THE CHILDREN SHALL PAY

Report on a systemic investigation into the allegations of the lack of service delivery and maladministration by the Gamagama Local Municipality which led to community protests

Report No: 16 of 2013/14

PUBLIC PROTECTOR
SOUTH AFRICA

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REPORT ON A SYSTEMIC INVESTIGATION INTO THE ALLEGATIONS OF LACK OF SERVICE DELIVERY AND MALADMINISTRATION BY THE GAMAGARA LOCAL MUNICIPALITY WHICH LED TO COMMUNITY PROTESTS
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Executive Summary

(i) "The Children Shall Pay" is my report as the Public Protector issued in terms of section 182 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).

(ii) The report communicates my findings and directives on appropriate remedial action following an investigation into allegations of maladministration, lack of service delivery and corruption against the Mayor, Ms Maria Diniza and several others at Gamagara Municipality. I was requested to intervene when the community had elected to close schools to back its call for the recall of the Mayor on account of allegations of maladministration and corruption. In support of its demands, the Olifantshoek community had forced local learners to stop going to school resulting in the closure of all schools in the area.

(iii) The investigation involved legal research, interviews, meetings, perusal of institutional documents such as policies, minutes and correspondence.

(iv) Several conciliation meetings were held with the parties with a view to having the children released to pursue their education. Mediation had worked in Kuruman where it was agreed that negotiations with appropriate authorities to attend to urgent community needs and an investigation into alleged irregularities would go on parallel to learners being allowed back in class. The mediation efforts included healing a rift between the police and the community. In Olifantshoek, the mediation did not yield desired results. Despite agreements reached on at least two occasions, the learners were not allowed to go back to school.

(v) The Olifantshoek story is a sad story of failed leadership at various levels of government and the community. Children in Olifantshoek lost a whole year of learning time in 2012. We should all take responsibility for failing the children of Olifantshoek. The only meaningful cooperation received from the
leadership of involved organs of state was from the South African Police Services leadership team in the province. Under the command of General Janet Basson and the representative of the Head of Department in the provincial Department of Transport, Safety and Liaison, the SAPS leadership team stepped up to the challenge. The SAPS cooperation included agreeing to relax bail conditions of a group of young community members that were seen and presented as leaders behind the forced closure of schools to pave the way for the reopening of schools. A group of leaders from the faith community also played their part in trying to end the impasse. I must also mention that cooperation by SAPS, traditional, faith and other community leaders helped end a similar impasse in Kuruman resulting in the reopening of schools in that part of the Northern Cape Province.

(vi) The issues considered and investigated centred on the following allegations:

(a) Allegations of systemic service failure affecting the broader community, were that:

(1) There are no roads in the township, despite a promise in 2006 that tarred roads amounting to 14km would be built in the area;

(2) Material for the building of a bridge was bought but the money got finished before construction started;

(3) The role of the Youth Development Centre in the Municipality is not clear;

(4) Some do not have electricity in their townships;

(5) Sanitation in the area is a huge problem. The park is flooded with sewage and there is no running water in the Community;

(6) The Municipality failed to provide places of recreation.
(b) Maladministration allegations against the Municipality, were that:

1. The Municipality was paying rent for the Chief Financial Officer (CFO) who was staying together with Mr George Loeto (the Acting Technical Services Manager) while both had housing allowances;

2. The Municipality called a Community meeting and told the Community that it had overspent by R6.4 Million, which was supposed to be used for development;

3. SASSA official (Ms Michell Tatas) is staying in an RDP house and her children are receiving grants;

4. The salary of five Ward Committee Members was stopped in May 2012 whereas the other five continued to receive salaries or stipends;

5. The Municipality allegedly procured 2000 Calendars which were wrongly spelt costing R28000;

6. The Indigent Funeral Policy allows the Municipality to use R1500 for funerals in assisting poor people within the Municipal area yet R25 000 was spent on the funeral of the Speaker of Ga-Segonyana Municipality;

7. The Municipality branded 74 vehicles to the amount of R174 000, using a company called Kgomotso Image;

8. There was no consistency in the sale of stands in Olifantshoek, one person can buy a stand for R1 and another for R50 000;

9. The Municipality spent an amount of R4 500 on alcohol for its employees during a year end function;

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(10) The Municipal Manager intimidated a junior employee of the Municipality to transport his furniture from Kuruman to Kathu;

(11) The Municipal Manager was being paid a transport allowance for him to travel from Kuruman to Kathu yet he stays in a municipal house in Kathu;

(12) The Acting Technical Services Manager got paid an Acting Allowance even when he was on sick leave for two months;

(13) An employee named Ms Ane Joey Tuise was paid while on maternity leave even though she did not qualify;

(14) Municipal funds estimated at R67 000, were irregularly used to renovate a private house where the Municipal Manager stays;

(15) An employee by the name of Ms Dineo Ntokwe could not do her job at Human Resources (HR) as every week she attended one day certificate courses;

(16) Mr Phuti bought a stand in Olfantshoek for only one Rand;

(17) There was lack of clarity regarding whether Bethuel Setungwane, a Community Development Worker, was an employee of the Municipality or the Personal Assistant to the Mayor;

(18) Mr Thapelo Tiroyame was irregularly paying the Ward Committee Members their stipends of R1 000 each in cash;

(19) Counsellor Hantise was granted a bursary when his term was expiring and the bursary went beyond his term of office;
(20) One Mr Mohau Moorosi was involved in an accident with the Mayoral car but that no case was registered against him.

(c) Maladministration allegations relating to tender irregularities, were that:

(1) The Municipality built houses in 2009 and never completed the project for 200 houses with some of the houses left without windows and some with only the foundation built while the builder, Lebogang Afrika Suppliers ran away having been paid most of the money;

(2) Tenders were only awarded to the same people, amongst, others Doc Motsoare;

(3) The Municipality employed three Security Companies which were not budgeted for and only operated in Kathu.

(d) Conduct failure allegations against the Mayor of Gamagara Local Municipality, Ms M Dinlza, were that:

(1) The Mayor was using a farm designated for the Community to enrich herself;

(2) The Mayor used a Municipal truck to transport her parents’ furniture from Olifantshoek to Kathu;

(3) The Manager in the Mayors’ office bought liquor with Municipal money for his son's birthday;

(4) Unemployment rate was very high yet the Mayor told the mines that the unemployment rate was not high;
(5) Land was unlawfully taken and developed by Mr D Motsoare without authorisation and that the Mayor was doing nothing about it;

(6) The Mayor and Charles Phuti (a Municipal official) were receiving Social Grants;

(7) One Edwin Hantise and the Mayor bought RDP houses;

(8) The Mayor was abusing the Subsistence & Travelling (S&T) claims in that she was using her private vehicles for long distance official trips while there was a Mayoral Car and a driver;

(9) A credit card and petrol card registered in the name of the former Mayor continued to be used after he had already left the employ of the Municipality;

(10) It is unclear as who is paying for the house where the Mayor resides, in Kuruman;

(11) There was a case of a stolen water tank against the Mayor and the Community wanted to know what happened to it;

(12) The Mayor’s brother stays in a property not belonging to him and the water and electricity connections to said property were done unlawfully;

(13) A councillor who stays at a Caravan Park was selling stolen goods, he allegedly had SANDF property.

(e) Maladministration allegations relating to employment irregularities

(1) One Gilbert Mothaping, who was dismissed by the Municipality for corruption, was re-employed by the same Municipality;
(2) Officials of the Municipality have been politically deployed and are without proper qualifications.

(f) Allegations of criminality involving external service providers

(1) Pastor David van der Westhuizen was said to be receiving cash payments from the Community for a period of three (3) years for sewer drainage, but no action was taken against him by the Municipal Manager who was then the Manager Corporate Services after same was reported to him.

(g) Allegations transcending the remit of the Municipality

(1) The Department of Education allegedly failed to provide text books for learners and that learners in the area were, that is, grade four (4) to Grade 12 learners in the area were sharing one text book between four of them;

(2) Olfantshoek does not have a hospital and lacks ambulances, a permanent doctor, equipment, sufficient staff and medical treatment with people sent to Kuruman (80 km away) for treatment and have to hitchhike back from Kuruman.

(3) Police brutality was allegedly perpetrated against the community during a march resulting in one person losing his eye and another, his ear and that such police brutality occurred even during peaceful marches.

(vii) My findings on the specific allegations are the following:

(a) On allegations of systemic service failure affecting the broader Community
(1) The Municipality managed to upgrade only 1.3 kilometres of the initial 14 kilometres of access roads from gravel road into a surface road which was a EPWP due to the limited funding.

(2) The allegation was substantiated since the culverts for the bridge were bought but the storm water drainage was not erected. The bridge/storm water drainage was not an afterthought but it was part of the upgrading of the 1.3 kilometres of road mentioned above. Therefore the revised budget of R5,984.27 should have covered the whole project. The Municipality is as a result found to have mismanaged the project funds and therefore dealt improperly with public funds.

(3) The Youth Development Centre deals with all youth related issues.

(4) While all formalised stands in Olifantshoek are electrified. It is true that informal sections of the community, among them Ditloong, Plakkerskamp, Wegelee and Diepkloof, do not have electricity. The illegal occupation of serviced Municipal sites or land and the Municipality’s failure to properly act and address the said occupation, made it difficult for Eskom to provide electricity in Ditloong. The action of the Community (to occupy the land) is wrongful and the Municipality’s failure to act promptly constitutes improper conduct and maladministration.

(5) The allegation on systemic sanitation problems is substantiated. It is indeed correct that some people do not have toilets and that there are still communal taps. But this is only the case in areas such as Ditloong where there is illegal occupation of land. This also means that all formalised stands in Olifantshoek have access to water.

(6) It is also true that there is currently no recreational place for the community. However, there is a project underway for the construction of recreational facilities for the Olifantshoek Community namely a
Community Hall, Sports Complex and Youth Centre. The project will also include the renovation of the swimming pool. The project is initiated and funded by the GDF in collaboration with the Municipality. Some allegations, including allegations that the Municipality lied about having renovated the local swimming pool, will be in the second report.

(b) On conduct failure allegations against the Mayor of Gamagara Local Municipality, Ms M Diniza

(1) It is true that the Mayor’s husband is farming on communal land. However, he meets all the requirements of the guidelines set by the committee that deal with the allocation of land for small farmers. The only criterion for the allocation of communal land to small scale farmers, is that the applicant must be a resident of Olifantshoek and that he/she must pay the required fees, namely a joining fee of R50.00 and annual attorney’s fees of R500.00. The Municipality does not have a policy to deal with the allocation of the communal land for farming. The absence of a policy itself constitutes improper conduct and maladministration.

(2) The allegation that the furniture of the Mayor’s parents was moved with a Municipal truck is substantiated. The instruction to move the furniture of the Mayor’s parents came from the office of the Municipal Manager following the Mayor’s claim that she had authority from the former Premier following threats to her family. However, the Premier did not have such authority.

(3) Public property must be used for public purposes unless there is specific authority for using such property for private purposes. In the absence of the said authority, the Municipality’s action in this instance constitutes improper conduct and maladministration.
(4) The allegation that the Manager in the Mayor's office used municipal funds to buy liquor for his son's birthday is not substantiated by evidence, which shows that he bought the liquor with his own money.

(5) No evidence could be found to substantiate the allegation that the Mayor told the mines that there was no problem of unemployment while unemployment is very high in the area. The evidence only supports a finding that the Municipality failed to follow up with the mines in the area, on what their plans are with regard to unemployment. In the light of chronic unemployment in the area, the omission constitutes maladministration.

(6) The allegation that the Mayor did nothing about Mr Motsoare's illegal occupation of and building on municipal land, is not substantiated by evidence. The Municipality obtained a court interdict against Mr Motsoare which stopped him from building on the land he occupied illegally. He was ordered to demolish what he has built already.

(7) The allegation regarding the Mayor and Mr Phuti receiving social grants is untrue. SASSA, through its Regional Office, confirmed that the Mayor does not receive any Social Grant. It was also confirmed that Mr Charles Phuti does not and has never received a Social Grant.

(8) It is true that Mr Hantise bought his house from Ms Visagie in 2007. However, there was no evidence suggesting impropriety. Furthermore, the transaction did not violate the 8 year bar on alienation of RDP houses as Ms Visagie had been allocated the house in the 90's. In the Mayor's case, the RDP house in question was allocated to her husband long before they got married and at the time, he qualified for it. The allegation is accordingly, unfounded.
(9) It is true that Mayor Diniza used her own private vehicle for several official trips after the Mayoral vehicle had been bought for her use. The Mayoral vehicle was bought in February 2012 but she claimed for S&T up to July 2012. The Mayor Diniza's claim after she got a state car constitutes improper conduct and maladministration. Her misrepresentation to my office about having stopped her claims when she got her Mayoral car also constitutes improper conduct and maladministration.

(10) In August 2011 and then in June 2012 two amounts of R5 000 and R10 000 respectively, were deposited into the bank account of the Mayor for fuel but there is no proof that the money was used for fuel, except R7 410 that was used for accommodation of the Mayor. A further amount of R5 000 was deposited into the bank account of the Mayor's driver also in August 2011 for fuel and again no proof has been provided that the money was used for fuel. A total of R12 590 is accordingly unaccounted for (i.e. R7 590 by the Mayor and R 5 000 by the Mayor's driver). Mayor Diniza's failure to account for the money constitutes improper dealings with respect to public money. The Mayor's misrepresentation about stopping her claims when she got her Mayoral car is improper and constitutes maladministration. The Mayor's conduct regarding the unaccounted R7 590 is also unlawful, improper and constitutes maladministration.

(11) Evidence indicates that the credit card use was discontinued immediately upon receipt of the circular from the National Treasury, to that effect. The petrol card in the former Mayor's name was used by the Mayor's administration until a new petrol card was received. This action was justified since there was a need to have a petrol card.

(12) The Mayor and her family were not paying any rent as they were staying at her husband's cousin in Kuruman.
(13) It is true that there is a case against the Mayor regarding possession of a stolen water tank. The case is proceeding and the investigating officer is awaiting the decision on whether to prosecute or not.

(14) The Mayor's brother lives on a stand that belongs to the late brother of the Mayor's husband. The connection of electricity and water was legitimate and it was paid for by Mayor Diniza.

(15) No finding could be made on the alleged selling of stolen goods by Councillor Johnson due to lack of evidence. Both the Mayor and Mr Jonhson denied the allegations

(c) On Maladministration allegations against the Municipality

(1) The allegation that the Municipality paid for the CFO's accommodation for 2009 to 2011 is valid. The Municipality's explanation is that it paid the difference between the rental amount of R3300 and R250 rental that staff is required to pay when renting state property. The CFO was according to the Municipality, only required to pay R250. The Municipality does not have a Rental Policy to regulate all leases by its employees. The failure by the CFO and then corporate services Manager, who is now the Municipal Manager, to develop a policy to regulate this matter as directed by the then Municipal Manager, in 2009, this constitutes improper conduct and maladministration.

(2) The Auditor General's audit of the Municipality's financial records during the year 2010/2011 revealed that there was irregular expenditure of R6.4 million. Proper procurement processes were not followed in the spending of this amount. Council approved the expenditure as unauthorised, irregular or fruitless and wasteful expenditure.

(3) The Auditor General found that an amount of R40 million was the subject of irregular expenditure for the year 2011/2012 but was not
disclosed as such. The conduct of the Municipality in this regard constitutes maladministration.

(4) Ms Michell Tatas inherited an RDP house from her late mother and then swapped the house with another. Her application for a Child Support Grant with SASSA was rejected as she was employed. It is therefore not true that Ms Tatas was allocated an RDP house or that she was receiving a Child Support Grant.

(5) It is true that salaries of the five Ward Committee Members were stopped abruptly and arbitrarily. The decision to stop the said salaries is an administrative act and therefore the Municipality was obliged to ensure procedural fairness. The Municipality’s action was procedurally unfair, improper and constitutes maladministration.

(6) It is true that the 2000 calendars procured for R27982.50 contained the wrong spelling of the Municipality’s name. The Service Provider rebranded some of the Calendars with the correct name but the Municipality failed to claim back and/or recover from the Service Provider the money for the Calendars that were never corrected. This amounts to fruitless and wasteful expenditure and accordingly constitutes improper conduct and maladministration.

(7) An amount of R25 000 was indeed contributed by the Municipality towards the funeral of the Speaker of Ga Segonyana Municipality. This contribution was contrary to the Indigent Policy of the Municipality which restricts such contributions to R1300 and only to residents of the Municipality. The Municipality’s conduct was unlawful, improper and constitutes maladministration.

(8) There is no evidence to prove that there was branding of Municipal vehicles that took place.
(9) It is true that the transfer amounts on certain houses reflect R1 as the purchase price. The explanation given is that these were given for free to the people by the Municipality.

(10) The Municipality actually spent R16,922.40 on alcohol for its employees. As the alcohol resolution referred to by the Mayor as authority for the action was not produced, the conduct was accordingly, improper and constitutes maladministration.

(11) It is true that an employee was asked to collect the furniture of the Municipal Manager. The allegation of intimidation was not backed by any evidence provided. As there is no written policy regulating the matter, the only finding that can be made is that this did not comply with the convention obtaining until then which required an employee to find his own service provider on the basis of a 50-50 cost sharing with the Municipality. Both the absence of a written policy and the deviation from convention constitute maladministration.

(12) The Municipality did not pay a separate amount as transport allowance to the Municipal Manager for his trips from Kuruman to Kathu. However, his salary package allows for the inclusion of a transport allowance. The Municipality lacks a Transport Policy provision that regulates this matter.

(13) The allegation that Mr Loeto was paid any Acting Allowance during the period when he was on sick leave has not been substantiated by evidence. Evidence shows that someone else was appointed to act on the same position while Mr Loeto was on sick leave.

(14) The allegation that Ms Joey Tuise was paid while on maternity leave was not backed by evidence and is accordingly unfounded.
(15) The allegation that municipal funds to the tune of R67 000, were spent towards renovating a private residence where the Municipal Manager stays is partly substantiated. However, the municipality could not account for the money spent towards the renovations. Only two quotations of R16 111.55 and R17 580.00 as well as an invoice of R9 200.00 were provided. The invoice amount was paid. It could not be established whether the services rendered were equivalent to the money spent or whether the expenditure was justified or not, since the documents provided were not conclusive. The Municipality's failure to develop a policy on the matter, its use of public funds without a supporting policy and its failure to account properly on how much was spent, constitute maladministration.

(16) The allegation that Ms Ntokwe attended training every week is not substantiated by evidenced. Evidence shows that Ms Ntokwe attended courses regularly as other employees in line with the Municipality's Work Place Skills Plan, which allows employees to attend training courses regularly. Ms Ntokwe attended training five (5) times between 01 July 2012 and 01 January 2013.

(17) Mr Phuti applied for a low cost house when he was still unemployed and his application was approved. No evidence was found to substantiate the allegation that he bought a stand for R1.

(18) Mr Setungwane is a Senior Ward Committee Administrator as confirmed by the letter of appointment and not a Personal Assistant to the Mayor. His duties include the coordination and managing of ward committee administration, provide secretarial function of all five ward committees, provide report of ward committees to council, coordinate ward meetings and related activities etc.
(19) Mr Tiroyane is a Ward Counsellor in Debenq, which falls under the Municipality and indeed he was paying Ward Committee Members their stipend in cash. There is no evidence to the contrary.

(20) The allegation that Ward Committee Members were paid their R1 000 stipends in cash, is substantiated by evidence. The Mayor's assertion, in her response, that the irregularity had been corrected is, untrue and her conduct in this regard is improper and constitutes maladministration.

