
REPORT NO. 33 of 2009/10

REPORT ON AN OWN INITIATIVE INVESTIGATION INTO A SABC NEWS REPORT ON POOR SERVICE DELIVERY BY THE THEMBSILE LOCAL MUNICIPALITY TO RESIDENTS OF BLOCK 17: MOLOTO VILLAGE IN THE MPUMALANGA PROVINCE
INDEX

Executive Summary 3

1. INTRODUCTION 4

2. THE ALLEGATION 4

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT 5

4. THE INVESTIGATION 5

5. ON SITE INSPECTION 6

6. CORRESPONDENCE AND MEETING WITH THE MUNICIPAL MANAGER 7

7. CONSULTATION WITH THE PROJECT MANAGER: TECHNICAL SERVICES 7

8. REPORT RECEIVED FROM THE DISTRICT MUNICIPALITY 8

9. APPLICABLE LEGISLATION 10

10. FINDINGS 11

11. RECOMMENDED REMEDIAL ACTION 11

12. CONCLUSION 12
Executive Summary

(i) This is a report on an own initiative investigation by the Public Protector which arose out of a news report by the South African Broadcasting Corporation (SABC) on 13 April 2009. The report relates to an incident where a trench was dug for purposes of constructing a storm water pipeline in Block 17: Moloto Village, but was allegedly left unfilled by the Thembisile Local Municipality, thus causing prejudice to some of the residents.

(ii) It was found that:

(a) Siyandiza Consulting Engineers, a service provider contracted by the Nkangala District Municipality dug a trench and left it open and unattended for a period of more than 12 months;

(b) The conduct of the Municipality, in allowing the situation to occur, did not accord with the objects of local government to promote a safe and healthy environment as provided for in section 152(1)(d) of the Constitution of the Republic of South Africa, 1996 (the Constitution) as well as section 11(3)(f) of the Local Government: Municipal Systems Act, 2000 (the Municipal Systems Act); and

(c) The conduct of the Municipality resulted in prejudice to some of the residents of Block 17: Moloto Village who were denied unimpeded access to their homes.

(iii) The recommended remedial action is that:

(a) Construction of the storm water pipe line should be completed without further delay; and

(b) The Municipality should take appropriate action to ensure the safety of residents in the affected areas of Moloto Village.
1. INTRODUCTION

1.1 This report is submitted to the Member of the Executive Council responsible for Co-operative Governance and Traditional Affairs in the Mpumalanga Provincial Government, and the Councils of the Thembisile Local Municipality and the Nkangala District Municipality, in terms of section 182(1)(b) of the Constitution of the Republic of South Africa Act, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 It deals with an investigation by the Public Protector into a news report by the South African Broadcasting Corporation (SABC) on allegations of poor service delivery by the Thembisile Local Municipality to residents of Block 17: Moloto Village, Mpumalanga Province.

2. THE ALLEGATION

2.1 The investigation was initiated as a result of a news report by the SABC on 13 April 2009. The news report stated that a trench was dug to lay storm water pipes in Moloto Village, but was left without being refilled by Thembisile Local Municipality (the Municipality).

2.2 The SABC reported further that the residents of Moloto Village had difficulty gaining access to their residential properties as the open trench was located in front of their houses.
3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

3.1 The Public Protector was established in terms of Chapter 9 of the Constitution to support constitutional democracy.

3.2 Section 182 of the Constitution gives the Public Protector 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 impropriety and prejudice, to report on that conduct, and to take appropriate remedial action.

3.3 The operational requirements of the Public Protector are provided for by the Public Protector Act. Section 6(4) of the Public Protector Act empowers the Public Protector to investigate, on his/her own initiative or on receipt of a complaint, among other things, maladministration in connection with the affairs of government at any level.

3.4 The findings of an investigation by the Public Protector may, when he/she deems it fit but as soon as possible, be made available to the complainant and to any person implicated thereby.

3.5 The allegation of maladministration against the Municipality falls within the jurisdiction of the Public Protector.

4. **THE INVESTIGATION**

The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, 1994 and comprised the following:

4.1 On site inspection conducted on 11 May 2009;
Report of the Public Protector

4.2 Correspondence and consultation with the Municipal Manager of the Municipality;

4.3 Consultation with the Project Manager: Technical Services at the Nkangala District Municipality;

4.4 Assessment of a report received from the Nkangala District Municipality; and


5. **ON SITE INSPECTION**

5.1 Following the SABC news report an on-site inspection was conducted on 11 May 2009.

5.2 It was observed that although the trenches had, since the broadcasting of the news report, been covered up with soil, water was still seeping through in some places and the resultant sogginess created a situation where some residents were still unable to have unimpeded access to their homes.

5.3 Some residents were interviewed in the affected area, including a member of the Community Forum, that was established to address the problem with the service provider and the Municipality. The interviewed residents reported that two weeks after the report on SABC news was broadcasted, the trench was merely covered up with soil without any storm water pipes being laid. The residents complained that on rainy days the water would fill up the area of the trench and end up running into their stands and that the soggy conditions in front of their properties posed a danger to them.
5.4 Photographs of the affected areas showing the seriousness of the situation were taken.

6. CORRESPONDENCE AND CONSULTATION WITH THE MUNICIPAL MANAGER OF THEMBISILE LOCAL MUNICIPALITY

6.1 Preliminary enquiries were made with the Municipal Manager of the Municipality in a letter dated 13 May 2009.

6.2 The letter raised questions in respect of the following issues:

6.2.1 The reason why a trench that was dug in front of residential properties was left unfilled for more than 12 months;

6.2.2 The specifications of the tender and whether the service provider met those specifications;

6.2.3 The action that the Municipality took, or intends to take to address the problem regarding the trench and what the way forward was; and

6.2.4 Whether the Municipality considered or adopted measures to guard against recurrence of similar situations in future.

