as opposed to the development and promotion of arts and culture in the Republic, the establishment, launching or financing any organisation or project whose objects were likely to have an impact throughout the country.

Therefore, the conduct of the Department was not in line with the objects of section 2(1)(a)(iv) of the CPA, especially the requirement of providing funding to any organisation or project whose objects are likely to have an impact throughout the country and goes against the objects of section 2(1)(a)(iv) of the CPA, and thus constitute irregular expenditure as defined in section 1 of the PFMA.

In terms of section 64(1) and 64(3) of the PFMA, any directive by an executive authority of a department to the accounting officer of the department having financial implications for the department must be in writing and a copy of this document must be filed with the National Treasury and the Auditor-General.

The only evidence submitted by the Department is a Memorandum containing a note, purported to be in the Minister’s handwriting, where the Minister asserted that he was not sure whether the R500 000.00 was not over the top and requested a further motivation (ostensibly as an admission that he was aware of the assistance sought by the beneficiaries of the Trust and the Foundation).

The failure by the Department to ensure that the directive to utilise funding defrayed from monies appropriated by Parliament was reduced to writing, was not in accordance with the principles referred to above, especially the requirements that the directive must be in writing and filed by the Director-General with the National Treasury and the AGSA respectively.

In the circumstances, we find that the allocation of funds to the Trust and Foundation for litigation in which the Department was not a party, as well as the failure to ensure

that the directive for the utilisation of the funds were in writing, constituted irregular expenditure and therefore equated to improper conduct as envisaged by the Constitution and maladministration as envisaged by the Public Protector Act.

We did not investigate, any further, the allegation that the department failed to take appropriate action following allegations of financial misconduct by the CCIFSA for the following reasons:

1. In terms of the Constitution, the Public Protector is mandated 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 any impropriety or prejudice; to report on that conduct; and to take appropriate remedial action;

2. The evidence received during the investigation indicates that, the CCFISA is a non-governmental organisation comprising of practitioners and activists in sectors that speak to the department's mandate, and not an organ of state. Therefore, its conduct does not amount to conduct in state affairs, as a result, the matter falls beyond the ambit of the Public Protector's mandate;

3. Notwithstanding the above, it was noted that the department has since appointed and authorised a forensic audit firm named Big Business Innovations Group (PTY) LTD to assist with an investigation into the allegations made, as well as in the auditing of CCIFSA since its establishment and this process is underway; and

4. Therefore, the allegation by Mr. Mthethwa that the department failed to take appropriate steps following allegations of financial misconduct by the CCIFSA has no merit.

The appropriate remedial action that we are taking as contemplated in the Constitution, with a view to remedying maladministration, improper conduct and irregular expenditure referred to in this report is the following:

The Minister of Sport, Arts and Culture, Mr Nkosinathi Emmanuel Mthethwa, to;

1. Take cognisance of the findings on the acts of maladministration, improper conduct and irregular expenditure by the Director-General envisaged in the PFMA, referred to in the report.

2. Ensure that in future all Ministerial Directives having financial implications for the department are reduced to writing and the Director-General files same with the National Treasury and the Auditor-General as envisaged by the PFMA; and

3. Include in his executive oversight role over the department, the monitoring of implementation of remedial action taken in pursuit of the findings in terms of the powers conferred under the Constitution.

The Director-General of the Department of Sport, Arts and Culture, to;

1. In line with the PFMA, ensure that appropriate actions are taken to ensure that such conduct is not repeated and prevent the recurrence of the improprieties identified in the investigation;

2. Ensure that upon the finalisation of a forensic investigation conducted by BIG into allegations of misappropriation of funds by the CCIFSA, the Public Protector is provided with a copy of the final report thereof;

3. Ensure that prior to approving requests for funding from third parties in terms of the CPA, such requests are subjected to a comprehensive legal vetting by the department's Legal Section with a view to ensure that they comply with the provisions of the Act and that same is for the purposes intended by the relevant provisions of the CPA;

4. Ensure that the particulars of the irregular expenditure in the final report is immediately reported in writing to the National Treasury as envisaged in the PFMA;

5. Ensure that the irregular expenditure is included in the department's report on revenue and expenditure submitted by the accounting officer to the National Treasury in terms of the PFMA.

6. Simultaneously, request for condonation for non-compliance with the PFMA and the CPA, respectively, and implement compliance checklists to supplement policies and procedures available to the department; and

7. In line with the PFMA, ensure that appropriate disciplinary steps are taken against any officials of the Department who may be found to have been involved in the financial irregularities referred to in the report.

The Department's Director: Human Resource Management, to;

1. Ensure that Line Managers, Divisional Managers and Section Managers are well capacitated to understand their role to improve the Department's governance and financial management through implementing effective internal controls in their respective areas.

We look forward to the full implementation of remedial action in all of these reports. Where there are questions in relations to the findings and remedial action, our doors remain open to engage. This has proven effective and can save the state a lot of money in that unnecessary litigation can be avoided.

One of the messages we have been preaching on the roadshow is that this institution is not the enemy of government. Through our inquisitorial, and not adversarial processes, we work together with government to ensure that our common goal of ensuring quality public service delivery and good governance is realised.

Thank you.