(21) The allegation that Counsellor Hantise was given a municipal bursary transcending his term as councillor is substantiated by evidence. Councillor Hantise was granted a one (1) year bursary in January 2011, about four months before expiry of his term in the light of the 2011 Local Government elections which took place in May 2011. While he remained in the employ of the Municipality after being re-elected, the granting of the bursary on the eve of elections was an unnecessary risk as he may have failed to get enough votes to return to office. The Municipality's conduct accordingly constitutes maladministration.

(22) The allegation that the accident was accordingly reported. The Municipal Manager's lack of knowledge of what happened concerning the accident was justified since the accident was reported to the then Manager in the Mayor's Office who in turn reported directly to the former Municipal Manager. However, the latter never pursued the matter.

(23) The accident was reported at the Danielskuil Police Station and Case No. 39/01/2010 was issued. The accident was also reported to the Municipality's insurer, Lion of Afrika. The allegation was, accordingly, not substantiated.
(d) On maladministration allegations relating to tender irregularities

(1) It is correct that the Housing Project was not completed and indeed only R1.9 Million was left from the project budget. The Municipality failed to monitor and measure the performance of Lebogang Afrika Afrika Suppliers. This contributed towards poor performance as the project could not be finalised within the contract period. The Municipality paid about 83% since the R1.9 million is 17% of the R11 million.

(2) The Municipality also failed to stipulate the practical completion date in the contract and as such they could not invoke the penalty clause in which the contractor was supposed to pay a penalty of R1 600 per calendar day for each day beyond the completion date. In that regard the Municipality’s conduct constitutes Maladministration. The beneficiaries of the Housing Project were prejudiced as they continued to be without their houses.

(3) The Municipality did not award any tender to Mr D Motsoare and was not linked to either Lebogang Afrika Suppliers or Khoisan Civils. However, the service provider who got more than one tender is Lebogang Afrika Suppliers, who was involved in two tenders, the Housing Project tender and the upgrading of the Oxidation Ponds contract. The latter was awarded to Khoisan Civils in which Lebogang Afrika Suppliers was a BEE partner.

(4) It is true that three Security Companies were contracted by the Municipality, one of which is working in Olifantshoek. Proper procurement procedures were not followed in the procurement of these services. Furthermore, the Municipality paid Swandla Trading and Projects cc R36 676.44 more than the amount indicated on the appointment letter. The Municipality’s conduct in this regard, was unlawful, improper and constitutes maladministration.
(5) On maladministration allegations relating to employment irregularities

(1) The Municipality omitted to conduct proper checks on Mr Gilbert Motlhaping before employing him. He was indeed in the middle of a disciplinary hearing on allegations of theft before resigning from his previous job. The Municipality’s conduct was reckless and contrary to the general norms and standards of recruitment.

(2) Mr Motlhaping also did not meet the two basic requirements for the post as advertised, being a tertiary qualification in Administration and a Driver’s Licence. The conduct of the Municipality was accordingly improper and constitutes maladministration.

(3) The Municipality does not have a recruitment policy and this was found to be the reason behind some of the recruitment mistakes made by the Municipality.

(4) Out of the 6 officials whose appointments and qualifications were looked into, the two Senior Managers, namely the Acting Corporate Services Manager and the Manager in the Mayor’s office, do not possess the necessary qualifications to be in the relevant positions.

(5) The Municipality’s employment of the Acting Corporate Services Manager and the Manager in the Mayor’s office without the necessary qualifications, constitutes improper conduct and maladministration.

(e) On allegations of criminality involving external service providers

(1) The Municipal Manager, who was then the Corporate Services Manager, failed to act on two possible cases of fraud involving Pastor David van der Westhuizen for collecting cash for drainage and Mr G van Wyk for electricity bridging, that were reported to him by municipal
staff with the necessary evidence. As a result of his failure to act the
Municipality lost revenue. The Municipal Manager’s failure to act is very
odd, suspicious and constitutes improper conduct and
maladministration.

(f) On matters transcending the remit of the municipality

(1) No evidence was found to back the allegation that the local High School
was experiencing textbook shortages resulting in children sharing
books.

(2) The allegation regarding health services deficiencies is valid. There is
no fully pledged Hospital in Olifantshoek but a Community Health
Centre and a Clinic. There is a serious shortage of staff, which leads to
the provision of poor health services and there is a shortage of
Ambulances. However, these matters fall outside the remit of the
Municipality and have been brought to the attention of the health
authorities.

(3) It is true that a person lost an eye and another, his hearing, during a
community march. The circumstances under which these injuries were
sustained have been referred for an investigation by the Independent
Police Investigation Directorate (IPID) together with other cases against
the police. The IPID has advised that the cases have been referred to
the Director of Public Prosecutions for a decision.

(viii) Appropriate remedial action to be taken by the Gamagara Municipality is in
terms of s182(1)(c) of the Constitution is the following:

(a) On allegations of systemic service failure affecting the broader
Community
(1) The Municipality has to construct the bridge on the access road already built, with the culverts that were bought during the implementation of the EPWP project in order to address the storm water issues within 6 months of the release of this report.

(2) The Municipality must choose and act decisively on one of the following options:

11.1.2.2 Evict the illegal occupants and allocate the sites properly; or
11.1.2.3 Embark on an exercise of resettling people by moving their dwellings within the marked borders of the serviced sites in order to formalise their settlement; or
11.1.2.4 Re-survey the land according to the current settlement to formalise it.

(3) The Municipality should then open up the streets by scraping the roads and clearly numbering the dwellings on the plots and mark them according to the corresponding number on the Local Government Plan to make it possible for Eskom to electrify the affected area.

(4) As far as other areas without electricity, outside the illegally occupied land are concerned, the Municipality should make the necessary arrangement to provide electricity without delay.

(5) The Municipality is to make sure that water and sanitation, which are basic rights, are provided for all the people of Olifantshoek.

(6) The Municipality should determine the commencement date of the project being the construction of the Community Hall, Sports Complex and Youth Centre, from the GDF and then inform the Community accordingly. The Municipality should also ensure that the project commences on the identified date, however should there be changes the Community should be updated.
(b) On maladministration allegations against Mayor

(1) The Municipality must formulate a comprehensive and detailed policy with clear criteria of who does or does not qualify to use Municipal property and for what purpose, in order to regulate all Municipal properties including the Communal Farm and Municipal vehicles.

(2) The Council through the office of the Mayor should continue to engage with the mining houses to consider local people for employment.

(3) The Municipality should enforce the court order directing the Respondent (Mr Motsoare) to demolish all structures unlawfully built on the land and rehabilitate the land. This has to be done within six (6) months from the date of the final report.

(4) The Mayor’s driver, Mr Mohau Moorosi must also account for the amount of R5000 he received during the same period. Should he fail to account, he must refund the Municipality in full or the portion not accounted for.

(5) The Municipality should look at empowering the Mayor to provide leadership to the administration and to ensure that proper policies are in place. A policy tool kit for municipalities, is recommended.

(c) On maladministration allegations against the Municipality

(1) The Municipality should not rely too much on Council Resolutions for anything and everything or every time a particular decision is to be taken, but should establish policies and in particular the Accommodation Policy to deal with but not limited to staff related accommodation.
(2) The Municipality needs to either investigate the irregular expenditure and apply for condonation from National Treasury based on the results of the investigation, or get the expenditure written off by Council with valid reasons. The Municipality should bear in mind though that should the reasons not be valid the Auditor General can still keep the expenditure as irregular instead of allowing the writing off by Council.

(3) The Municipality should reinstate the five (5) Ward Committee Members and should it be that they committed misconduct, proper procedures should be followed which may lead to disciplinary action being taken. The Municipality should also reinstate their salaries retrospectively pending its decision to institute disciplinary action.

(4) The Municipality should ascertain and then recover from the service provider, the value of the Calendars that were not rebranded. Measures are to be taken to ensure that quality and quantity comply with tender/contract specifications before payment is made.

(5) The Municipality should refrain from paying out funeral contributions towards individuals who are not indigent, are outside the Gamagara Municipal area and amounts that are more than what is specified in the Indigent Funeral Policy.

(6) Other measures like monthly staff contributions towards alcohol should be encouraged in order to raise funds for their alcohol for the Christmas party. The Municipality should refrain from using public funds for alcohol.

(7) The Municipality should establish a policy that will regulate the issue of removal of property of Municipal Officials, including Councillors and move away from "common practise".
(8) The Municipality does not have to pay Mr Loeto his acting allowance for the period he was sick since someone else was paid for acting on the same position.

(9) A further investigation into the procurement processes of the renovations to a house where the Municipal Manager stays and similar matters will be conducted.

(10) The Ward Committee Members should be made to open bank accounts where their monies should be deposited instead of cash payments.

(c) On allegations of tender irregularities

(1) In future, the Municipality should ensure that the commencement and completion dates of projects are clearly stated in the tender or contract documents as provided in Section 116(1) of the Municipal Finance Management Act.

(2) The Municipality should recover overpayment made to one of the security companies known as Swamdla Trading and Projects CC.

(d) On allegations of employment irregularities

(1) The Municipality should appoint a qualified Corporate Services Manager since the current Acting Manager does not possess the necessary qualifications.

(2) The Municipality should develop and implement a comprehensive Recruitment Policy which is in line with general norms and standards of recruitment.

(3) The Municipality should fill all the Senior Management posts where the incumbents are acting such as Corporate Services, with permanent and
suitably qualified individuals, within a period of six (6) months from date of this report.

(e) On allegations of criminality involving external service providers

(1) The Council should take action against the Municipal Manager for failing to act on the conduct of the Pastor for sewer drainage and Mr G van Wyk on the alleged bridging of meter readings, irrespective of the position he occupied when the matter was reported to him. The case against the Pastor and that of meter bridging, should be investigated and appropriate action be taken.

(f) On allegations transcending the remit of the Municipality

(1) A separate investigation relating to the Department of Health and the management of health services is in progress. The MEC for Health has been advised of this and other matters that emerged during the Public Protector Good Governance Week, 2012.

(2) Regarding the police brutality allegations referred by the IPID to the NPA, the National Director of Public Prosecutions is to advise on the NPA’s intention within 30 days of this report being issued.
REPORT ON A SYSTEMIC INVESTIGATION INTO THE ALLEGATIONS OF LACK OF SERVICE DELIVERY AND MALADMINISTRATION BY GAMAGARA LOCAL MUNICIPALITY WHICH LED TO COMMUNITY PROTESTS

1. INTRODUCTION

1.1 "The Children Shall Pay" is a final report I have issued in terms of section 182 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 The report is submitted to the following persons in terms of section 8(1) of the Public Protector Act:

1.2.1 The MEC for Cooperative Governance, Human Settlement and Traditional Affairs, Mr Alvin Botes
1.2.2 The Mayor or Acting Mayor (who is also the Speaker) of Gamagara Local Municipality
1.2.3 The Municipal Manager, Mr T C Itumeleng, of Gamagara Local Municipality
1.2.4 The Community of Olifantshoek.

1.3 Copies of the Report are also provided to Mr Mervin Van Wyk and Mrs Gloria Andrias (the Complainants) in terms of section 8(1) of the Public Protector Act.

1.4 The report relates to an investigation into allegations of lack of service delivery and maladministration by Mayor Diniza of and the Gamagara Local Municipality.

1.5 On the 28 June 2012 my office received a letter of concern from Mr Mervin Van Wyk on his behalf and on behalf of the Community of Olifantshoek. He was worried about the situation in Oliphantshoek, in that people were beaten up and shot by the police. No further specific issues were raised except that he pleaded for a visit to the area so that people could raise their issues and problems. Around the same time the media published various articles about schools in Oliphantshoek and Kuruman being forcibly closed by community members in an
effort to leverage service delivery improvement and in the case of Olifantshoek, the resignation or removal of Mayor Diniza.

1.6 On 11 July 2012 I visited Olifantshoek on a fact finding mission which entailed meeting with the relevant people. A meeting took place at a farm outside Olifantshoek on the said date, attended by young persons referred to by the community as “Community Leaders” and members of the Community, including Mr Mervin Van Wyk. Some of the “community leaders” had been interdicted from entering the Community for intimidation, including the enforcement of the “school boycott”, hence the meeting was held at a farm. The meeting discussion formed part of the overall complaints received from the Community as stated in paragraph 2 below.

1.7 On 29 August 2012 the Provincial Manager of the South African Human Rights Commission (SAHRC) in the Northern Cape, Adv Chantelle Williams, approached my office, in writing, requesting a joint intervention on the community enforced closure of schools in Olifantshoek as a means of bargaining for better services and resignation of the Mayor. A letter of complaint received from Mrs Gloria Andrias, was attached to this fax. The complaint also dealt with the closure of schools.

1.8 Our investigation team accompanied Adv Williams, of the SHRC, to Olifantshoek for a meeting on 07 September 2012. After the said meeting, the understanding between the parties was that the Public Protector would focus on service delivery issues while the SAHRC focuses on the issue of the children not going to school. However, the Public Protector investigation team eventually found itself having to deal with the school closure crisis in addition to the service delivery grievances.

1.9 Motivated by concern over children not going to school, we visited Olifantshoek on 26 September 2012 where we met with the Community around the issue of schools and the police over allegations of police brutality and involvement in local politics. The community made several allegations against Mayor Diniza,
Councillors and the staff of the Municipality, requesting her immediate removal and linking her removal to the re-opening of schools. Documents with allegations and information backing the allegations, were provided by the community.

1.10 During the aforementioned engagements, service delivery and political issues were raised. The Community called for, among other things, the Mayor Diniza's resignation or dismissal, promising that if this condition was met everything would go back to normal, including the opening of the schools. The Community also made several allegations with some relating to matters in the African National Congress and therefore, outside my remit.

1.11 We further held meetings with the parties, being the so called “community leaders”, the leadership of the South African Police Services (SAPS), the Mayor and Religious Leaders, in an attempt to mediate the conflict with a view of getting learners back to school. The approach had worked in Kuruman. But it did not work in Olifantshoek as agreements were not kept by the “community leaders” while the SAPS kept its end of the agreement.

2. THE COMPLAINT

2.1 The Community of Olifantshoek made several allegations mainly against Mayor Diniza and the Gamagara Local Municipality. The allegations were received by means of letters from Mr Mervin Van Wyk and Mrs Gloria Andrias. The allegations were repeated to our investigation team during community meetings held on 11 July 2012, 07 and 26 September 2012. The following documents, among others, were received from the Community leaders on 26 September 2012:

2.1.1. Report on the 200 RDP project linked subsidy houses;

2.1.2. List of beneficiaries for 200 RDP houses;
2.1.3. Three photos of a municipal truck moving the furniture Mayor Diniza's parents accompanied by the police on the 05 September 2012;

2.1.4. Audit report 2010/2011;

2.1.5. Documents on grievances given to me directly during my visits Newspaper article (Kathu gazette dated 11 August 2012) where Sishen Mine donates refuse removal truck to Gamagara Municipality;

2.1.6. Documents on a progress report on the engagement processes with Olifantshoek Small Farmers Co-operative regarding the illegal occupation on the Municipal commonage land;

2.1.7. Documents on renting of Municipal houses by employees and
2.1.8. Documents on Gamagara media statement on the on-going Community unrests in Olifantshoek

2.2. The Community made the following broad allegations:

2.2.1 Allegations of systemic service failure affecting the broader community, were that:

2.2.1.1 There are no roads in the township;

2.2.1.2 Material for the building of a bridge was bought but got finished before construction started;

2.2.1.3 The Community alleged that Mr Phuti bought a stand in Olifantshoek for only one rand

2.2.1.4 The role of the Youth Development Centre in the Municipality is not clear;

2.2.1.5 Some do not have electricity in their township;
2.2.1.6 Sanitation in the area is a huge problem. The park where the children are supposed to play is flooded with sewage and there is no running water in the Community and that 100 people share one tap;

2.2.1.7 The Municipality failed to provide places of recreation.

2.2.2 Maladministration allegations against the Municipality, were that:

2.2.2.1 The Municipality was paying rent for the Chief Financial Officer (CFO) who was staying together with Mr George Loeto (the Acting Technical Services Manager) but that they receive housing allowances;

2.2.2.2 The Municipality called a Community meeting and told the Community that it had overspent by R6.4 Million, which was supposed to be used for development;

2.2.2.3 SASSA official (Ms Michell Tatas) is staying in an RDP house and her children are receiving grants;

2.2.2.4 The salary/ stipends of five Ward Committee Members was stopped in May 2012 whereas the other five continued to receive salaries or stipends;

2.2.2.5 The Municipality allegedly procured 2000 Calendars which were wrongly spelt costing R28000;

2.2.2.6 The Indigent Funeral Policy allows the Municipality to use R1500 for funerals in assisting poor people within the Municipal area yet R25 000 was spent on the funeral of the Speaker of Ga-Segonyana Municipality;

2.2.2.7 The Municipality branded 74 vehicles to the amount of R174 000, using a company called Kgomotso Image;
2.2.2.8 There was no consistency in the sale of stands in Olifantshoek, one person can buy a stand for R1 and another for R50 000;

2.2.2.9 The Municipality spent an amount of R4 500 on alcohol for its employees during a year end function;

2.2.2.10 The Municipal Manager intimidated a junior employee of the Municipality to transport his furniture from Kuruman to Kathu;

2.2.2.11 The Municipal Manager had been paid a transport allowance for him to travel from Kuruman to Kathu yet he stays in a municipal house in Kathu;

2.2.2.12 The Acting Technical Services Manager got paid an Acting Allowance even when he was on sick leave for two months;

2.2.2.13 An employee named Ms Joey Tuise was paid while on maternity leave even though she did not qualify;

2.2.2.14 Municipal funds estimated at R67 000, were irregularly used to renovate a private house where the Municipal Manager stays;

2.2.2.15 An employee by the name of Ms Dineo Ntokwe could not do her job at Human Resources (HR) as every week she attended one day certificate courses;

2.2.2.16 Mr Phuti bought a stand in Olifantshoek for only one Rand;

2.2.2.17 There was lack of clarity regarding whether Bethuel Setungwane, a Community Development Worker, was an employee of the Municipality or the Personal Assistant to the Mayor;

2.2.2.18 Mr Thapele Tiroyame was irregularly paying the Ward Committee Members their stipends of R1 000 each in cash;
2.2.2.19 Counsellor Hantise was granted a bursary when his term was expiring and the bursary went beyond his term of office;

2.2.2.20 One Mr Mohau Moorosi was allegedly involved in an accident with the Mayoral car but that no case was registered against him.