6.3 During a meeting on 22 May 2009, the Municipal Manager of the Municipality explained that the Nkangala District Municipality was responsible for the project and that the enquiry was referred to the District Municipality.

7. CONSULTATION WITH THE PROJECT MANAGER: TECHNICAL SERVICES AT THE NKANGALA DISTRICT MUNICIPALITY

7.1 A meeting was arranged with Mr Makola, the Municipal Manager of Nkangala District Municipality, for 30 June 2009. On the scheduled day Mr Ntekele,
Project Manager in the Technical Services Division represented the Municipal Manager, who was unable to attend.

7.2 It was agreed with Mr Ntekele that a detailed report covering, but not limited to questions raised in the letter that was originally addressed to the Municipal Manager would be furnished to the Public Protector.

8. REPORT RECEIVED FROM THE NKANGALA DISTRICT MUNICIPALITY

8.1 A report was received from the Nkangala District Municipality on 7 June 2009 wherein Mr Ntekele responded to the queries raised by the Public Protector as follows:

8.1.1 The reason why a trench was left open and unattended for more than 12 months

8.1.1.1 "The scope of the project had to be reduced as the tender exceeded the available budget. As it was a storm water project, starting from the downstream side was necessary and the outlet pipes were 1500mm diameter, and were only made to order. After many negotiations with the suppliers of the concrete pipes, a supplier was identified by the contractor. Due to factors beyond control, the supplier only delivered 45m of the required 355m of pipe and informed the contractor that he would no longer be able to supply the pipe. Based on his delivery schedule, the excavations for laying of these pipes had already been completed. This meant that there were open trenches but no pipe to lay in them and this made it impossible to backfill the trenches.

8.1.1.2 A pipe of a different material (Ribloc) was proposed by the Engineer. The pipe was delivered and Thembisile Local Municipality refused that these pipes be used on the project, as according to them they had not approved the material. Since then there have been numerous negotiations regarding this matter and as the cement price had increased dramatically, the material price of pipe far
exceeded the supply and lay rate of the contractor. The contractor informed the Municipality that due to price increase, he would not be able to proceed with the contract. The contract was then placed on hold and the contractor was instructed to make all the excavations safe in the meantime.

8.1.1.3 As some of the up-stream storm water pipes had been laid, closing of the trench would mean that the storm-water would have serious consequences. The trenches were, however, barricaded pending the finalisation of the matter. There were no complaints received regarding the trench, until aired on SABC 2. Should there have been any complaints we would have certainly taken action to resolve the issue.

8.1.1.4 This trench was subsequently closed up. There is a problem in the area of underground water which sometimes causes isolated sogginess. A new contractor will be appointed and this problem will be addressed first once he takes possession of the site.”

8.1.2 The specifications of the tender and whether the service provider comply with such specifications

8.1.2.1 “The original specification was for concrete pipe, but due to non availability and subsequent major unforeseen price increases, it was recommended that an alternative material be utilised. This was rejected by the local Municipality, and thus never installed. All the work done and paid for to-date is thus as per the original specification in the tender document.”

8.1.3 The action the Municipality took, or intends to take to address the problem regarding the trench and what the way forward was.

8.1.3.1 “A new tender for roads and storm water in the area has been put out as part of a new budget allocation for Moloto. The completion of the work under the previous tender has been included in this new contract. This will be funded
from monies left over from the previous contract, as well as the sureties provided by the previous contractor.”

8.1.4 The measures considered and adopted by the Municipality to guard against recurrence of similar situations in future

8.1.4.1 “Funding for the whole scope of work of the project is made available. Planning of all the projects is done in integration with Local Municipalities, they approve scope of works before being sent to tender. Community liaison officers will assist in recording, reporting and resolving community related concerns. Communities will be empowered through project steering committees to assist and work with the project.”

9. APPLICABLE LEGISLATION

9.1 The Constitution

9.1.1 Section 152(1) of the Constitution provides that the objectives of local government, among others, are to provide democratic and accountable government for local communities as well as promote a safe and healthy environment.

9.2 The Local Government: Municipal Systems Act, 2000

9.2.1 Section 11(3) provides that a municipality exercises its legislative or executive authority by, among other things:

(a) “Monitoring and where, appropriate, regulating municipal services where those services are provided by service providers other than the municipality.
10. FINDINGS

From the investigation the following findings were made:

10.1 Siyandiza Consulting Engineers, a service provider company contracted by the Nkangala District Municipality, excavated a trench and left it open and unattended for more than 12 months;

10.2 The conduct of the Municipality, in allowing the situation to occur, did not accord with the objects of local government to promote a safe and healthy environment as provided for in section 152(1)(d) of the Constitution, as well as section 11(3)(l) of the Municipal Systems Act: and

10.3 The conduct of the Municipality resulted in prejudice to some of the residents of Block 17: Moloto Village who were denied unimpeded access to their homes.

11. RECOMMENDED REMEDIAL ACTION

In terms of section 182(1)(b) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, the following recommended remedial action must be taken:

11.1 The Nkangala District Municipality should ensure that construction of the storm-water drain is completed as indicated in paragraph 8.1.3 above; and

11.2 The Municipality should take appropriate action to ensure the safety of residents in the affected areas of Moloto Village.
12. CONCLUSION

12.1 The Municipality should report to the Public Protector on the implementation of the remedial action within three month of receipt of this report.

ADV T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 23/02/2010

Assisted by: Mr. S P Maphanga, Investigator: Nelspruit Office