2.2.3 Maladministration allegations relating to tender irregularities, were that:

2.2.3.1 The Municipality built houses in 2009 and never completed the project for 200 houses with some of the houses left without windows and some with only the foundation built while the builder, Lebogang Afrika Suppliers ran away having been paid most of the money;

2.2.3.2 Tenders were only awarded to the same people, amongst others, Mr D Motsoare, without proper procedures being followed like advertisements placed

2.2.3.3 The Municipality employed three Security Companies which were not budgeted for and only operated in Kathu.

2.2.4 Conduct failure allegations against the Mayor of Gamagara Local Municipality, Ms M Diniza, were that:

2.2.4.1 The Mayor was using a farm designated for the Community to enrich herself;

2.2.4.2 The Mayor used a Municipal truck to transport her parents' furniture from Olifantshoek to Kathu;

2.2.4.3 The Manager in the Mayors' office bought liquor with Municipal money for his son's birthday;

2.2.4.4 The unemployment rate was very high yet the Mayor told the mines that the unemployment rate was not high;
2.2.4.5 Land was unlawfully taken and developed by Mr D Motsoare without authorisation and that the Mayor was doing nothing about it;

2.2.4.6 The Mayor and Charles Phuti (a Municipal official) were receiving Social Grants;

2.2.4.7 One Edwin Hantise and the Mayor bought RDP houses;

2.2.4.8 The Mayor was abusing the Subsistence & Travelling (S&T) claims in that she was using her private vehicles for long distances official trips while there was a Mayoral Car and a driver;

2.2.4.9 A credit card and petrol card registered in the name of the former Mayor continued to be used after he had already left the employ of the Municipality;

2.2.4.10 Who was paying for the house that the Mayor is staying at, in Kuruman;

2.2.4.11 There was a case of a stolen water tank against the Mayor and the Community wanted to know what happened to it;

2.2.4.12 The Mayor’s brother stays in a property not belonging to him and the water and electricity connections to said property were done unlawfully;

2.2.4.13 A councillor who stays at a Caravan Park was selling stolen goods, he allegedly had SANDF property.

2.2.5 Maladministration allegations relating to employment irregularities

2.2.5.1 One Gilbert Motlhaping who was dismissed by the Municipality for corruption was re-employed by the same Municipality;

2.2.5.2 Officials of the Municipality have been politically deployed and are without proper qualifications.
2.2.6 Allegations of criminality involving external service providers

2.2.7.1 Pastor David van der Westhuizen was said to be receiving cash payments from the Community for a period of three (3) years for sewer drainage, but no action was taken against him by the Municipal Manager after same was reported to him.

2.2.7 Allegations transcending the remit of the Municipality

2.2.7.1 The Department of Education allegedly failed to provide text books for learners and that learners in the area were sharing one text book between four of them;

2.2.7.2 Olifantshoek does not have a hospital and lacks ambulances, a permanent doctor, equipment, sufficient staff and medical treatment with people sent to Kuruman for treatment and have to hitchhike back from Kuruman.

2.2.7.3 Police brutality was allegedly perpetrated against the community during a march, resulting in one person losing his eye and another, his ear and that such police brutality occurred even during peaceful marches.

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional office established in terms of section 181(1)(a) of the Constitution to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2 Section 182(1) of the Constitution provides that the Public Protector has the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice, to report on that conduct and take appropriate remedial action. Section 182(2) directs that the Public Protector has additional powers prescribed in legislation.
3.3 The Public Protector is further mandated by the Public Protector Act, 23 of 1994, to investigate and redress maladministration and related improprieties in the conduct of state affairs and to resolve the disputes through conciliation, mediation, negotiation or any other means deemed appropriate by him or her.

3.4 Gamagara Local Municipality is an organ of state and its conduct amounts to conduct in state affairs, as a result this matter falls within the ambit of the Public Protector's mandate.

3.5 None of the parties challenged the jurisdiction.

4. THE ISSUES CONSIDERED AND INVESTIGATED

4.1 The following broad issues were issues distilled from the allegations and investigated:

4.1.1. Allegations of systemic service failure affecting the broader Community,

4.1.2. Maladministration allegations against the Municipality,

4.1.3. Maladministration allegations relating to tender irregularities,

4.1.4. Conduct failure allegations against Mayor Diniza

4.1.5. Maladministration allegations relating to employment irregularities,

4.1.6. Allegations of criminality involving external service providers and

4.1.7. Allegations of transcending the remit of the municipality.
5. **THE INVESTIGATION**

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

5.1. **Key Sources of Information**

5.1.1. Interviews held with the Complainants and perusal of the documents they submitted.

5.1.2. Correspondence with the Municipality.

5.1.3. Meetings held with the Young Leaders on 11 July 2012, 26 September 2012, 11 and 18 October 2012.

5.1.4. Community meeting of the 07 September 2012 in Olifantshoek.

5.1.5. Community meeting of the 26 September 2012 in Olifantshoek.

5.1.6. Meetings held with the Mayor on the 26 September 2012, 11 October 2012 and 18 October 2012 and with the South African Police Services on 26 September 2012 and again with their (SAPS) provincial leadership on 18 October 2012.

5.1.7. Interviews with the employees of the Municipality on the 23 to the 24 October 2012 and again on the 5 to the 7 November 2012.

5.1.8. Meeting with officials from the Auditor General’s office to discuss collaboration in this investigation on the 23 October 2012.

5.1.9. Meeting held with the South Afrikan Human Rights Commission.
5.2. Documents Perused During the Investigation

During consultation the Complainants provided various documents to substantiate their allegations. The following documents were received:

5.1.1. Letter from Mevin Van Wyk requesting Mr Sithole to visit Olifantshoek.

5.1.2. Letter of complaint received from Mrs Gloria Andrias raising various complaints against Gamagara Municipality

5.1.3. Three photos of municipal truck moving the furniture of the Mayor’s parents accompanied by the police on the 05 September 2012.

5.1.4. Report on the 200 RDP project linked subsidy houses.

5.1.5. List of beneficiaries for 200 RDP houses.


5.1.7. Documentation on grievances given to the Public Protector Adv Thuli Madonsela on the 26 September 2012

5.1.8. Newspaper article (Kathu gazette dated 11 August 2012) where Sishen Mine donates refuse removal truck to Gamagara Municipality.

5.1.9. Newspaper article (Kathu gazette dated 18 August 2012) where Khumani Mine donates refuse removal truck to Gamagara Municipality.

5.1.10. Documents on a progress report on the engagement processes with Olifantshoek Small Farmers Co-operative regarding the illegal occupation on the Municipal commonage land.
5.1.11. Letter from the complainant requesting the Public Protector to visit Olifantshoek for intervention.

5.1.12. Documentation on renting of Municipal houses by employees.

5.1.13. Requisition for meat at Angus Butchery.


5.1.15. Documents on Gamagara media statement on the on-going Community unrests in Olifantshoek.

5.1.16. Correspondence with the Municipality

5.1.17. An undated written response received from Mr Mervin van Wyk and received on 20 August 2013.

5.1.18. An undated written response received from Mrs S G Andrias and received on 28 August 2013.

5.1.19. A written response received from the Gamagara Municipality dated 28 August 2013 and signed by the Municipal Manager, T C Itumeleng, and the Acting Mayor, Cllr. D P Moyo.

5.1.20. A written response received from the Gamagara Municipality dated 28 August 2013 and signed by the Municipal Manager, T C Itumeleng.

6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

6.1 On learning that Children in Kuruman and Olifantshoek were not going to school due to community protests, an intervention in the form of mediation was initiated. The intervention targeted the Community, Community Leaders, South African Police Services and the Northern Cape Department of Education. In Kuruman,
the intervention, executed in collaboration with the Deputy Minister of the Department of Mineral Resources, Mr Godfrey Olifant, was successful. However, the same strategy did not yield desired results in Olifantshoek.

6.2 Initial Community Meeting on 26 September 2012.

6.2.1 An initial meeting was held on 26 September 2012 with a view to obtaining the concerns of the Community. The purpose of the meeting included an intention to convince the community to allow the children to go back to school, having been absent from school for about three months.

6.2.2 Before meeting with the Community, a meeting was held with young persons referred to by the community and others as the "community leaders" at a farm where they were based. The bail conditions of some of them did not allow them to stay in the township hence they were staying on a farm. Some community members backed the young community leaders on the forced closure schools in the area. The young persons (Herinafter referred to as the Young Leaders) confirmed that they had influence in the community. They reiterated some of the allegations made against Mayor Diniza, councillors and some of the municipal staff members, and called for her immediate removal or resignation. They further requested a forensic investigation and involvement by the Auditor General. As a way forward an agreement was reached, that:

6.2.2.1 They would persuade the community and the parents to allow the children to go back to school and assist the children to catch up on their school work;

6.2.2.2 A joint investigation would be conducted with the Auditor General on the issues raised; and also

6.2.2.3 A request for the relaxation of their bail conditions would be made by the investigation team to appropriate authorities.
6.2.3 A Community meeting was later held where community complaints and concerns were raised. Instead of convincing the Community to allow the children to go back to school as agreed earlier, the representative of the young leaders influenced the Community not to allow the schools to reopen. Pleas were made that the Community, especially the parents, allows the schools to reopen while the investigation of their issues proceeds. I reiterated the commitment to collaborate with the Auditor General and fast track the investigation. But the pleas fell on deaf ears.

6.2.4 In another attempt to get children back to school, another meeting was held with the young leaders on 11 October 2012 at the farm. An agreement was signed in which I would assist to have the bail conditions relaxed to allow the so called young leaders to go back to the Community but that they would not instigate violence or cause disruptions. The so called young leaders undertook to convince the Community to allow the children to go back to school, once their bail conditions were relaxed and made an order of court. The bail conditions were relaxed at the end of October 2012 and once again the young leaders went back on their word and failed to fulfill their promise.

6.2.5 We met with the SAPS and the Mayor separately on the 18 October 2012 where they did not object to the relaxation of the bail conditions of the so called young leaders. This was done in order to make it possible for the children to go back to school. Interactions with the Department and in particular the principals of the schools in the areas showed that they were ready for the return of the children to school and they had plans in place to assist the children to catch up.

6.3 Interviews with the Complainants and documents submitted

6.3.2 During the meetings and subsequent interviews, the Complainants informed the Investigation team that the Municipality was not delivering services as it should to the Community and that there is a lot of maladministration in the Municipality.
6.3.2 The Complainants stated that the Mayor was misusing municipal property, referring to the municipal truck and the communal farm. They also claimed that some senior officials have been politically deployed to the Municipality without proper qualifications. They also complained about unemployment, which leads to prostitution and lack of recreational facilities. They also raised issued impacting on other Departments such as health, Education and the SAPS. They submitted documents to substantiate the allegations. They also alleged that the ruling party had unduly failed to launch a local branch, asking that I intervene to ensure that such branch was launched immediately. My response was that I had no jurisdiction on political party internal processes and related grievances.

6.4 Meeting with officials from the Auditor General on our collaboration

6.4.1 Soon after meeting with the community and hearing their complaints, the Auditor General was approached to request that the investigation team and the audit team collaborate on appropriate allegations. On the 23 October 2012 a meeting was held between officials from both institutions to discuss a collaborative approach. As a result of this collaboration the two institutions have since exchanged valuable information resulting from their respective investigative and audit processes.

6.5 Meeting with Mayor Diniza

6.5.1 On 18 October 2012 we met with Mayor Diniza and Religious Leaders from the National Interfaith Council of South Africa (NICSA). We briefed them on the allegations and concerns from the Community and appealed for cooperation to get the schools reopened. Prior to this meeting, we had met the Mayor on the 26 September and 11 October 2012. Mayor Diniza welcomed the investigation and pledged her support and cooperation. She also mentioned that the investigation was long overdue.
6.6 Meeting with the South African Police Services

6.6.1 Several meetings were held with the South African Police Services (SAPS) leadership to seek cooperation in ensuring that no action was taken to exacerbate tensions in the Olifantshoek and Kuruman Communities.

6.6.2 The SAPS cooperated, including the issue of relaxing of the bail conditions of the so called young leaders. SAPS also further undertook not to arrest anyone on account of the community conflict without following agreed protocols.

6.7 Correspondence with the Municipality

6.7.1 The allegations brought to the office were initially raised with the Municipal Manager of Gamagara Local Municipality Mr Clement Itumeleng (the Municipal Manager) and he mandated the Mr. K. Semamai (the Manager in the office of the Mayor) to respond to our enquiry.

6.7.2 The Municipality responded as follows:

"a) ON THE RIGHTS TO MARCH

The Gamagara local municipality is one of the organisation or constitution that respected and upholds the Constitution of the Republic as amended in 1996. As the council stated before that as much as we respect their rights to March and protest, they must also respect other people’s rights. The grievance could have been handled better that they did to avoid damages of other people’s property.

(3) THE MUNICIPALITY’S CAPACITY TO DELIVER SERVICES TO THE CONSTITUENCIES

The Gamagara council had a very good track record and qualitative strategies in terms of service delivery to the community. It has been proven over the years that we are the best municipality to deliver basic service to our people.
Since 2000 we’ve successfully eradicated the service delivery bag locks created by the past government of the old regimes.

(4) SERVICE DELIVERY RECORD IN OLIFANTSHOEK

This was an exercise that was undertaken by the Provincial Department of Housing and Local government. This decision was taken on the basis that this area was spending it’s resources within Gamagara area, because they were doing everything in Kathu town.

It was incorporated into Gamagara there were some serious challenges especially on the provision of basic services, infrastructural development and internal control systems etc. The decision was based on the interest of ensuring that our people live a better life.

The following are some of the infrastructure development project that were undertaken by the Gamagara council in the area itself:

- Ditloung sewer Network = R4 million
- Upgrading of Oxidation ponds = R 14 million
- Skerpdraai Sewer Network = R8 million
- Diepkloof Sewer Network = R9 million (still in progress)
- Replacement of Asbestos pipeline = R10 million or R6.5 million
- Taxi Road = R7 million
- 200 Housing project = R12 million

Below here are other projects that were supposed to start and it was stopped as a result of the community protests that erupted:

- Diepkloof sewer network - (completion)
- Diepkloof community hall – (project in progress)
- Completion of the 200 housing project
(5) ALLEGATION LEVELED AGAINST THE MAYOR AND SENIOR OFFICIALS

There were serious allegations made that the Mayor is involved in administrative processes of council in terms of appointments and all other allegations are baseless and not true. We also noticed from the last week's paper, Kathu Kazette by the so-called AfriForum alleged that the council is busy wasting money, the projects that are not beneficial to the community and throwing-in of a towel on the Olifantshoek problem, these are also very unreliable and misleading.

We therefore place it on record that, the council want to dismiss all these allegations with contempt and further state it clearly that whoever has any information must not hesitate to contact the law enforcement agencies or the Public Protector for assistance."

6.7.3 On the 19 September 2012 the Municipality further responded as follows:

"e) REPORT ON THE ISSUES RAISED WITH THE OFFICE OF THE PUBLIC PROTECTOR REGARDING OLIFANTSHOEK

1. SANITATION

It was stated from your question that the community alleged that there are no provision of sanitation in the area though it did not indicated since when.

As the municipality we can confidently confirm that all basic service delivery backlogs in the area were addressed after the incorporation of the town into Gamagara in 2006. The municipality is currently working on improving services from basic to a higher level of service.

The following are the projects that were implemented in Olifantshoek:

- Upgrading of Oxidation ponds, it is currently at the final stage for completion – 10.7 Million
- Ditloong Sewer Network -
Skerpdraai Sewer Network - 6.1 Million
Diepkloof Sewer Network – 7.7 Million
Replacement of Asbestos Water pipeline- 5.9 Million
Skerpdraai Sewer and Water Network for 92 stands (Funds committed by Khumani Mine)

Most of these projects were funded from MIG Funds and are completed; others were just disturbed by the protests that erupted in the town.

2. ELECTRICITY

The Gamagara council has attempted to address all critical areas of service delivery in wards ward 3 & 4. The whole of Olifantshoek is electrified with the exclusion of the illegal area that was occupied by close to 350 people and other illegal occupations in and around the township.

Eskom could not complete their plan to electrify these areas even though they fall within Eskom area of supply due to this illegal occupation. Eskom wrote a letter to the municipality requesting an intervention in this matter as occupiers did not demarcate or allocate themselves erfs as per the surveyor general’s map. Attempts by the municipality to communicate this message and intervene were met with hostility as protesters indicated no willingness to engage with the municipality.

This intervention is thus at a standstill. It should be reported that the surveyor was to survey approx. 1200 sites and to resurvey and put new beacons in the illegally occupied land.

This has derailed the plans of council to improve the living conditions of some of the community members. Eskom has indicated to the municipality that there is less capacity in Olifantshoek to connect more houses now.

There is thus a plan by the municipality to increase the capacity of the electricity in Olifantshoek.
3. ROADS

The Olifantshoek Taxi Access Road was an EPWP project that was funded by the department of Public Works, which has created temporary job opportunities for residents in Olifantshoek.

The project, was however, not fully completed and the projects funds as per public works are depleted.

To address the road backlog, the municipality has committed R25 million rand in the next five years to construct roads in the town. A consultant has been appointed to do the Roads and Storm water Master plan for the entire town. However, due to the protest all services related to the municipality were stopped including consultants, contractors and surveyors.

4. HOUSING

There was a housing project that was identified and approved by the Provincial Department of COGHSTA and this project was allocated to Olifantshoek in 2009 as part of Government to address the housing backlog in the Province. The only critical issue that dragged the project from the beginning was the issue of the beneficiary list that needed to be scrutinized clearly and send for approval to the relevant offices, thus the contractor could not deliver the project timeously. The main reason for the failure to complete the project was, however the ineffectiveness of the contractor and his poor/shoddy work.

This matter was then brought before Council for immediate intervention and as a result the council resolved to terminate the current contractor with immediate effect. A new contractor who will complete the project and hand it over to the municipality and beneficiaries was appointed and was supposed to start immediately before the end of the last financial year, unfortunately the protests erupted in the area and affected most of the projects that were about to be started.
The following is the progress report as submitted by the project consultant or project manager by the end of June 2012:

- Foundations/Floor levels - 189 (95%)
- Wall Plates- 180 (90%)
- Roofing – 171 (86%)
- Plastering – 151 (76%)
- Plumbing / Completions – 123(62%)

The overall percentage complete of this housing project as per the report provided by the consultants is = 84, 4%

There were certain reports or incidents that were reported about the conduct of some of the community members who disturbed the site establishment of the newly appointed contractor including theft etc., the matter is still subjudicæ.

5. RECREATIONAL FACILITIES AND LED PROJECTS
5.1 OLFANTSHOEK SPORTS COMPLEX

During our IDP engagements with the communities of Gamagara in the last or past financial years there were number of needs and aspirations that were raised by communities and the only challenge that was raised by council was the issue of how those projects will be funded.

The issue of recreational facilities was also one of the needs highlighted particularly in Olifantshoek and Sesheng (Mapoteng) as a result of growing interests of sports in the areas respectively and the intention to combat crime.

As the municipality through our engagement with our social partners, a commitment was made to construct a Community Sports Complex in Olifantshoek. This project was supposed to commence by June / July 2012. The very same community started with protests and said it very clear that they don’t need sports project or stadiums; they need services. This was one of the projects funded by Gamagara Development Forum (GDF) (one of the beneficiary Trusts of SIOC) and amount was close to
R11.6 Million for the sports complex, the plans were submitted to council for approval. By the time the protests started, the project was already at the tender process towards finalization and appointment.

5.2 SATELLITE OFFICE OF YOUTH DEVELOPMENT ADVISORY CENTRE

The other concern raised by the young people of the area during was the issue of access by other young people outside Kathu as the Youth Advisory Centre that is based in Kathu. They then requested that the council should consider building or establishing satellite offices in other areas.

Again this was one of the projects committed by Gamagara Development Forum (GDF) worth an amount or value of R2 Million, the tender was already awarded by the GDF and the contractor could not start with his work due to the protests.

5.3 BOMME CLOTHING SEWING PROJECT

This project was also committed by GDF in the very same area to a value of R 815 636.04, it was build and completed, unfortunately it was amongst the properties that were burned during the riots or illegal protests.

5.4 OLIFANTSHOEK COMMUNITY HALL (DIEPKLOOF)

GDF, have also committed this project to a value of R3.7 Million, the actual construction work started already the project is at the roof level, it was stopped temporarily due to the community protests.
5.5 Langeberg High School Project

This project was also committed by GDF, to an amount of 15.1 Million, it is currently at the adjudication stage awaiting for appointment of the contractor.

6. Unemployment

The issue of unemployment is the national issue and as the municipality we could not commit ourselves or raise expectation on it. It's only unfortunate that as council there is nothing that we can do. However, from the office of the mayor we are committed to engage with the mining houses to consider our local people for employment opportunity, this engagement is continuous because we are raising it every time in our Social and Labour Plan (SLP) meeting. The other way to create temporary jobs for the communities is through the community projects that are being implemented by some of our Social Partners in our areas as well as the EPWP projects. These are not sustainable jobs. The other thing that we can also do as council is to collect the data of all unemployed through our youth advisory centers so that when the mines are approached, the data may be considered given the level of skills and experience required.

7. Conclusion

This report intends to clarify some of the issues raised by the community of Olfantshoek as allegations leveled against the municipality for its inability to deliver basic services to the people. We hope that the information provided above will clear all parties as it providing the true aspects of the status of service delivery in the area of Olfantshoek. As council we are only concern about the distortion of information that seeks to divide and mislead the community for personal interests"
6.9. Allegations of systemic service failure affecting the broader Community

6.9.1. Documents received from the municipality showed that KKM Consulting Engineers were appointed to upgrade a taxi access road as part of the EPWP project in Olifantshoek. The storm water facility was part of the project from the onset and as such it had to be constructed together with the upgrading of the access road.

6.9.2. According to a letter by the Department of Energy directed to the Municipality, the illegal land grabs happened in the Eskom supply area, which is Ditloong. It further stated that Eskom will not be able to supply that area until the Municipality replaces the property pegs and moves the shacks to correct positions, open up the streets by scraping the roads, and clearly number the dwellings on the plots with black paint. Eskom is also said to have required that the dwellings be marked according to the corresponding number on the Local Government Plan as no other number would be accepted.

6.9.3. Documents received, indicated that the Municipality is in the process of installing Oxidation Ponds to address issues of water and sanitation. According to the documents the project started in the 2010/2011 Financial Year and, is nearing completion. These Oxidation Ponds should assist in the cleaning of the water and the separation of sewerage from the water.

6.9.4. Documentation received from the GDF’s Comprehensive Project Implementation indicates that the GDF has a project to build the Olifantshoek Sports Complex, a Community Hall, related facilities, and a Youth Centre which includes a swimming pool.

6.10. Conduct Failure allegations against Mayor Diniza

6.10.1. A contract signed by the Mayor's husband on 07 March 2012 and allowing him to gain use of the communal land as a small farmer, was provided during the investigation. According to the Municipality, the farmers apply to the committee
comprising the small scale farmers in order for them to farm on the communal land.

6.10.2. Personal bank statements were received from the Municipal manager which showed that alcohol bought for his son's birthday party was bought from his own money. As he had paid using his bank card, his bank account had been debited, accordingly.

6.10.3. According to the Gamagara Development Fund’s project implementation report, the GDF was said to be building a Youth Centre in Olifantshoek and that it is also building a sewing facility for an NGO group in the area.

6.10.4. Court documents relating to the development of land by Mr Motsoare without authorisation, were given to the investigation team. These indicate that there is an interdict against Mr Doc Motsoare.

6.10.5. A deeds search was done, which showed that the two stands occupied by Mayor Diniza and Mr E Hantise belong to the Mayor's husband.

6.10.6. The requisition forms of the Mayor's official trips from April 2011 to July 2012 show that she made S&T claims for official trips using her private vehicle.

6.10.7. During the collaboration with the Auditor General's office, it was established that some amounts that were advanced to Mayor Diniza and to her driver for fuel were not accounted for. The advances were made to Mayor Diniza on 26 August 2011, 31 August 2011 and 12 June 2012. On 26 August 2011 a further amount of R5000 was advanced into the Mayor's driver's bank account and on 31 August 2011, an amount of R5000 was deposited into the Mayor's bank account. In the year 2012 an amount of R10 000 was again advanced, on 12 June, to Mayor Diniza.

6.10.8. In a letter dated 02 August 2011 from National Treasury, it was instructed that Municipal credit cards were to be discontinued by the 01 September 2011.
6.11. Maladministration allegations against the Municipality

6.11.1. In a letter dated 11 March 2009 and signed by the previous Municipal Manager, it was stated that the CFO and the Corporate Services Manager had to develop a policy which would address the differentiation on rental i.e. those paying R250 and those paying around R3000. The CFO's initial rental agreement was cancelled in 2010, in writing. This resulted from the fact that those employees staying at Municipal houses pay only R250 but those who reside at houses rented from third parties paid around R3000 per month.

6.11.2. A Council resolution was provided indicating that the R6.4 million over expenditure was approved as unauthorised, irregular or fruitless and wasteful.

6.11.3. A Council Resolution passed by Municipality states that that some of the Ward Committee Members wrote a defaming article about the Council and the Mayor and that swift action should be taken against those Committee Members.

6.11.4. In a letter from Ga-Segonyana Local Municipality the Municipality requested all local Municipalities in the John Taolo Gaetsewe District Municipality to make contributions of R25 000.

6.11.5. The transfer documents received in respect of some of the stands given by the Municipality to people indicated that the purchase price was R1.

6.11.6. According to the invoice received from the Municipality, the Municipality purchased drinks for its annual year end function to the amount of R31 208.50. This amount was for different flavours in beers, ciders and soft drinks. The total amount for alcohol was R16 922.40.

6.11.7. The Municipal Manager's salary advice was submitted and it indicated that his salary was structured to make provision for transport allowance and that there was no extra payment for transport.
6.11.8. In a letter dated 21 September 2010, the Municipal Manager, in his capacity as
the then Acting Municipal Manager, stated that in June 2010 Mr Loeto went on
sick leave for a period of six weeks and that his acting position was not
terminated.

6.11.9. Two quotations of R16 111.55 and R17 580.00 from Vikile Building
Construction CC and Tebogo Ditiro Logistics, respectfully in respect of the
renovations done at the Mayoral home and an invoice of R9 200.00 from NJ
Multi Building Suppliers pertaining to the renovation of the bathroom was
submitted.

6.11.10. Documents submitted by the Municipality suggest that Ms Ntokwe has
attended training five (5) times between 01 July 2012 and 01 January 2013.
This means she was absent every month instead of every week as alleged. The
skills plan also shows other employees of the Municipality as having attended
training courses and seminars.

6.11.11. An appointment letter was provided that indicates that Mr Sethungwane is
a Senior Ward Committee Administrator with effect from the 01 April 2012.

6.12. Alleged tender irregularities

6.12.1. The tender documents were obtained from the Municipality on the
Olfantshoek 200 Housing Project (the Housing Project), regarding houses
that were to be built in Olfantshoek. The documents indicated that the tender
was awarded to Lebogang Afrika Suppliers and that there were numerous
extensions on the completion of the project. The tender document does not
specify how long the project had to take, it only states that:

"The period of the commencement of the works after the contractor takes
possession of the site is fourteen working days. For the works as a whole the
date of practical completion is..."
The space where the completion date was to be put was left blank. The document continues to state that,

"The penalty per calendar day is R1600".

6.12.2. Tender documents submitted relating to the Housing Project and the upgrading of the Oxidation Ponds indicated that Mr D Motsoare doesn’t have a company and the Municipality has never awarded any tender to him but that the housing project tender was awarded to Lebogang Afrika Suppliers. The contract started on 11 August 2009 and was supposed to finish on 15 March 2011. The contract was extended several times and it was only terminated in November 2011.

6.12.3. Documentation received from the Municipality indicated that three security companies were contracted to the municipality. The companies are currently guarding the Municipal offices in Kathu, Olfantshoek and the Traffic Department. The documentation also indicated that proper procurement procedures were not followed but that requests for deviations were made and approved by the Council.

6.12.4. An appointment letter in respect of the security service indicated that the services were rendered for a period of 6 months till 20 May 2011 and documentation indicated that payment of R141 075 was made in respect of June 2012.

6.12.5. Documents submitted by the Municipality confirmed that Mr G Motlhaping applied for the position of Senior Administrator and was interviewed and subsequently appointed. According to the advert for the position, the candidate had to have a tertiary qualification in Administration and a Drivers Licence, amongst others.

6.12.6. Additional documents received revealed that 46 applications were received of which 4 candidates were shortlisted, 1 candidate declined, 1 candidate declined to attend the interviews, and thus 2 candidates were interviewed.
6.13. Allegations of criminality involving external service providers

6.13.1. Interviews were held with two anonymous employees of the Municipality who confirmed that cases have been lodged with the then Corporate Services Manager, who is now the Municipal Manager, and nothing was done.

6.13.2. The Municipality's own submission did not include any evidence indicating that action had been taken in pursuit of the allegations relating to criminal activities.

6.9.

6.9 The following responses were received to the provisional report issued on 14 August 2013:

6.8.1 The response of the Municipal Council

6.8.2.8 The Council stated that a business plan was submitted to Public Works in 2006 for the construction of 14 kilometres of roads in Welgelee, Ditloong and Diepkloof but the project never took off as there were no funds. The estimated cost then was R17 589 000 which included the storm water facilities.

6.8.2.9 The Council added that the Department of Roads and Public Works committed to funding of R5 311 000 but ended up paying R5 984 605.27 and as a result KKM Consulting was re-appointed to redesign the business plan to fit into the available funding in 2008. Although the business plan included the storm water facilities (of which a bridge was part thereof), it was only realised that the allocated funding would not be sufficient to complete the storm water facilities once the business plan was submitted in October 2009. Due to the limited funding only culverts were then procured in relation to the storm water facilities but could not be installed in the hope of installing them once funding became available.
6.8.2.10 The Council further stated that it is unfair to suggest that nothing was done, even though no other legal steps like eviction were taken, to remedy the illegal occupation of serviced Municipal sites and added that the illegal grabbing of the land which belonged to both the Municipality and the Department of Roads and Public Works was reported to the latter and a Community meeting was convened but that the Community refused to listen. A letter was also written to the Department of COGHSTA requesting advice on the action to be taken.

6.8.2.11 The Council disputed that all formalised stands in Olifantshoek are not electrified and stated that the stands that are not electrified in Olifantshoek are only those that were occupied illegally systematically from 2010 and which spiralled out of control during the protest. The Council added that this is supported by the Cooperative Governance and Traditional Affairs Ministry’s local government turnaround strategy (LGTAS) which was tabled in parliament in 2009 confirming that all backlogs have been addressed in the Municipality.

6.8.2.12 The Council also disputed not all formalised stands in Olifantshoek have access to water. It was again stated that the areas which do not have access to water in Olifantshoek are only those that are occupied illegally. They again referred to the LGTAS.

6.8.2.13 The meaning of the Integrated Development Plan (IDP) was defined and the mandate of the Gamagara Development Forum (GDF) was also explained and further that the GDF is a partner to assist the Municipality with developments and collaborate closely as all projects implemented by the GDF are obtained from the IDP. The Council suggested that the finding made in the provisional report against the Municipality regarding the project underway for the construction of recreational facilities for the Olifantshoek Community insinuated that it played no role in the project and therefore that it is misleading, malicious and unfortunate.
6.8.2.14 The Council took note of the finding that public property must be used for public purposes unless there is specific authority for using such property for private purposes. It, however, argued that, the authority for the protection of the Mayor was provided by Council. It further argued that the circumstances under which the decision was taken must be taken into account. However, such circumstances do not create an authority that does not exist.

6.8.2.15 The Council disputed the finding that the Municipality did not follow up with mines on their plans regarding unemployment and submitted that the Municipality organised a youth summit in 2008 consisting of all the mines and unemployment and local labour was said to have been discussed at the summit. The Council added that the Municipality has annual discussions with the mines on their Social and Labour Plans (SLP) and in these meetings the issue of unemployment and absorption of local labour is always part of the agenda. The Council further stated that youth submit their CV’s to the Youth Centre, but that the mines have their own independent recruitment processes and that due to a lack of skilled labour the Municipality took initiative and came up with the Gamagara Assmang bursary scheme.

6.8.2.16 The Council disputed that the Mayor acted improperly by using her private vehicle for official purposes when she has a Mayoral car. The Council stated that the Mayor receives a Total Remuneration Package, which includes a travelling allowance which she must account for to the South African Revenue Services (SARS). It argued that there is nothing untoward about the Mayor using her private car for official purposes legislatively.

6.8.2.17 The Council disputed that a total amount of R20 000 was paid into the bank accounts of the Mayor and her driver and that it is unaccounted for and stated that in August 2010 the Mayor was still Mr James Rakoi and his driver was Mr Mohau Moorosi and that the finding is shocking, misleading and malicious. The Council indicated that during August 2010 Mrs M Diniza was a councillor.
6.8.2.18 Regarding the R10 000, the Council declared that the money was paid into the Mayor’s account in June 2012 for accommodation of the Mayor during the protest and that the Municipality was advised by the Mayor’s security personnel not to pay the money into a specific guesthouse/hotel as the protestors had threatened to find her wherever she is. After the R10 000 was depleted the Mayor made her own arrangements.

6.8.2.19 With regard to the finding that the Municipality did not disclose R40 million which was the subject of irregular expenditure for the 2011/2012 financial year; the Council provided the transactions and explanations of what lead to the irregular expenditure as reported by the Auditor General (AG). The Council further stated that a detailed action plan had been developed to address all the findings of the AG and that the irregular expenditure forms part of the action plan.

6.8.2.20 Regarding the finding on withholding the ward committee members’ salary, the Council pointed out that the members receive a stipend which is based on reports produced indicating work done. The Council added that the Municipality could not engage the concerned ward committee members procedurally because of their violent and intimidating behaviour. They are said to have, together with about 20 community members, stormed into the Municipal Manager’s office. The Municipal Manager is said to have been in the middle of the meeting with other managers when these ward committee members stormed in and took his laptop, which was later recovered through a SAPS intervention.

6.8.2.21 The Council further indicated that the Municipality feels that there was no way in which it could have engaged the concerned members procedurally. It accordingly challenged the intended finding of maladministration insisting that the violence and intimidating behaviour of the members concerned forced the Municipality to obtain a court order which also made it impractical to engage them.
6.8.2.22 The Council agreed with the finding that proper procurement procedures were not followed in the appointment of three Security Companies and provided reasons for the appointments.

6.8.2.23 The Council further stated that the transactions were since reported in terms of section 32 of the Municipal Finance Management Act and were then investigated by the Municipal Public Accounts Committee (MPAC) and condoned by the Council.

6.8.2.24 The Council disagreed with the finding regarding irregular expenditure in respect of monies paid to Swamla Trading and Projects CC and stated that although the appointment was for six months there had been month to month extension of the service as it was still required by the Municipality. Further that all payments subsequent to the six months were also investigated and condoned by the Council.

6.8.2.25 The Council agreed that there is no Service Level Agreement (SLA) between the security service and the Municipality but disputed that that the lack of a SLA can result in irregular expenditure as irregular expenditure is expenditure incurred in contravention of an Act or policy.

6.8.2.26 With regard to the finding pertaining to the year 2000’s calendars, the Council acknowledged that there was a spelling error on the calendars, but disagreed that not all calendars were rebranded to their satisfaction and stated that all calendars were rebranded to their satisfaction.

6.8.2.27 The Council indicated on the finding pertaining to the contribution of R25 000 made towards the Speaker of Ga Segonyana Municipality’s funeral that the contribution was not based on the indigent policy as the late Speaker would not have qualified for same and that the payment was made after a request from Ga-Segonyana Municipality. The Council further disputed that they ever indicated that the Speaker was indigent.
6.8.2.28 The Council took note of the finding and recommendation relating to money spent on alcohol for the Municipality’s year end function but added that there is no legislation that prohibits the Municipality from buying alcohol during year end functions and welcomed proof that this action is wrong.

6.8.2.29 On the finding that Mr Loeto was not paid an Acting Allowance during the period he was sick was disputed by the Council and same stated that that Mr Loeto strongly denied that he informed the Public Protector team that the current Municipal Manager promised to reinstate him as the Acting Manager: Community Services. The Council claimed that this allegation is malicious and without merit as Mr Loeto was already appointed by the then Municipal Manager on 16 August 2010 upon his return from sick leave. This allegedly took place when the current Municipal Manager was still the Manager Corporate Services and had no power to appoint senior managers into acting positions. The Council further indicated that the current Municipal Manager was only appointed as acting Municipal Manager on 06 September 2010.

6.8.2.30 The Council accused me of misrepresentation of facts and stated that the finding that the Municipal Manager had a lack of knowledge about Mr Mohau’s accident contained elements of malicious prosecution based on certain facts.

6.8.2.31 The Council did not agree with the finding that the housing project was not monitored and submitted that it had a consultant and a technician who were responsible for monitoring the project.

6.8.2.32 The Council took note of the administrative error in putting the end date on the SLA but submitted that the contract was for nine months and thus the error was said to be corrected and the end date fixed and that is why there were extensions to the contract. The Council added that the money left to complete the project was R1.9 million which was said to be enough, at the time, to complete the project and as such the assertion that the contractor was over paid is not true as the contractor was only paid for work done.
6.8.2.33 The Council pointed out that penalties could not be imposed as the project delays was not solely by the contractor or the Municipality, as beneficiary administration is the responsibility of COGHSTA and took long to be finalised. It allegedly took COGHSTA three years to complete the beneficiary administration.

6.8.2.34 The Council submitted that the finding regarding Lebogang Afrika Suppliers’ appointment was a joint venture with Khoisan Civils and was granted through a normal competitive bidding process. Further that at the stage of their appointment the Municipality did not have any difficulties with the contractor.

6.8.2.35 The Council mentioned in relation to the finding on the issue of procurement and tender processes that it found the speculation and pre-conclusion strange. The Council questioned my objectivity on the separate investigation still to be undertaken.

6.8.2.36 The Council agreed with the finding that the Municipality omitted to do proper checks on Mr Gilbert Mthaping and indicated that corrective measures will be put in place.

6.8.2.37 The finding that the Municipal Manager, whilst in his previous office as Corporate Service Manager, failed to act on fraud allegations was disputed by the Council. The Council stated that the matter was reported to the then Manager: Corporate Services and that during the investigation key Community witnesses withdrew as witnesses and refuse to put anything in writing and as such the matter was not pursued any further.

6.8.2.38 The Council further stated that it disagreed with the remedial action proposed against the Municipal Manager in light of the allegation above and stated that the matter was said to have been reported to the Manager Corporate Services who then initiated a pre-suspension hearing. The hearing was allegedly chaired by the CFO who called off the pre-suspension hearing as
contradictory evidence was provided by witnesses. The matter was referred back to Corporate Services but no further evidence has come to light and as such the matter was not pursued further. The Council argued that the allegation that the Municipal Manager never pursued the disciplinary actions on this matter is thus not true.

6.8.2.39 On the Remedial Action, the Council’s view is that some of action proposed is impractical and it does not take into cognisance issues like the IDP and budget cycle.

6.8.2 The response by Mayor Diniza

6.8.2.1 The Municipality addressed a letter to my offices on 28 August 2013 stating that:

"Your report contains a number of findings against the Mayor in which you contend that she misrepresented facts.

The fact that the findings are as a result of personal interactions and recordings between your investigators and the Mayor makes it difficult for council to comment on. Only the Mayor can personally respond to your findings."

6.8.2.2 No response was received from the Mayor and my office became aware of the Mayor’s untimely passing on 19 September 2013.

6.8.3 The response by Mr Mervin van Wyk

6.8.3.1 Mr van Wyk agreed with the findings and remedial action of the report and raised new issues and requested my office to look into them.

6.8.3.2 He further commented on the Remedial Action by stating that he proposes a committee be established to work with the Municipality.
6.8.3.3 He made no further material submissions or responses.

6.8.4 The response by Mrs Seitebaleng G Andrias

6.8.4.1 Mrs Andria had no response or submission to make and requested that the report be finalised.

7. EVALUATION OF THE INFORMATION OBTAINED DURING THE INVESTIGATION

7.1 Allegations of systemic service failure affecting the broader Community

7.1.1. Documents received from the municipality showed that KKM Consulting Engineers were appointed to upgrade a taxi access road as part of the EPWP project in Olifantshoek. The storm water facility was part of the project from the onset and as such it had to be constructed together with the upgrading of the access road. But only the 1.3 km of access roads were upgraded.

7.1.2. The project was said to have been funded by the Department of Roads and Public Works even though the Municipality was responsible to administer it. The roads are now part of Kumba Iron Ore’s Service Level Plans (SLP’s) with the Municipality, for the next five years. R5.5 million was spent on an access road in Olifantshoek and according to Mr Lategan Botha, the Technical Advisor to the Municipality, this project did not include the storm water drainage until he made enquiries about why that was. He further stated that the money was exhausted before the construction of the bridge but, the materials (culverts) were bought and the work that is left is for the Municipality to construct the bridge.

7.1.3. In light of the evidence presented we believe that the storm water drainage was not an afterthought but part of the project on roads from the onset. The tender documents on this project referred to the project as the upgrade of taxi access roads and storm water drainage. Therefore the storm water drainage was part
of the project from the start but the Municipality either did not budget well, or simply did not make certain that everything required from the contract was implemented. The Municipality only realised their mistake when Mr Lategan Botha brought the issue up and they then indicated that the storm water drainage was not part of the project which is not correct. Only culverts were bought as the budget was not enough to build the bridge.

7.1.4. According to the letter by the Department of Energy directed to the Municipality, the illegal land grabs happened in the Eskom supply area which is Ditloong. Further that Eskom will not be able to supply that area until the Municipality replace the property pegs and move their shacks to their correct positions, open up the streets by scraping the roads, and clearly number the dwellings on the plots with black paint and mark them according to the corresponding number on the Local Government Plan as no other number will be accepted.

7.1.5. According to the Municipal Manager there is no electricity in the area where illegal land grabs happened. The Municipal Manager further stated that Eskom cannot connect as the people are not placed according to the 350 surveyed and registered sites. They just placed themselves in an unsystematic and disorderly manner. He added that there is R1.9 million funded by Integrated National Electrification Programme (INEP) that is put aside for the securing of increased capacity as the power capacity is also a problem in the area. The Municipal Manager added that the area would be resurveyed and re-registered instead of shuffling the people around according to the present registered and surveyed sites. He stated that the Municipality, after receiving the letter from the Department of Energy, tried to have a Community meeting to discuss the matter but the community refused saying that they have given themselves land and they do not need the Municipality to give them land. Community members that we approached disputed the fact that they refused to attend meetings called by the Municipality.

7.1.6. Documents at my disposal show that the Municipality is in the process of installing Oxidation Ponds to address issues of water and sanitation. This
project started in the 2010/2011 Financial Year and, is nearing completion. The Municipality stated that had it not been for the unrest the project would have been completed. These Oxidation Ponds will assist in the cleaning of the water and the separation of sewerage from the water.

7.1.7. The Municipal Manager confirmed that some people are still going to the bush to relieve themselves and that there are still communal taps, but that this is only in the area where illegal land grabs happened. He mentioned, however, that the rest of the area has basic services which entail availability of communal taps and septic tank toilets. He further stated that in the coloured area there are high level services which include running water and flushing toilets in the house. The Acting Manager for Technical Services Mr. Ositang confirmed that the sewage network is only available in Wegelee, a coloured area. He further stated that there is generally a shortage of water in Olifantshoek and that is why the high level services have not yet been connected.

7.1.8. On recreational areas, the Municipal Manager stated that there is a park that was built by the Department of Environmental Affairs for R350 000 and according to him that amount was not enough. However, that there is a plan to build a Sports Complex funded by Gamagara Development Forum (GDF) for R11.5 million. This project will start as soon as the Community allows them to enter the township. This is not a Municipality project and it is apparently at an adjudication stage. The Municipal Manager added that the allegation of sewer running in the park is true but that the Municipality had tried to fix the problem, for instance the bakkie they had sent to go fix the burst pipes was burned by the Community.

7.1.9. The Public Protector has documentation of the GDF’s Comprehensive Project implementation which shows that the GDF has a project to build the Olifantshoek Sports Complex, a Community Hall, related facilities, and a Youth Centre. It also includes a swimming pool.
7.1.10. The evidence obtained indicated that the role of the Youth Development Centre is to deal with all youth related issues.

7.2. **Conduct Failure allegations against the Mayor of Gamagara Municipality, Ms M Diniza**

7.2.1. On the issue of using state property for personal gain, the Mayor states that her husband is the one farming on the land. She argued that her husband followed proper channels as a small farmer to farm on the communal land. She could not understand what was wrong with farming on the Municipal land as they are also part of the Community. Apparently the former Municipal Manager also used the same land for grazing of his animals. According to the Municipality the farmers apply to the committee comprising of the small scale farmers in order for them to farm on the communal land. There are no policies in place to say who can apply and who cannot apply or who qualifies or not. The committee uses its discretion in selecting and according to the Municipality no one has ever been refused. The contract signed by the Mayor's husband on the 07 March 2012 allowed him to gain use of the communal land as a small farmer.

7.2.2. There is a lease agreement signed by the Mayor's husband to lease a portion of the communal land for grazing. There are 65 other lease agreements signed by other people using the land. According to Mme Lena Kaptein who is the chairperson of the Small Farmers Committee, to be a farmer in the communal land one joins by paying a joining fee of R50 and an annual fee of R500. All that is required is that a person must be a resident of Olfantshoek to conduct farming activities on the land. The Mayor's husband meets this requirement.

7.2.3. On the Mayor using municipal truck to transport her parent's furniture, she conceded that she used municipal transport to move her parents and their property. Her explanation was that it was the Premier's idea. She alleged that she was approached by the Premier at a provincial meeting that took place in Kuruman and this was after the latter got a state security report. The Premier then asked the mayor to move her parents out of Olfantshoek as it was
dangerous for them to stay there as attempts were apparently made on their lives. The instruction to move the furniture of the mayor's parent is said to have come from the Municipal Manager's office, after the Mayor was advised to move her parents by the district Mayor and Premier. The Municipal Manager authorised that the Municipal truck be used to move the furniture of the Mayor's parents.

7.2.4. The Manager in the office of the Mayor denied having bought any liquor for his son's birthday with Municipal money. He stated that he spent his own money for his son's birthday to the amount of R 14 000. He made his bank statement available as proof that the alcohol bought for his son's birthday party was bought from his own money as he paid using his bank card and his bank account was accordingly debited. Therefore the bank statement confirmed what he said.

7.2.5. On the fact that there is unemployment in the area yet there are mines around, the Municipal Manager pointed out that there was a plan to build a Youth Centre in the area to try and give the young people skills, career guidance and bursaries. Further that there is a project funded by Khumani Mine for cleaning services that could employ only 30 people from Olifantshoek.

7.2.6. The GDF was said to be building a Youth Centre in Olifantshoek and that it is also building a sewing facility to an NGO group in the area according to the project implementation report of the GDF.

7.2.7. On the issue of the Mayor's failure to act to the development of land by Mr Motsoare without authorisation, court documents given to the Public Protector team show that there is an interdict against Mr Doc Motsoare. The Municipality instituted the court case against him for occupying land illegally and building on it. The interdict forbids the respondent, Mr Motsoare, from building any kind of structure and keeping any portion of the land he has occupied illegally.
7.2.8. The Mayor confirmed that the Municipality interdicted Doc Motsoare for building on the Municipal land he occupied illegally. Further that the interdict stopped him from continuing with his plans. He apparently requested to buy the land from the Municipality but they refused. Mr Motsoare then stopped building after receiving the interdict. He had already built by the time the interdict was served on him. According to the Mayor the interdict also required that he demolishes what he had already built. However, this has not yet been done.

7.2.9. The Mayor’s response to the allegation that she and Charles Phuti received Social Grants was that she used to receive a Child Support Grant for her children but that it was stopped as soon as she became a Councillor in 2006. Mr Phuti indicated that he has never received any Social Grant. SASSA was contacted and they confirmed the Mayor and Mr Phuti’s positions.

7.2.10. On the allegations that the Mayor and one Edwin Hantise bought RDP houses, the deeds search shows two stands belonging to the Mayor’s husband. The Mayor’s RDP house in question actually belongs to her husband who applied for it and was approved during the time when he was still unemployed and he qualified for it. By then he already owned the two stands which he bought prior to his unemployment in the early 90’s. The said stands are in the name of the Mayor’s husband who owns them and he bought both of them prior to him applying for the RDP house and the house was built on one of the stands. This happened long before he was involved with the Mayor.

7.2.11. Mr Hantise on the other hand responded to the allegation by saying that he bought the house from Ms Griet Visagie. An affidavit signed at the police station between Mr Hantise and Ms Griet Visagie, the previous owner of the house, indicated that the house was formally sold to Mr Hantise for R13 000. This happened in 2007. Ms Visagie had been staying in the house for more than eight years as the house was allocated to her during the first allocations in the 1990’s.
7.2.12. On the Mayor's alleged use of her private vehicles for official trips while there is a Mayoral Car and a driver, she explained in her response that when she came into office, there was no Mayoral car for a long time until February 2012 when a mayoral car was bought. So in that period she used her own vehicle and only claimed for fuel when travelling long distances. She further stated that she never claimed for trips between Olifantshoek and Kathu. There is a driver who is driving the Mayor around.

7.2.13. According to the requisition forms of the Mayor's official trips from April 2011 to July 2012, she only made S&T claims for such (official) trips using her private vehicle. This contradicts the oral evidence given to us by the Mayor. The Mayoral vehicle was purchased on the 16 February 2012. There is an overlap between the time when the Mayor did not have a Mayoral vehicle and after. According to the aforementioned requisition forms the Mayor submitted claims for using her private car for official trips even after the Mayoral car had been bought. This confirms the complaint that the Mayor was using her private car for official trips while the Mayoral car was available for her use.

7.2.14. Collaboration with the Auditor General's office led to the uncovering of some amounts that were advanced to the Mayor and to her driver for fuel on 26 August 2011, the 31 August 2011 and the 12 June 2012. In August 2011 on the 26th an amount of R5000 was advanced into the Mayor's driver's bank account and on the 31st an amount of R5000 into the Mayor's bank account. In the year 2012 on June the 12th an amount of R10 000 was also advanced to the Mayor. There are no requisition forms, receipts or claim forms against any of these amounts to prove what they were for. It is important to note that when the amounts were advanced for fuel there was a petrol card for the Mayor in use.

7.2.15. On the issue of the credit and petrol cards that were said to have been acquired in the name James Rakoi after he had already left, the Mayor stated that when she came into office there was a credit card and a petrol card in James Rakoi's name, the former Mayor. Around the same period the National Treasury then sent out circulars to all Municipalities stating that they should no longer use
credit cards. The Municipality doesn’t have a credit card anymore but only a petrol card. She further said that the credit card that was there was never used. The petrol card on the other hand was used until the Municipality got a new card. The Mayor added that the petrol card was cancelled after one was issued in her name. The credit card was cancelled after the letter from treasury.

7.2.16. The Mayor’s explanation was confirmed by a letter dated 02 August 2011 from National Treasury which was to the effect that Municipal credit cards were to be discontinued by the 01 September 2011.

7.2.17. The Community wanted to know who was paying for the house the Mayor was staying at, in Kuruman and his response was that she and her family were staying with her in-laws in Kuruman. The Municipality was not paying for her stay there. The house belongs to Captain Kopang. The Mayor was only contributing towards groceries from her own pocket. The Mayor’s statement was confirmed by Captain Kopang.

7.2.18. On the issue of a stolen water tank, indeed there was a case of possession of a stolen water tank opened against the Mayor. Warrant officer Marwane is the investigating officer of the case. The docket was sent to a Senior Public Prosecutor for decision and it came back with queries. The Investigating Officer was supposed to follow up on queries and return the docket again to the Senior Public Prosecutor.

7.2.19. The Mayor explained that the land where her brother stays belongs to her husband’s late brother and she denied that the water and electricity connection was irregular. The electricity and water connections were done after the Mayor paid R6000 and a Municipal receipt was provided as proof. Water and sanitation is running through that area according to the Mayor. She provided us with a copy of the title deed to the land showing that it belongs to her husband’s late brother.
7.2.20. When enquiries were made about the allegation, that Councillor Johnson was selling stolen goods, the Mayor did not know anything about this matter as the Council never received anything in writing in this regard. Councillor Johnson was called with regard to the allegations against him and he denies the allegation.

7.3. Maladministration allegations against the Municipality

7.3.1 The CFO responded to the allegations that the Municipality was paying rent for his accommodation by explaining that he joined the Municipality in 2007 and he was staying in a Guest House for 3 months. He stated that the previous Municipal Manager was mandated to acquire a house from the mine for him to stay in as all Municipal houses were occupied. The practice was that employees who stay in Council houses pay only R250.00. The houses leased from the mines were more expensive. It was then agreed between the CFO and the previous Municipal Manager that he was to pay the same amount for rent as the other employees of the Municipality staying in Council houses and that the Municipality would pay the difference as he was to stay in a mine leased house.

7.3.2 The rent is now being paid in full by the CFO in the amount of R3000-00 for the house that the Municipality got for him to stay in from the mine. The agreement with the previous Municipal Manager was said to be verbal. According to the Municipal Manager he does not know why they were not paying the full rental amount from the onset but at the moment rent is deducted from their salaries in full. The employer never required the employees who were staying in mine houses to pay back the difference between R250 and the actual rental amount.

7.3.3 According to a letter dated 11 March 2009 signed by the previous Municipal Manager, the CFO and the Corporate Services Manager were supposed to develop a policy which would address the differentiation on rental i.e. those paying R250 and those paying around R3000. This arrangement was not necessarily verbal as was stated by the CFO. In 2010 the CFO was given
another letter stating that his initial rental agreement was being cancelled. He therefore needed to pay the full rental amount and that no subsidy would be given. The CFO’s payslips show that he is now paying the full rental amount. In this regard there is no policy despite recommendations by the previous Municipal Manager. In view of the above it cannot be expected that the employees staying in mine houses pay back the difference for the period they were paying R250 as it has never been a requirement.

7.3.4 The Municipal Manager indicated that there was a report on the over expenditure of R6.4 million that can give an explanation on this matter. He added that after going through the Auditor General’s report and getting an explanation to the expenditure, Council then approved the fruitless and wasteful expenditure. Further that the money was not used for one thing it was for numerous things such as buying of brake pads for Municipal vehicles. During our collaboration with the Auditor General’s office it was revealed that the R6.4 million over expenditure was reported as unauthorised, fruitless and wasteful expenditure. The documents to my disposal show that council took a resolution to approve the over expenditure as unauthorised, irregular or fruitless and wasteful.

7.3.5 The Municipal account of stand no. 1978 on which Ms Tatas (who was alleged to be working for SASSA but staying in an RDP house and receiving child support grant for her children) is living, is in her name but the deeds search reflects Mr and Mrs Witbooi, who Ms Tatas swapped houses with as owners of the stand.

7.3.6 Michell Tatas was the beneficiary of her mother’s house situated on stand no 1978. She then swapped the house with Mr Jan Witbooi hence the stand is still in his name. The house Jan Witbooi is in is under the ownership of Ms V S Moleleki who was Ms Tatas’ mother.
7.3.7 Ms Tatas used to receive a grant for a child before she was employed, however the South African Social Security Agency (SASSA) confirmed that the grant was stopped in 2004 when she got a job.

7.3.8 On the fact that five (5) Ward Committee Members were not paid since May 2012, the Mayor explained that these Ward Committee Members were the ones who started the unrests in Olifantshoek hence their salaries were stopped. She further stated that they are Municipal employees and that they were supposed to owe allegiance to the Municipality. The Mayor also stated that these people were told that their salaries would be stopped. She also said that there was a Council Resolution to the effect that the Department of COGHSTA should be informed of this incident and the Department was accordingly informed.

7.3.9 There was a Council Resolution received from the Municipality which stated that it came to the attention of the Mayor's office that some of the Ward Committee Members wrote a defaming article about the Council and the Mayor herself. Further that swift action should be taken against those Committee Members.

7.3.10 Nothing was said about the procedure followed. However, the council resolution on the matter only state that swift action should be undertaken but does not specify what action.

7.3.11 On the issue of the procurement of 2000 Calendars costing around R28 000 that were wrongly spelt, the Manager in the Mayor’s office stated that indeed there were Calendars that were procured and misspelled. The Municipality then spoke to the supplier and who then rebranded some of the Calendars with the correct name. The Municipality could not say how many Calendars were rebranded and nothing was done to claim back the money used to procure the Calendars that could not be rebranded. The contract could not be obtained.

7.3.12 The remittance advice on the matter shows that an amount of R27 982.50 was spent for the 2000 calendars.
7.3.13 Regarding the payment of R25 000 towards the funeral of Refilwe Olepeng, the Mayor stated that the Municipality contributes R1 300 for adults (although the Community referred to R1 500) and R900 for children for indigent funerals. She stated that there was no R25 000 that was donated to Refilwe Olepeng's funeral, the late speaker of Ga Segonyana Local Municipality. Her response was contradicted by that of the CFO who mentioned that there was indeed R25 000 donated to Refilwe Olepeng's funeral. He also stated that there was a resolution and instruction to the effect that Municipalities in the John Taolo Gaetsewe District, had to make contributions of R25 000.

7.3.14 There was a letter from Ga-Segonyana Local Municipality asking all local Municipalities in the John Taolo Gaetsewe District Municipality to make contributions of R25 000, according to the CFO. There is evidence in the form of documentation received confirming the CFO's assertion on the matter. Therefore the evidence given by the Mayor was not truthful.

7.3.15 The CFO, in response to allegations that an amount of R174 000 was used to brand 74 vehicles, said that there were no vehicles branded since he became the CFO. The Municipal Manager also said that he did not know anything about the branding of 74 vehicles. They have more than 50 vehicles, and they still have vehicles which are not branded. There were no documents made available to dispute or confirm the allegation raised.

7.3.16 Ms Marieta Redeer, an Administrator who deals with alienation of Municipal property through tenders and/or auction, stated that some stands were sold for R1 during the time when the Olifantshoek area still fell under the Tsantsabane Local Municipality. She indicated further that it has been 6 years since she has been working for the Municipality and she has not seen any sale like that. She does not work with RDP houses though and only works with tender and auction sales.
7.3.17 Mr Headman Thabakeng who deals with RDP housing explained that people do not actually buy stands for R1 but that they are given the stands for free by the Municipality and the stand is then registered as R1 in the title deed. This only applies to low cost housing and those old stands that were given to the people.

7.3.18 The transfer documents we received on some of the stands given by the Municipality to people, and it indeed showed R1 as a purchase price.

7.3.19 On the allegation of spending R4500 on alcohol for employees, the Mayor indicated that the Municipality does not spend money to buy liquor for its employees. She further said that there was an amount of money that was deducted from the employees’ salaries for the liquor to be bought during the end year function. But according to the Municipal Manager and CFO the Municipality bought liquor for its employees for the end year function. This they say has been a practise in the Municipality. In this regard the evidence is contradictory.

7.3.20 According to the invoice received from the Municipality, the Municipality purchased drinks for their annual year end function to the amount of R31208.50. This amount was for different flavours in beers, ciders and soft drinks. The total amount for alcohol was R16 922.40.

7.3.21 On allegations of intimidation of a junior employee by the Municipal Manager to fetch his furniture from Kuruman to Kathu, the Municipal Manager explained that the policy on removals for employees is not documented but common practise.

7.3.22 Oom Johnny Monnapula, the driver, explained that the Municipal Manager did not intimidate him into doing anything, he only requested him to please bring his stuff as he was already in Kuruman on official business. The Municipal Manager mentioned that it was common practise which was not documented by the Municipality that when an employee moves he/she would hire a vehicle to transport furniture. The Municipality would then pay 50% and the employee
50% of the cost. So the Municipal Manager argued that by asking Oom Johnny to bring his stuff he saved the Municipality some money.

7.3.23 The CFO dismissed the allegations that the Municipal Manager had been paid transport allowance for him to travel from Kuruman to Kathu, as untrue. The Municipal Manager’s payslips were requested in order to determine whether transport allowance was paid for the period he was still staying in Kuruman and when he moved to Kathu. The payslip show that his salary was structured to make provision for transport allowance and there was no extra payment for transport.

7.3.24 Mr George Loeto who is said to have been paid an acting allowance even when he was on sick leave for two months, explained that he was not paid for the two months he was on sick leave and further that he took the matter up with labour attorneys in Johannesburg but they didn’t help. He also said that he had been acting for 14 months before he went on sick leave. Instead he saw a letter by the previous Municipal Manager saying that the matter was resolved.

7.3.25 The previous Municipal Manager, Mr C. Joachim, had stopped Mr Loeto’s Acting Allowance and removed him as Acting Manager Community Services as well. Mr Loeto did not want to leave the matter unresolved and then tried to pursue it but then the current Municipal Manager told him to let it go as such things create bad blood with the employer. Further that he would reinstate him as Acting Manager (should he be appointed Municipal Manager) and this was done in that when Mr Clement Itumeleng became the Municipal Manager he reinstated Mr Loeto.

7.3.26 In a letter dated 21 September 2010 the Municipal Manager, who was at the time an Acting Municipal Manager, stated that in June 2010 Mr Loeto went on sick leave for a period of six weeks and that his acting position was not terminated. During that period Mr Hendry Hornet was appointed to act as Acting Manager Community Services and was paid an acting allowance. The Municipal Manager added that in the spirit of maintaining a sound working
environment and the fact that Mr Loeto acting appointment was not terminated, he authorised that payment be made. But the payment was never effected because the Municipality had already paid Mr Horniet who was acting.

7.3.27 The CFO and the Acting Corporate Services Manager testified that according to the policy a person should act for at least 14 consecutive days to be paid an acting allowance. However according to the Collective Agreement on Conditions of Service an employee must act for 10 consecutive days to qualify for payment of this allowance.

7.3.28 The Acting Corporate Services Manager explained that Ms Tuise (who was accused of being paid while on maternity leave when she did not qualify) was not paid as she indeed did not qualify. This was supported by the leave form which indicated that the leave was unpaid as the employee had not yet completed a year with the Municipality.

7.3.29 In response to the allegation that the Municipal funds were misused in renovating a house the Municipal Manager stays in, to the amount of R67 000, the Municipal Manager explained that only painting in the inside and tilling was done on the house. He further stated that the house is still not in a good state but he was not complaining as it was not his house. The CFO stated that he does know about the renovations and that the Municipal Manager was happy when the job was concluded.

7.3.30 However, nothing was received showing how much was spent on the renovations except for the two quotations of R16 111.55 and R17 580.00 from Vikile Building Construction cc and Tebogo Ditiro Logistics, respectfully and invoices of R9 200.00 from NJ Multi Building Suppliers pertaining to the renovation of the bathroom. This is despite our requests for documentation.

7.3.31 According to the Acting Manager Corporate Services the house that Municipal Manager was staying in was never maintained for more than 20 years and had serious defects, hence the Municipal Manager authorized and approved the
renovations. The Municipality failed to make available all the necessary documents in this regard. It is therefore difficult to make a finding in the absence of relevant documents. However, this matter will be revisited when dealing with certain contracts relating to the issues raised by the Community.

7.3.32 In response to the allegation that Dineo Ntokwe could not do her job at HR as every week she attended one day certificate courses, the Acting Corporate Services Manager who also deals with Human Resources matters, stated that the workplace skills plans requires that once every month there is training that staff attends. He further explained that this is the reason Ms Ntokwe went on training so often. Documents in the possession of the Public Protector confirm that Ms Ntokwe has attended training five (5) times between 01 July 2012 and 01 January 2013. The skills plan also shows other employees of the Municipality as having attended training courses and seminars.

7.3.33 Mr Phuti, the Acting Corporate Manager, allegedly bought a stand for only one rand stated that he applied and qualified for an RDP house because he was unemployed at the time. The house was built on his parent’s stand, between 1996 and 1998. According to the evidence from Elma Ludick of the Municipality this happened during the period when Olifantshoek was still under Tsantsabane Municipality and, the documents to verify this could not be traced.

7.3.34 In responding to the question whether Bethuel Setungwane is an employee or the Mayor’s PA, the Mayor explained that Mr Setungwane is a Ward Committee Administrator. This was confirmed by the Acting Manager Corporate Services, Mr Phuti, and an appointment letter was provided that indicates that Mr Setungwane is a Senior Ward Committee Administrator with effect from the 01 April 2012.

7.3.35 Mr Thapelo Tiroyame is a Ward Counsellor in Debeng according to the Mayor. As for his performance the Mayor said there have not been complaints that he is not performing or anything to that effect.
7.3.36 The Mayor’s description of the allegation that Ward Committee Members are paid in cash, is that Ward Committee Members did not have Bank Accounts hence they got paid cash on hand. After that they had to get Bank accounts for future payments.

7.3.37 The Mayor explained, on the allegations that Counsellor Hantise was granted a bursary when his term was expiring and that the bursary went beyond his term of office, that Counsellor Hantise was re-elected twice and that during the time he was elected as PR counsellor. According to Acting Manager Corporate Services Mr Charles Phuti, Mr Hantise was awarded a 1 year bursary which started January 2011. He is still working for the Municipality. Mr Hantise’s employment with the Municipality is proof that indeed he was re-elected.

7.3.38 On the issue of Mr Mohau Moorosi being involved in an accident with the mayoral car, the Mayor stated that it was before her term as Mayor and she did not know if steps were taken. The Municipal Manager initially said that he also did not know whether steps were taken but that in cases of accidents, a determination is made on the accident report and the driver’s account. He also added that he could not get any documents on the matter.

7.3.39 I later learned from the Municipality that Mr Moorosi was reporting to the then Manager in the Office of the Mayor who in turn reported directly to the then former Municipal Manager. The accident in question was apparently reported through the above channels but it was never pursued by the former Municipal Manager. Therefore the current Municipal Manager does not know what happened in the matter.

7.8.40 The accident was reported to the Danielskuil Police Station with Case No. 39/01/2010. The accident was said to have been reported to the insurer of the Municipality, Lion of Afrika.

7.4 Maladministration allegations relating to tender irregularities
7.4.1 The tender documents obtained from the Municipality on the Olfantshoek 200 Housing Project (the Housing Project), regarding houses that were to be built in Olfantshoek, indicated that the tender was awarded to Lebogang Afrika Suppliers and that there were lots of extensions on the completion of the project. However, the tender document does not specify how long the project had to take, it only states that:

"The period of the commencement of the works after the contractor takes possession of the site is fourteen working days. For the works as a whole the date of practical completion is..."

The space where the completion date was to be put was left blank. The document continues to state that,

"The penalty per calendar day is R1600."

7.4.2 Lebogang Afrika Suppliers' contract was formally terminated in November 2011 due to poor performance despite repeated extensions granted by the Municipality. The project started in 2009 and was supposed to run for 9 months according to the Municipal Manager.

7.4.3 The Municipal Manager also indicated that the budget for the Housing Project was approximately R11 million which was supposed to deliver 200 houses and only R1.9 million was left to complete the remainder of the 200 houses when the contract was terminated. After the said termination the second contractor was appointed in May 2012 and was apparently due to start but could not as result of the riots.

7.4.4 The Municipal Manager averred that there was an 85% completion rate on the Housing Project and further that there were no consultants when the project began and as such no monitoring took place. The value of completing the project was said to be R3.2 million though the Municipality had only R1.9 million available from the original budget, the Municipality intend to source the shortfall elsewhere. The Municipality did nothing to recover the money from the previous contractor (i.e. Lebogang Afrika Suppliers) and does not have a plan to do so.
7.4.5 On the issue of tenders being given to the same person, the Municipal Manager stated that Mr D Motsoare doesn’t have a company and the Municipality has never awarded any tender to him but that the housing project tender was awarded to Lebogang Afrika Suppliers. The contract started on 11 August 2009 and was supposed to finish on 15 March 2011. The contract was extended several times and it was only terminated in November 2011 and the work was not completed. The Technical Manager, Mr Ositang, added that Lebogang Afrika Suppliers was a BEE partner on the second tender that was awarded to Khoisan Civils for the upgrading of Oxidation Ponds. This tender started on the 26 April 2010 for 36 weeks. It was supposed to finish on the 30 June 2011. It was extended for 3 months but due to the unrest the project could not be completed.

7.4.6 The above information was confirmed by the tender documents of the Housing Project and the upgrading of the Oxidation Ponds. The tenders of the Housing Project, the access road, and the upgrading of the Oxidation Ponds were advertised and proper tender processes seem to have been followed (A detailed investigation into the tenders namely the advertisement, adjudication and awarding of tenders will be conducted separately). It was therefore noted from the tender documents that Lebogang Afrika Supplies was awarded the Housing tender and the upgrading of the Oxidation ponds contract where he was a BEE partner to Khoisan Civils.

7.4.7 Another observation causing concern in this matter is that of a pattern in the undertaking of the housing project and the upgrading of oxidation ponds. On both these contracts Lebogang Afrika Suppliers was involved, and in both contracts extensions were made. It is disturbing that after the Municipality had suffered losses on the housing project, they would still involve Lebogang Afrika Suppliers in the upgrading of oxidation ponds project albeit as a BEE partner.

7.4.8 In the appointment of three security companies not budgeted for, the Mayor responded by saying that there was only one security company working for the
Municipality and that proper channels were followed in procuring their services. However, according to the Municipal Manager two Security Companies were appointed, one to service the Municipal offices in Kathu and another to service the Municipal offices in Olifantshoek. The Municipal Manager mentioned that there was no budget for the security but it had to be done, further that there was no tender advertised. It was done due to the break-ins in Kathu and threats to office in Olifantshoek.

7.4.9 On this matter of the security companies, documentation received from the Municipality however, indicated that there were in fact three security companies contracted to the municipality. The companies are currently guarding the Municipal offices in Kathu, Olifantshoek and the Traffic Department. The documentation also indicated that proper procurement procedures were not followed but that requests for deviations were made and approved by the Council. Had a risk manager been present he/she would have been able to alert the Municipality of the need for further security after the first request for deviation.

7.4.10 Collaboration with the Auditor General's office revealed that in 2010 only one security firm known as Swamdia Trading and Projects CC was used by the Municipality. The amount paid for a period of 6 months was R36 676.44 more than the amount indicated on the appointment letter.

7.4.11 As per the appointment letter, the security service was rendered for a period of 6 months till 20 May 2011. The payment of R141 075 for June 2012 could therefore be classified as irregular expenditure.

7.5 Maladministration allegations relating to employment irregularities

7.5.1 Mr Gilbert Motlhaping was initially employed by Tsantsabane Local Municipality during the period when Olifantshoek was still under the administration of this Municipality, that is from 2000 to 2003 as an Admin Assistant. He was charged with theft by the said Municipality in 2003 and that is when he resigned. The
charges were later withdrawn in 2004 but no explanation was given. The current Municipality under which Olifantshoek falls (Gamagara Local Municipality) advertised a post and he responded. He was interviewed and then subsequently appointed by the Municipality in December 2010 as a Senior Admin Officer. The Municipal Manager said that they did not look into Mr Motlhaping’s resignation from Tsantsabane Municipality. He further admitted that there are grey areas in their screening processes.

7.5.2 Documents at the Public Protector’s disposal as received from the Municipality confirmed that Mr G Motlhaping applied for the position of Senior Administrator and was interviewed and subsequently appointed. According to the advert for the position the candidate had to have a tertiary qualification in Administration and a Drivers Licence, amongst others. However, Mr Motlhaping did not meet these two requirements. The Municipal Manager also said that Mr Motlhaping was appointed because he had experience and exposure in local government as he had worked as an Administration Officer in Tsantsabane Local Municipality.

7.5.3 Additional documentation received revealed that 46 applications were received, 4 candidates were shortlisted, 1 candidate declined, 1 candidate didn’t come for interviews, and 2 candidates were interviewed. The best candidate from the two was appointed. It is alarming to note that Mr Motlhaping having not met two of the requirements was shortlisted for the position. It is further alarming that the Municipality in appointing Mr Motlhaping based on his experience in local government disregarded his reasons for leaving his previous employ. Despite the fact that Mr Motlhaping was not charged for his demeanour it is cause for concern that he resigned during an investigation against him. It is our view that an oversight such as this will continue as the current Human Resources Manager is not qualified in the field so it is therefore easy for him to miss things like these.

7.5.4 As to the allegation of officials being deployed instead of being appointed on qualifications the following officials’ appointments were looked into: The
Municipal Manager, the CFO, the Acting Director Community Services, Acting Director Corporate Services, Manager in the Mayor’s office and Acting Director Technical Services. The Curriculum Vitae of the following officials indicate their qualifications.

7.5.4.1 The Municipal Manager has a degree in communications and a degree in International Relations;

7.5.4.2 The CFO has a B Com Accounting Degree;

7.5.4.3 The Acting Director Community Services has a Degree in Fine Arts in Education;

7.5.4.4 The Acting Director Corporate Services does not have an appropriate degree for his position but numerous certificate courses;

7.5.4.5 The Manager in the Mayor’s office also does not have a formal degree but different certificates in different courses; and

7.5.4.6 The Acting Director Technical Services has a diploma in Civil Engineering.

7.5.5 According to the Mayor, the Department of Cooperative Governance Human Settlement and Traditional Affairs (COGHSTA), Provincial Treasury and Development Bank of South Africa came in and helped the Municipality in the recruitment of the two Senior Managers, being the Municipal Manager and the CFO who have the necessary or equivalent qualifications.

7.5.6 In view of the above it is concluded that only the Manager in the Mayor’s office and the Acting Director Corporate Services do not have the necessary qualifications. This is confirmed in our findings.

7.6 Allegations of criminality involving external service providers
7.6.1 Mr Karneels informed the Public Protector Investigation Team that a member of the Community approached him as he and his colleagues were busy servicing the area with the drainage of the sceptic tanks. The Community member asked where Pastor David van der Westhuizen (the Pastor) was and his response was that the Pastor was not available but that he could assist as he was an employee of the Municipality. The said member then told Mr Karneels that he wanted Pastor to come and drain his sceptic tank. Mr Karneels then told the gentleman to go to the Municipality and pay for the service then he would assist him. The gentleman then refused saying that he pays the Pastor in cash and he does the drainage. The Pastor and his employees were contracted by the Municipality to assist them with the drainage of the sceptic tanks in Olfantshoek.

7.6.2 Mr Karneels allegedly refused to assist the gentleman without him going to pay at the Municipality. After the gentleman had left, some of the Pastor's employees showed him two other households that do the same as the gentleman. Mr Karneels was surprised as the Pastor was hired by the Municipality to render the service and all the people who needed that service had to pay through the Municipality. He then went to the Municipality checked the status of the three households and found that they have not been paying the services. He then took that information plus the testimony of the gentleman and the Pastors employees as evidence to the present Municipal Manager for investigation.

7.6.3 Mr Karneels who is the person who brought the complaint also stated that he gave the evidence to the Municipal Manager who was the Corporate Services Manager at the time and Mr Phuti was his deputy. He further stated that after a year he enquired from the Municipal Manager what had become of the matter but he was told he had no authority to question the Municipal Manager about his job.

7.6.4 On interviewing the Municipal Manager, he declared that there wasn't enough evidence. However, he could not produce any document or information that
shows that something was done. Mr Karneels also stated that the Pastor was friends with the present Acting Corporate Services Manager, Mr Phuti.

7.6.5 A former employee and current Technical Adviser to the Municipality, Mr Lategan also informed that the people who brought the complaint, handed the evidence to Mr Phuti but nothing was done. He added that the same thing happened in the case of electricity meter bridging. He stated further that concrete evidence was given to Human Resources and nothing was done. In responding to this matter the Municipal Manager said that there was not enough evidence as well but still could not give us documented proof that something was done even though there was not enough evidence. There was nothing shown to us to prove that an investigation was done but failed for lack of evidence. In view of the above the more probable version is that of Mr Lategan. Interviews were held with two anonymous employees of the Municipality who confirmed that indeed cases have been lodged with then Corporate Services Manager, who is now the Municipal Manager, and nothing was done.

7.7 Allegations transcending the remit of the Municipality

7.7.1 On the issue of textbooks shortages, the principal of the only high school affected by the protests, Mr Morris, indicated that the allegation is untrue. He further stated that he made sure that all the matriculants had textbooks himself. The Department of Education also denied the allegation as they were not aware of such shortages. The few school learners that we spoke to confirmed that they had school books. When we visited the school we were shown text books that were to be sent back to the department as they were in excess.

7.7.2 In response to the lack of health services, an inspection in loco was conducted and it turned out that there is a Hospital now called a Community Health Centre and a Clinic in Olifantshoek. Sister Selati at the Clinic was interviewed and he explained that the Clinic and the Community Health Centre are operational. Further that they have human resource challenges as both the Community
Health Centre and the Clinic are under staffed. This he explained as the cause of the referrals to Kuruman Hospital.

7.7.3 The Public Protector and her team visited and toured the Community Health Centre during the Public Protector Good Governance Week. The tour and interviews conducted by the Public Protector confirmed that there was poor management facilities and services. The Centre was operating only during the day despite it being a 24 hour Centre. The Sister did a half day in each clinic. All we can say here is that the allegations are true, that the whole allegation including ambulance inadequacies transcends the remit of the Municipality and has been taken up with the Department of Health.

7.7.4 On the issue of police brutality during the riots, Brigadier Mkhwanazi stated that all matters against SAPS were referred to the Independent Police Investigation Directorate (IPID) for further investigation. The IPID has confirmed receipt of Eleven (11) cases reported to them. The IPID in turn referred the cases to the Director of Public Prosecutions (DPP) in the province for her decision.

7.8 Responses received to the provincial report

The response by the Municipal Council

7.8.1 The Council’s contention that the Municipality only realised upon submission of the business plan in 2009 that the allocated funding will not be sufficient to complete all associated storm water facilities does not take this matter any further. This is because the KKM Consulting had already redesigned the business plan (which included the storm water facilities) to fit the available funding, as such it does not affect the Public Protector’s finding in this regard.

7.8.2 The Council’s contention that it is unfair to suggest that nothing was done, and the fact that letters were written to the Departments of Roads and Public Works and COGHSTA cannot be sustained for the reason that, the Municipality did not do enough to make it possible for Eskom to provide electricity in Ditloong.
7.8.3 The Council correctly pointed out that all formalised stands in Olifantshoek are electrified. The stands that are not electrified in Olifantshoek are only those that were occupied illegally.

7.8.4 The Council again correctly pointed out that all formalised stands in Olifantshoek have access to water. The areas that do not have access to water in Olifantshoek are only those that were occupied illegally.

7.8.5 The Council's suggestion that the finding at paragraph 10.1.6, insinuate that the Municipality played no role in the project underway for the construction of recreational facilities for Olifantshoek Community is misplaced. The finding was based on the evidence received from the Municipality, amongst others and in particular the Municipal Manager. However, it will not do any harm to mention the Municipality as a partner in the finding since naturally the GDF will not initiate a project without the involvement of the Municipality.

7.8.6 The Council's contention that the circumstances under which the decision to use public property for private purposes, does not take this matter any further since it does not affect the Public Protector's finding in this regard. This is due to the fact that the circumstances referred to by the Council do not justify the use of public property for private purposes without the specific authority. The Council Resolved on the 28 May 2012 as follows:

1. That security for the Mayor be organized as a temporary concern.
2. That the CFO peruse the Budget to avail funds for hiring temporary security or the Mayor as soon as possible.

7.8.7 This resolution does not constitute specific authority for the use of the Municipal Truck to move the furniture of the Mayor's parents but to provide security to the Mayor.
7.8.8 The Council correctly pointed out that there is a Youth Development Centre in Kathu which serve the youth in the Gamagara Municipal area through Field Workers, there is interaction with the mines in terms of employment and training.

7.8.9 The Council’s response regarding the use of a private vehicle by the Mayor when there was a Mayoral vehicle contradicts with the oral evidence obtained from the Mayor herself as recorded in paragraph 7.2.13 above. She basically informed the Public Protector team that she only used her private vehicle because the Mayoral vehicle was not available. She had the opportunity to inform the team about her package especially the part that deals with travelling allowance unless she did not understand how it works.

7.8.10 The Council correctly pointed out that in 2010 the Mayor was still Mr James Rakoi and his driver was Mr Mohau Moorosi. In actual fact the year was erroneously recorded as 2010 instead of 2011. Therefore the correct period when monies were advanced to the Mayor and her driver is August 2011 and June 2012 as discussed in paragraph 7.2.14 above. Therefore the Council’s response does not take this matter any further since it does not affect the Public Protector’s finding in this regard.

7.8.11 The Council’s response regarding the issue of irregular expenditure also does not take this matter any further since it does not disprove the fact that the irregular expenditure was not disclosed nor does it change the Public Protector’s finding in that regard.

7.8.12 The Council’s response that the Ward Committee Members do not get a salary but a stipend is not the point that is why when this matter was initially raised with the Municipality it was never an issue whether the Ward Committee Members were paid a salary or a stipend, loosely translated the words mean wages. The issue was whether the Municipality acted fairly when it arbitrarily stopped the wages of the Ward Committee Members. Section 33 of the Constitution, 1996 provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair. The Public Protector is not saying that the
conduct of the Ward Committee Members should be tolerated but that the Municipality should follow proper procedures in dealing with the matter. The Council’s argument does not affect the Public Protector’s finding.

7.8.13 The Council’s response pertaining to the security companies sought to justify why the service providers were appointed without following the normal supply chain processes does not disprove or change the Public Protector’s findings.

7.8.14 The Council’s response regarding the payments to the security companies also does not take this matter any further since it did not provide any evidence to disprove or change the Public Protector’s findings in that regard.

7.8.15 The Council’s response regarding the issue of the calendars amount to speculation since the Manager in the Mayor’s office admitted that not all calendars were corrected as some had already been distributed to the Community. This response therefore does not affect the Public Protector’s finding in this regard.

7.8.16 the Contention of the Council that the contribution of R25 000 was not based on indigents policy does not disprove or change the Public Protector’s findings in that regard. This is because the Municipality including the Mayor was given an opportunity during the course of our investigation to explain the vote or programme from which this amount was paid but it was never denied that the money was paid based on the indigent policy.

7.8.17 The comments of the Council on the use of alcohol are noted. However, the Municipal Budget Circular for the 2012/2013 MTRES, states on point 4.1 that Municipalities must pay special attention to controlling unnecessary spending on nice to have items and non-essential activities such as: (vi) excessive catering for meetings and other events including the use of public funds to buy alcohol beverages are seen as non-essential items and nice to have.
7.8.18 The Council's contention that the allegation of promise to reinstate Mr Loeto by the current Municipal Manager is malicious and that Mr Loeto was already appointed by the former Municipal Manager cannot be sustained for the following reasons:

7.8.18.1 The former Municipal Manager had stopped Mr Loeto's Acting Allowance and removed him as Acting Manager Community Services as well, hence the need for reinstatement;

7.8.18.2 When Mr Itumelelang became the Municipal Manager Mr Loeto was reinstated. If the former Municipal Manager had the power to appoint acting managers so did the current Municipal Manager.

7.8.19 The contention does not affect the Public Protector's finding in this regard.

7.8.20 The Council's argument that the Public Protector misrepresented facts in the matter of the accident of the Mayoral vehicle is misleading. The Public Protector's findings were based on the available evidence. However, the Council correctly pointed out that it was basically the responsibility of the former Municipal Manager to act on the matter, although the current Municipal Manager should have provided the Public Protector team with what transpired.

7.8.21 The contention of the Council that there was a consultant and a technician cannot be sustained for the following reasons:

7.8.21.1 The Municipal Manager admitted during his interaction with the Public Protector team that there no consultants when the project began and as such no monitoring took place.

7.8.21.2 Documentary evidence indicates that there was no monitoring that is why the end date of the contract could not be met or enforced.
7.8.22 Therefore the contention does not disprove or change the Public Protector's finding in that regard.

7.8.23 The contention by the Council that penalties could not be imposed as the delays was not solely contractor or Municipality does not take this matter any further since it does not affect the Public Protector's finding in this regard. This is because in the Municipality's correspondence of the 19 September 2012, the Municipality stated, under Housing, as follows:

"The main reason for failure to complete the project was, however the ineffectiveness of the contractor and his poor/shoddy work. The matter was then brought before Council for immediate intervention and as a result the council resolved to terminate the current contractor with immediate effect."

7.8.24 The Council's contention that the Municipality did not have problems with the contractor (Lebogang Afrika Suppliers) at the time of his appointment is misconstrued seeing that the housing contract was terminated prematurely because he could not perform.

7.8.25 The Council's contention that the Public Protector is speculating and made pre-conclusion is misguided. The fact that the Municipal Public Accounts Committee (MPAC) at its meeting of the 20 May 2012 confirmed that the Municipality incurred unauthorised expenditure of about R6 million due to overspending and in particular irregular expenditure due to the acquisition of goods and services in contravention of the Supply Chain Management Regulations points to the flawed tender processes.

7.8.26 The Council's contention that there were no witnesses in the matter of the drainage of septic tanks and the theft of electricity does not address the fact that the Municipality lost revenue and some people were prepared to assist like Mr Karneels who when he followed up on the matter was told that he had no authority to question the Municipal Manager about his job. Therefore this
contention cannot be sustained and it does not change the Public Protector's finding.

8. **LEGAL AND REGULATORY FRAMEWORK**

8.1 **Allegations of systemic failure affecting the broader community**

8.1.1 Section 152(1) of the Constitution provides that; "The objects of local government are –

   (b) to ensure the provision of services to communities in a sustainable manner...

   (d) to promote safe and healthy environment"

8.1.2 The fact that the there were still areas without electricity, water and sanitation means that the Municipality did not meet the objects of local government.

8.2 **Maladministration allegations against the Municipality**

8.2.1 **The Constitution of the Republic of South Africa, 1996**

8.2.1.1 Section 33, provides that everyone has the right to administrative action that is lawful, reasonable and procedurally fair and that everyone whose rights have been adversely affected by administrative action has a right to be given written reasons. This provision is also elaborated on in section 3 of the Promotion of Administrative Justice Act, Act 2000

8.2.1.2 In the case of the five Ward Committee Members whose salaries were withheld, the Municipality acted *ultra vires* these two Acts one of which being the supreme law of the land. The Municipality should have given the Ward Committee members an opportunity to make representation before taking an adverse decision affecting them.

8.2.2 **Municipal Systems Act 32 of 2000**
8.2.2.1 Section 66 of this Act provides for the development of systems and procedures for personnel administration.

8.2.2.2 The Municipality failed to keep to the requirements of this Act as it should have headed calls for investigation of misconduct in the Municipality.

8.3 Maladministration allegations relating to tender irregularities

8.3.1 Municipal Finance Management Act, 56 of 2003

8.3.1.1 Section 116 provides for the regulation of Contracts and Contract Management

8.3.1.2 The Municipality according to this Act should have made it clear in the Housing contract what the commencement date of the project is and what the completion date should be. It should have also been clear what is to be done to recover costs in case the contractor delays. Periodic reviews of the contract which were not done by the Municipality are also provided for in this Act.

8.4 Conduct failure allegations against the Mayor of Gamagara Municipality

8.4.1 Schedule 1, section 12 provides that:

"(12) A councillor may not use, take, acquire or benefit from property or asset owned, controlled or managed by the municipality to which that councillor has no right"

8.4.2 The Mayor should not have used Municipal property to move her parents' furniture as she did not have authority to do so.

8.5 Maladministration allegations relating to employment irregularities
8.5.1 Section 23 of the Constitution affords the right to fair labour practices to everyone.

8.5.2 Fair labour practices require that things such as proper reference checks to be made prior appointment, which were not done, this is seen in the case of Mr Motlhaping. This is also seen in the appointment of managers without relevant qualifications.

8. Allegations of criminality involving external service providers

8.6.1 Labour Relations Act, 66 of 1995

8.6.1.1 The definition of ‘employee’ in Section 213, means — “Any other person who in any manner assists in carrying on or conducting the business of an employer,”

8.6.1.2 This definition should have been born in mind when complaints against Pastor Van Der Westuizen came in and were not investigated by the Municipality.

8.6.2 Municipal Systems Act 32 of 2000

8.6.2.1 Schedule 2, section 2 of the Municipal Systems Act 32 of 2000, provides that:

“(b) A staff member of a Municipality must at all times perform the functions of office in good faith, diligently, honestly and in a transparent manner;”

8.6.2.2 Pastor Van Der Westuizen in his performance of his duties as a municipal employee should have acted in good faith and honestly and not take Municipal money for himself.
9. ANALYSIS AND CONCLUSION

9.1 A allegations of systemic service failure affecting the broader Community

9.2 Maladministration allegations against the Municipality

9.2.1 It has also been noticed that the Municipality, through the Municipal Manager, abdicated its responsibility to investigate allegations of misconduct and complaints against staff. Had the Municipality taken up its responsibility it would have been able to investigate and then prove or disprove the allegations against its staff and then take appropriate remedial action.

9.2.2 Section 33 of the Constitution of The Republic of South Africa requires that everyone be afforded administrative action that is lawful, reasonable and procedurally fair. The Promotion of Administrative Justice Act also requires that all administrative action be procedurally fair. The Municipality took a decision that adversely affected the said Committee Members and then implemented it without giving them the opportunity to make representation as required by the Act. The Mayor took to council that the said Ward Committee Members were the ones fuelling the riots in Olifantshoek and that, they were bad naming the Mayor and Council. It is at this council meeting that the Mayor brought to Council a decision to stop the ward committee members’ salaries. The Promotion of Administrative Justice Act also provides the procedure to follow in order to give effect to the right to procedurally fair administrative action which was not followed in this matter.

9.3 Maladministration allegations relating to tender irregularities

9.3.1 In this report we have noticed cases of misconduct reported against employees and there were no reports or documentation to show that the cases were investigated despite the fact that proof was given together with the complaint. This led to the assumption that nothing was indeed done.
9.3.2 It is also apparent in this report that there was no monitoring and measuring of performance in respect of Supply Chain Management projects. Had this requirement been met the Municipality would not have found itself having to employ another contractor to finish the uncompleted houses at a deficit.

9.3.3 Section 116 of the Municipal Finance Management Act quoted in the legal framework provides for contracts management. It has been observed in this report that the Municipality had difficulty in the management of the first contract for the building of 200 houses. Had this Act, and in particular Section 116 (1)(b)(i), which states that a contract or agreement procured through the Supply chain Management System of a Municipality or Municipal entity must stipulate the terms and conditions of the contract or agreement in the case of non or under performance, been complied with this would not have been the case. The Municipality would have put a clear indication of the completion date thereby not allowing the contractor to take their time unnecessarily.

9.3.4 Furthermore the Municipality would have put clauses in the contract that would allow for the recovery of funds from the contractor in cases of termination of the contract due to non or under performance, as provided for in Section 116 (1) (b) (i) by the contractor. This Act was not applied as it is also witness that the contract had a penalty clause in the event of the contractor not completing the housing project on time, but the Municipality could not put this clause in effect as they had not made it clear in the contract what the completion date was. It is therefore established that the Municipal Finance Management Act was infringed. We can even place the argument of fruitless expenditure which is strictly prohibited by this Act and say that by allowing the contractor to be paid more money than the work done the Municipality fruitlessly spent public funds.

9.4 Conduct failure allegations against the Mayor of Gamagara Municipality

9.4.1 According to Schedule 1 section 12 of the Municipal Systems Act a Councillor may not use, take, acquire or benefit from property or asset owned, controlled or managed by the Municipality to which that Councillor has no right. As explained above the law forbids a councillor from the benefit or use of Municipal property to
which he/she has not right. This means that the Municipal Systems Act has indeed been infringed. The Section applied here is arguable but a reasonable person would do as it prescribes because he/she would want to flee from inappropriate or even illegal acts or the appearance thereof. One may ask who is a reasonable person in this matter, and the answer would be that, it is the one who holds the Constitution of the land supreme and its principles as his/her guide.

9.5 Maladministration allegations relating to employment irregularities

9.5.1 It is clear that Section 23 of the Constitution was not entirely applied in the investigated appointments made by the Municipality. One is able to observe that not all Senior Managers and in particular the Acting Corporate Services Manager and Manager in the Mayor's office, are appropriately suited for the positions they hold. Further to the Constitution, Section 66 of the Municipal Systems Act 32 of 2000 provides that a Municipality in accordance with the Employment Equity Act of 1998, must develop and adapt appropriate systems and procedures to ensure fair, efficient, effective and transparent personnel administration including:

a) The recruitment, selection and appointment of persons as staff members
b) Service conditions
c) Supervision and management of staff
d) The monitoring, measuring and evaluating of performance of staff
e) The promotion and demotion of staff
f) The transfer of staff
g) Grievance procedures
h) Disciplinary procedures
i) The investigation of allegations of misconduct and complaints against staff.
j) The dismissal and retrenchment of staff and
k) Any other matter prescribed by regulation in terms of section 72

9.5.2 The recruitment of staff by the Municipality is seen to be in question as the appointments looked into are not entirely complying with the requirements of
these Acts; the Constitution and the Employment Equity Act. It is apparent that
the appointments did not all meet the advertised requirements as, the positions
required a degree or equivalent and, the appointed candidates do not have
degrees or equivalents. Others, on the other hand have degrees but not the
required degrees as per the advert.

9.6 Allegations of criminality involving some external service providers

9.6.1 Schedule 2 section 2 of the Municipal Systems Act was not applied in dealing
with the actions of Pastor Van der Westuizen. The Act is clear about how the
conduct of a Municipal employee should be. As much as it can be argued that
Pastor van der Westhuizen is not an employee of the Municipality, at the time a
complaint against him was made, he was regarded as an employee of the
Municipality because he was contracted to do a job by the Municipality and on
behalf of the Municipality and was getting paid for it. This is confirmed by the
definition of the word employee in Section 213 of the Labour Relations Act. So,
Pastor van der Westhuizen as an employee of the Municipality allegedly failed to
act in good faith or honestly. The Municipal officials to whom the complaint was
made also failed to act in good faith and be transparent by dealing with the
complaint and giving feedback to the complainants.

10. FINDINGS

My findings on the specific allegations are the following:

10.1 On allegations of systemic service failure affecting the broader Community

10.1.1 The Municipality managed to upgrade only 1.3 kilometres of the initial 14
kilometres of access roads from gravel road into a surface road which was a
EPWP due to the limited funding.

10.1.2 The allegation was substantiated since the culverts for the bridge were bought
but the storm water drainage was not erected. The bridge/storm water drainage
was not an afterthought but it was part of the upgrading of the 1.3 kilometres of road mentioned above. Therefore the revised budget of R5 984.27 should have covered the whole project. The Municipality is as a result found to have mismanaged the project funds and therefore dealt improperly with public funds.

10.1.3 The Youth Development Centre deals with all youth related issues.

10.1.4 While all formalised stands in Olifantshoek are electrified. It is true that informal sections of the community, among them Ditloeng, Plakkerskamp, Wegelee and Diepkloof, do not have electricity. The illegal occupation of serviced Municipal sites or land and the Municipality’s failure to properly act and address the said occupation, made it difficult for Eskom to provide electricity in Ditloeng. The action of the Community (to occupy the land) is wrongful and the Municipality’s failure to act promptly constitutes improper conduct and maladministration.

10.1.5 The allegation on systemic sanitation problems is substantiated. It is indeed correct that some people do not have toilets and that there are still communal taps. But this is only the case in areas such as Ditloeng where there is illegal occupation of land. This also means that all formalised stands in Olifantshoek have access to water.

10.1.6 It is also true that there is currently no recreational place for the community. However, there is a project underway for the construction of recreational facilities for the Olifantshoek Community namely a Community Hall, Sports Complex and Youth Centre. The project will also include the renovation of the swimming pool. The project is initiated and funded by the GDF in collaboration with the Municipality. Some allegations, including allegations that the Municipality lied about having renovated the local swimming pool, will be in the second report.
10.2 On conduct failure allegations against the Mayor of Gamagara Local Municipality, Ms M Diniza

10.2.1 It is true that the Mayor's husband is farming on communal land. However, he meets all the requirements of the guidelines set by the committee that deal with the allocation of land for small farmers. The only criterion for the allocation of communal land to small scale farmers, is that the applicant must be a resident of Olifantshoek and that he/she must pay the required fees, namely a joining fee of R50.00 and annual attorney's fees of R500.00. The Municipality does not have a policy to deal with the allocation of the communal land for farming. The absence of a policy itself constitutes improper conduct and maladministration.

10.2.2 The allegation that the furniture of the Mayor's parents was moved with a Municipal truck is substantiated. The instruction to move the furniture of the Mayor's parents came from the office of the Municipal Manager following the Mayor's claim that she had authority from the former Premier following threats to her family. However, the Premier did not have such authority.

10.2.3 Public property must be used for public purposes unless there is specific authority for using such property for private purposes. In the absence of the said authority, the Municipality's action in this instance constitutes improper conduct and maladministration.

10.2.4 The allegation that the Manager in the Mayor's office used municipal funds to buy liquor for his son's birthday is not substantiated by evidence, which shows that he bought the liquor with his own money.

10.2.5 No evidence could be found to substantiate the allegation that the Mayor told the mines that there was no problem of unemployment while unemployment is very high in the area. The evidence only supports a finding that the Municipality failed to follow up with the mines in the area, on what their plans are with regard to unemployment. In the light of chronic unemployment in the area, the omission constitutes maladministration.
10.2.6 The allegation that the Mayor did nothing about Mr Motsoare’s illegal occupation of and building on municipal land, is not substantiated by evidence. The Municipality obtained a court interdict against Mr Motsoare which stopped him from building on the land he occupied illegally. He was ordered to demolish what he has built already.

10.2.7 The allegation regarding the Mayor and Mr Phuti receiving social grants is untrue. SASSA, through its Regional Office, confirmed that the Mayor does not receive any Social Grant. It was also confirmed that Mr Charles Phuti does not and has never received a Social Grant.

10.2.8 It is true that Mr Hantise bought his house from Ms Visagie in 2007. However, there was no evidence suggesting impropriety. Furthermore, the transaction did not violate the 8 year bar on alienation of RDP houses as Ms Visagie had been allocated the house in the 90’s. In the Mayor’s case, the RDP house in question was allocated to her husband long before they got married and at the time, he qualified for it. The allegation is accordingly, unfounded.

10.2.9 It is true that Mayor Diniza used her own private vehicle for several official trips after the Mayoral vehicle had been bought for her use. The Mayoral vehicle was bought in February 2012 but she claimed for S&T up to July 2012. The Mayor Diniza’s claim after she got a state car constitutes improper conduct and maladministration. Her misrepresentation to my office about having stopped her claims when she got her Mayoral car also constitutes improper conduct and maladministration.

10.2.10 In August 2011 and then in June 2012 two amounts of R5 000 and R10 000 respectively, were deposited into the bank account of the Mayor for fuel but there is no proof that the money was used for fuel, except R7 410 that was used for accommodation of the Mayor. A further amount of R5 000 was deposited into the bank account of the Mayor’s driver also in August 2011 for fuel and again no proof has been provided that the money was used for fuel.
A total of R12 590 is accordingly unaccounted for (i.e. R7 590 by the Mayor and R 5 000 by the Mayor’s driver). Mayor Diniza’s failure to account for the money constitutes improper dealings with respect to public money. The Mayor’s misrepresentation about stopping her claims when she got her Mayoral car is improper and constitutes maladministration. The Mayor’s conduct regarding the unaccounted R7 590 is also unlawful, improper and constitutes maladministration.

10.2.11 Evidence indicates that the credit card use was discontinued immediately upon receipt of the circular from the National Treasury, to that effect. The petrol card in the former Mayor’s name was used by the Mayor’s administration until a new petrol card was received. This action was justified since there was a need to have a petrol card.

10.2.12 The Mayor and her family were not paying any rent as they were staying at her husband’s cousin in Kuruman.

10.2.13 It is true that there is a case against the Mayor regarding possession of a stolen water tank. The case is proceeding and the investigating officer is awaiting the decision on whether to prosecute or not.

10.2.14 The Mayor’s brother lives on a stand that belongs to the late brother of the Mayor’s husband. The connection of electricity and water was legitimate and it was paid for by Mayor Diniza.

10.2.15 No finding could be made on the alleged selling of stolen goods by Councillor Johnson due to lack of evidence. Both the Mayor and Mr Johnson denied the allegations.

10.3 On Maladministration allegations against the Municipality

10.3.1 The allegation that the Municipality paid for the CFO’s accommodation for 2009 to 2011 is valid. The Municipality’s explanation is that it paid the difference
between the rental amount of R3300 and R250 rental that staff is required to pay when renting state property. The CFO was according to the Municipality, only required to pay R250. The Municipality does not have a Rental Policy to regulate all leases by its employees. The failure by the CFO and then corporate services Manager, who is now the Municipal Manager, to develop a policy to regulate this matter as directed by the then Municipal Manager, in 2009, this constitutes improper conduct and maladministration.

10.3.2 The Auditor General’s audit of the Municipality’s financial records during the year 2010/2011 revealed that there was irregular expenditure of R6.4 million. Proper procurement processes were not followed in the spending of this amount. Council approved the expenditure as unauthorised, irregular or fruitless and wasteful expenditure.

10.3.3 The Auditor General found that an amount of R40 million was the subject of irregular expenditure for the year 2011/2012 but was not disclosed as such. The conduct of the Municipality in this regard constitutes maladministration.

10.3.4 Ms Michell Tatas inherited an RDP house from her late mother and then swapped the house with another. Her application for a Child Support Grant with SASSA was rejected as she was employed. It is therefore not true that Ms Tatas was allocated an RDP house or that she was receiving a Child Support Grant.

10.3.5 It is true that salaries of the five Ward Committee Members were stopped abruptly and arbitrarily. The decision to stop the said salaries is an administrative act and therefore the Municipality was obliged to ensure procedural fairness. The Municipality’s action was procedurally unfair, improper and constitutes maladministration.

10.3.6 It is true that the 2000 calendars procured for R27982.50 contained the wrong spelling of the Municipality’s name. The Service Provider re-branded some of the Calendars with the correct name but the Municipality failed to claim back and/or recover from the Service Provider the money for the Calendars that were never
corrected. This amounts to fruitless and wasteful expenditure and accordingly constitutes improper conduct and maladministration.

10.3.7 An amount of R25 000 was indeed contributed by the Municipality towards the funeral of the Speaker of Ga Segonyana Municipality. This contribution was contrary to the Indigent Policy of the Municipality which restricts such contributions to R1300 and only to residents of the Municipality. The Municipality’s conduct was unlawful, improper and constitutes maladministration.

10.3.8 There is no evidence to prove that there was branding of Municipal vehicles that took place.

10.3.9 It is true that the transfer amounts on certain houses reflect R1 as the purchase price. The explanation given is that these were given for free to the people by the Municipality.

10.3.10 The Municipality actually spent R16 922.40 on alcohol for its employees. As the alcohol resolution referred to by the Mayor as authority for the action was not produced, the conduct was accordingly, improper and constitutes maladministration.

10.3.11 It is true that an employee was asked to collect the furniture of the Municipal Manager. The allegation of intimidation was not backed by any evidence provided. As there is no written policy regulating the matter, the only finding that can be made is that this did not comply with the convention obtaining until then which required an employee to find his own service provider on the basis of a 50-50 cost sharing with the Municipality. Both the absence of a written policy and the deviation from convention constitute maladministration.

10.3.12 The Municipality did not pay a separate amount as transport allowance to the Municipal Manager for his trips from Kuruman to Kathu. However, his salary
package allows for the inclusion of a transport allowance. The Municipality lacks a Transport Policy provision that regulates this matter.

10.3.13 The allegation that Mr Loeto was paid any Acting Allowance during the period when he was on sick leave has not been substantiated by evidence. Evidence shows that someone else was appointed to act on the same position while Mr Loeto was on sick leave.

10.3.14 The allegation that Ms Joey Tuise was paid while on maternity leave was not backed by evidence and is accordingly unfounded.

10.3.15 The allegation that municipal funds to the tune of R67,000, were spent towards renovating a private residence where the Municipal Manager stays is partly substantiated. However, the municipality could not account for the money spent towards the renovations. Only two quotations of R16 111.55 and R17 580.00 as well as an invoice of R9 200.00 were provided. The invoice amount was paid. It could not be established whether the services rendered were equivalent to the money spent or whether the expenditure was justified or not, since the documents provided were not conclusive. The Municipality’s failure to develop a policy on the matter, its use of public funds without a supporting policy and its failure to account properly on how much was spent, constitute maladministration.

10.3.16 The allegation that Ms Ntokwe attended training every week is not substantiated by evidenced. Evidence shows that Ms Ntokwe attended courses regularly as other employees in line with the Municipality’s Work Place Skills Plan, which allows employees to attend training courses regularly. Ms Ntokwe attended training five (5) times between 01 July 2012 and 01 January 2013.

10.3.17 Mr Phuti applied for a low cost house when he was still unemployed and his application was approved. No evidence was found to substantiate the allegation that he bought a stand for R1.
10.3.18 Mr Setungwane is a Senior Ward Committee Administrator as confirmed by the letter of appointment and not a Personal Assistant to the Mayor. His duties include the coordination and managing of ward committee administration, provide secretarial function of all five ward committees, provide report of ward committees to council, coordinate ward meetings and related activities etc.

10.3.19 Mr Tiroyane is a Ward Counsellor in Deben, which falls under the Municipality and indeed he was paying Ward Committee Members their stipend in cash. There is no evidence to the contrary.

10.3.20 The allegation that Ward Committee Members were paid their R1 000 stipends in cash, is substantiated by evidence. The Mayor’s assertion, in her response, that the irregularity had been corrected is, untrue and her conduct in this regard is improper and constitutes maladministration.

10.3.21 The allegation that Counsellor Hantse was given a municipal bursary transcending his term as councillor is substantiated by evidence. Councillor Hantse was granted a one (1) year bursary in January 2011, about four months before expiry of his term in the light of the 2011 Local Government elections which took place in May 2011. While he remained in the employ of the Municipality after being reelected, the granting of the bursary on the eve of elections was an unnecessary risk as he may have failed to get enough votes to return to office. The Municipality’s conduct accordingly constitutes maladministration.

10.3.22 The allegation that the accident was accordingly reported. The Municipal Manager’s lack of knowledge of what happened concerning the accident was justified since the accident was reported to the then Manager in the Mayor’s Office who in turn reported directly to the former Municipal Manager. However, the latter never pursued the matter.
10.3.23 The accident was reported at the Danielskull Police Station and Case No. 39/01/2010 was issued. The accident was also reported to the Municipality’s insurer, Lion of Afrika. The allegation was, accordingly, not substantiated.

10.4 On maladministration allegations relating to tender irregularities

10.4.1 It is correct that the Housing Project was not completed and indeed only R1.9 Million was left from the project budget. The Municipality failed to monitor and measure the performance of Lebogang Afrika Afrika Suppliers. This contributed towards poor performance as the project could not be finalised within the contract period. The Municipality paid about 83% since the R1.9 million is 17% of the R11 million.

10.4.2 The Municipality also failed to stipulate the practical completion date in the contract and as such they could not invoke the penalty clause in which the contractor was supposed to pay a penalty of R1 600 per calendar day for each day beyond the completion date. In that regard the Municipality’s conduct constitutes Maladministration. The beneficiaries of the Housing Project were prejudiced as they continued to be without their houses.

10.4.3 The Municipality did not award any tender to Mr D Motsoare and was not linked to either Lebogang Afrika Suppliers or Khoisan Civils. However, the service provider who got more than one tender is Lebogang Afrika Suppliers, who was involved in two tenders, the Housing Project tender and the upgrading of the Oxidation Ponds contract. The latter was awarded to Khoisan Civils in which Lebogang Afrika Suppliers was a BEE partner.

10.4.4 It is true that three Security Companies were contracted by the Municipality, one of which is working in Olifantshoek. Proper procurement procedures were not followed in the procurement of these services. Furthermore, the Municipality paid Swandia Trading and Projects cc R36 676.44 more than the amount indicated on
the appointment letter. The Municipality's conduct in this regard, was unlawful, improper and constitutes maladministration.

10.5 On maladministration allegations relating to employment irregularities

10.5.1 The Municipality omitted to conduct proper checks on Mr Gilbert Motlhaping before employing him. He was indeed in the middle of a disciplinary hearing on allegations of theft before resigning from his previous job. The Municipality's conduct was reckless and contrary to the general norms and standards of recruitment.

10.5.2 Mr Motlhaping also did not meet the two basic requirements for the post as advertised, being a tertiary qualification in Administration and a Driver's Licence. The conduct of the Municipality was accordingly improper and constitutes maladministration.

10.5.3 The Municipality does not have a recruitment policy and this was found to be the reason behind some of the recruitment mistakes made by the Municipality.

10.5.4 Out of the 6 officials whose appointments and qualifications were looked into, the two Senior Managers, namely the Acting Corporate Services Manager and the Manager in the Mayor's office, do not possess the necessary qualifications to be in the relevant positions.

10.5.5 The Municipality's employment of the Acting Corporate Services Manager and the Manager in the Mayor's office without the necessary qualifications, constitutes improper conduct and maladministration.

10.6 On allegations of criminality involving external service providers

10.6.1 The Municipal Manager, who was then the Corporate Services Manager, failed to act on two possible cases of fraud involving Pastor David van der Westhuizen for collecting cash for drainage and Mr G van Wyk for electricity bridging, that
were reported to him by municipal staff with the necessary evidence. As a result of his failure to act the Municipality lost revenue. The Municipal Manager’s failure to act is very odd, suspicious and constitutes improper conduct and maladministration.

10.7 On matters transcending the remit of the municipality

10.7.1 No evidence was found to back the allegation that the local High School was experiencing textbook shortages resulting in children sharing books.

10.7.2 The allegation regarding health services deficiencies is valid. There is no fully pledged Hospital in Olifantshoek but a Community Health Centre and a Clinic. There is a serious shortage of staff, which leads to the provision of poor health services and there is a shortage of Ambulances. However, these matters fall outside the remit of the Municipality and have been brought to the attention of the health authorities.

10.7.3 It is true that a person lost an eye and another, his hearing, during a community march. The circumstances under which these injuries were sustained have been referred for an investigation by the Independent Police Investigation Directorate (IPID) together with other cases against the police. The IPID has advised that the cases have been referred to the Director of Public Prosecutions for a decision.

11. REMEDIAL ACTION

In terms of section 182(1)(c) of the Constitution and section 6(4)(c)(ii) of the Public Protector Act, the appropriate remedial action to be taken by the Gamagara Municipality, is as follows:
11.1 On allegations of systemic service failure affecting the broader Community

11.1.1 The Municipality has to construct the bridge on the access road already built, with the culverts that were bought during the implementation of the EPWP project in order to address the storm water issues within 6 months of the release of this report.

11.1.2 The Municipality must choose and act decisively on one of the following options:

11.1.2.1 Evict the illegal occupants and allocate the sites properly; or
11.1.2.2 Embark on an exercise of resettling people by moving their dwellings within the marked borders of the serviced sites in order to formalise their settlement; or
11.1.2.3 Re-survey the land according to the current settlement to formalise it.

11.1.3 The Municipality should then open up the streets by scraping the roads and clearly numbering the dwellings on the plots and mark them according to the corresponding number on the Local Government Plan to make it possible for Eskom to electrify the affected area.

11.1.4 As far as other areas without electricity, outside the illegally occupied land are concerned, the Municipality should make the necessary arrangement to provide electricity without delay.

11.1.5 The Municipality is to make sure that water and sanitation, which are basic rights, are provided for all the people of Olifantshoek.

11.1.6 The Municipality should determine the commencement date of the project being the construction of the Community Hall, Sports Complex and Youth Centre, from the GDF and then inform the Community accordingly. The Municipality should also ensure that the project commences on the identified date, however should there be changes the Community should be updated.
11.2 On maladministration allegations against Mayor

11.2.1 The Municipality must formulate a comprehensive and detailed policy with clear criteria of who does or does not qualify to use Municipal property and for what purpose, in order to regulate all Municipal properties including the Communal Farm and Municipal vehicles.

11.2.2 The Council through the office of the Mayor should continue to engage with the mining houses to consider local people for employment.

11.2.3 The Municipality should enforce the court order directing the Respondent (Mr Motsoare) to demolish all structures unlawfully built on the land and rehabilitate the land. This has to be done within six (6) months from the date of the final report.

11.2.4 The Mayor's driver, Mr Mohau Moorosi must also account for the amount of R5000 he received during the same period. Should he fail to account, he must refund the Municipality in full or the portion not accounted for.

11.2.5 The Municipality should look at empowering the Mayor to provide leadership to the administration and to ensure that proper policies are in place. A policy tool kit for municipalities is recommended.

11.3 On maladministration allegations against the Municipality

11.3.1 The Municipality should not rely too much on Council Resolutions for anything and everything or every time a particular decision is to be taken, but should establish policies and in particular the Accommodation Policy to deal with but not limited to staff related accommodation.

11.3.2 The Municipality needs to either investigate the irregular expenditure and apply for condonation from National Treasury based on the results of the investigation, or get the expenditure written off by Council with valid reasons. The Municipality
should bear in mind though that should the reasons not be valid the Auditor General can still keep the expenditure as irregular instead of allowing the writing off by Council.

11.3.3 The Municipality should reinstate the five (5) Ward Committee Members and should it be that they committed misconduct, proper procedures should be followed which may lead to disciplinary action being taken. The Municipality should also reinstate their salaries retrospectively pending its decision to institute disciplinary action.

11.3.4 The Municipality should ascertain and then recover from the service provider, the value of the Calendars that were not rebranded. Measures are to be taken to ensure that quality and quantity comply with tender/contract specifications before payment is made.

11.3.5 The Municipality should refrain from paying out funeral contributions towards individuals who are not indigent, are outside the Gamagara Municipal area and amounts that are more than what is specified in the Indigent Funeral Policy.

11.3.6 Other measures like monthly staff contributions towards alcohol should be encouraged in order to raise funds for their alcohol for the Christmas party. The Municipality should refrain from using public funds for alcohol.

11.3.7 The Municipality should establish a policy that will regulate the issue of removal of property of Municipal Officials, including Councillors and move away from “common practise”.

11.3.8 The Municipality does not have to pay Mr Loeto his acting allowance for the period he was sick since someone else was paid for acting on the same position.

11.3.9 A further investigation into the procurement processes of the renovations to a house where the Municipal Manager stays and similar matters will be conducted.
11.3.10 The Ward Committee Members should be made to open bank accounts where their monies should be deposited instead of cash payments.

11.4 On allegations of tender irregularities

11.4.1 In future, the Municipality should ensure that the commencement and completion dates of projects are clearly stated in the tender or contract documents as provided in Section 116(1) of the Municipal Finance Management Act.

11.4.2 The Municipality should recover overpayment made to one of the security companies known as Swamdia Trading and Projects CC.

11.5 On allegations of employment irregularities

11.5.1 The Municipality should appoint a qualified Corporate Services Manager since the current Acting Manager does not possess the necessary qualifications.

11.5.2 The Municipality should develop and implement a comprehensive Recruitment Policy which is in line with general norms and standards of recruitment.

11.5.3 The Municipality should fill all the Senior Management posts where the incumbents are acting such as Corporate Services, with permanent and suitably qualified individuals, within a period of six (6) months from date of this report.

11.6 On allegations of criminality involving external service providers

11.6.1 The Council should take action against the Municipal Manager for failing to act on the conduct of the Pastor for sewer drainage and Mr G van Wyk on the alleged bridging of meter readings, irrespective of the position he occupied when the matter was reported to him. The case against the Pastor and that of meter bridging, should be investigated and appropriate action be taken.
11.7 On allegations transcending the remit of the Municipality

11.7.1 A separate investigation relating to the Department of Health and the management of health services is in progress. The MEC for Health has been advised of this and other matters that emerged during the Public Protector Good Governance Week, 2012.

11.7.2 Regarding the police brutality allegations referred by the IPID to the NPA, the National Director of Public Prosecutions is to advise on the NPA's intention within 30 days of this report being issued.
12. MONITORING

The Public Protector will require:

12.1 An implementation plan from the Mayor and the Municipal Manager, indicating how the remedial action referred to in paragraph 10 above will be implemented, within 30 days from the date of this report;

12.2 Require a progress report from the Mayor and the Municipal Manager within 21 days of submission of the implementation plan referred to above; and

12.3 Monitor the progress made in this regard over regular intervals.

ADV T MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE: 25/09/2013

Assisted by: Mr. BG Sithole, Provincial Representative;
Adv KL Lekoba, Senior Investigator; and
Ms. KV Ratshire, Investigator;
Northern Cape