PIPES TO NOWHERE

Report on a systemic investigation into alleged maladministration by the Nala Local Municipality

Report No: 9 of 2013/14

PUBLIC PROTECTOR SOUTH AFRICA

REPORT NO 9 OF 2013/2014


*Pipes to Nowhere*

REPORT ON A SYSTEMIC INVESTIGATION INTO ALLEGED MALADMINISTRATION BY THE NALA LOCAL MUNICIPALITY
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Executive Summary

(i) "Pipes to Nowhere" is a report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, and section 8(1) of the Public Protector’s Act, 1994.

(ii) The report communicates the Public Protector’s findings and directives on remedial action following an investigation into a complaint lodged by a group of concerned citizens from Nala Local Municipality, in the Free State Province, on 14 March 2012, alleging maladministration and undue delay against Nala Local Municipality and the non-implementation of recommendations of a KPMG forensic investigation report submitted to the Nala Local Council during September 2010. The Public Protector decided to conduct a systemic investigation into the alleged maladministration against the Nala Local Municipality.

(iii) The Public Protector considered and investigated the following issues:

(a) Alleged lack of service delivery and maladministration;

(b) Alleged lack of Communication between the Municipality and the Community;

(c) Alleged incomplete and non-operational sewerage plant;

(d) Alleged unconnected flush system toilets, leading to implementation of the bucket system that is not regularly collected;

(e) Alleged sewerage spillage in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems;

(f) Alleged incomplete public park at the entrance of Monyakeng;
(g) Allegations that the new community hall was not built according to tender specifications;

(h) Allegations that Municipality is accepting tender bids from companies with invalid tax clearance certificates;

(i) Allegations of payment of R3 936 822.69 to a law firm to conduct the disciplinary hearing of the suspended Municipal Manager, Mr. D Shongwe;

(j) Alleged irregular payment of a R90 000.00 bonus to the new Municipal Manager, Mr. Chris Mokomela permanently appointed on 1 December 2012;

(k) Alleged irregular appointment of the Municipal Manager, Mr Chris Mokomela as acting, and subsequently as a permanent incumbent;

(l) Alleged irregular payments to officials on the Payroll system;

(m) Alleged unfinished housing project in Marantha; and

(n) Alleged lack of security at Mmabana School.

(iv) The investigation involved inspections *in loco*, correspondence and the perusal of documents received, including the KPMG Report. Meetings were held with the residents, municipal officials and other provincial authorities. Applicable legislation, policies and regulations were also considered and applied.

(v) The Public Protector makes the following findings:
(a) Lack of service delivery and maladministration

(aa) Most of the systemic service delivery failures and maladministration complaints are substantiated, including the failure to expeditiously implement the recommendations of the forensic investigation report of KPMG.

(bb) The Municipal Manager at the time, Mr. D Shongwe, (Former Municipal Manager) received the KPMG report during 2010 and failed to table the report in the Council or to release the findings of a KPMG forensic investigation that was conducted in respect of the Nala Local Municipality.

(cc) The executive summary of the report was only tabled in the Council on 14 November 2011, whereas the report was received by the Municipal Manager, Mr. D Shongwe on 20 September 2010. This is in contravention of section 6(2) of the Municipal Systems Act, 2000 (MSA) and section 32 of the MFMA and constitutes improper conduct and maladministration.

(dd) The Former Municipal Manager did not adhere to Supply Chain Management (SCM) Policies and in some cases engaged in incidents amounting to manipulation of the SCM Process such as in the case of the Bucket Eradication Phase 3 tender. This is in contravention of sections 62 and 95 of the Municipal Finance Management Act (MFMA), the Municipal SCM Regulations and section 217 of the Constitution of the Republic of South Africa (Constitution) and therefore constitutes improper conduct and maladministration.

(ee) The Former Municipal Manager, Mr. D Shongwe, the Mayor, Ms. Mpal Mogorosi and the Nala Council failed to take the required
steps to implement the recommendations of the KPMG report. This is in contravention of section 32 of the MFMA and section 152 of the Constitution and constitutes improper conduct and maladministration.

(ff) The Former Municipal Manager failed to ensure that disciplinary proceedings were conducted in respect of officials implicated in the KPMG report in accordance with the MFMA and other relevant prescripts. The conduct was unlawful, improper and constitutes maladministration.

(gg) The Former Municipal Manager, Mr. D Shongwe, the Mayor of the Council, Ms. Mpai Mogorosi and the Nala Local Municipal Council failed to ensure that the use of a government credit card for private expenditure by the Speaker of the Council Ms. N Mashiya and the allocation of public funds by the ex-mayor Ms. Mpai Mogorosi to build a wall at a private home, were referred to the Council for investigation in terms of section 32 of the MFMA. This constitutes maladministration.

(b) Lack of Communication between the Municipality and the Community

(aa) The Speaker of the Nala Local Municipal Council, Ms. N Mashiya and the Council did not fulfill their constitutional duties in terms of section 152 of the Constitution, section 16 of the MSA and section 19(3) of the Structures Act to ensure public participation by the community in the affairs of the Municipality, resulting in a major breach of trust between the people and the municipality that further led to protest action by the community. The conduct of the Speaker of the Council Ms. N Mashiya was improper and constitutes maladministration.
(c) **Incomplete and non-operational sewerage plant**

(aa) The allegation was confirmed during the Public Protector's two visits to the plant and conceded by the Municipal authorities conceded to the fact during meetings with them.

(bb) The KPMG forensic investigation report's finding that the defective situation was due to the Former Municipal Manager's failure to adhere to the Supply Chain Management Policy and other prescripts were substantiated by documentary evidence relating to the relevant procurement process.

(cc) This is in contravention of sections 62 and 95 of the MFMA, the Municipality Supply Chain Management Regulations and section 217 of the Constitution, which essentially prescribes an open, competitive and cost effective procurement process. As a result the cost had escalated enormously. The conduct was accordingly unlawful, improper and constitutes maladministration.

(d) **Unconnected flush system toilets, leading to implementation of the bucket system that is not regularly collected**

(aa) The allegation regarding unconnected flush toilets was confirmed during the first *inspection in loco*, which included a visit to the home of a senior citizen frustrated by a dysfunctional bucket system while having a waterborne sanitation system that has become a white elephant. The pipes of some of the toilets are not connected to the main system. In addition the entire piping system has several defects, including inferior piping that is inadequate to support the sewerage.
(bb) The evidence indicates that the company responsible for the incomplete and non-operational flush toilet system was paid for work not done resulting in irregular, fruitless and wasteful expenditure. This is regarded as financial misconduct by the Former Municipal Manager, Mr D Shongwe.

(cc) The situation was exacerbated by the Municipality’s failure to implement the KPMG report. Had the report been implemented earlier, some of the irregular payments could have been reversed and/or assets of wrongdoers targeted.

(dd) The Municipal Manager’s conduct is in contravention of sections 62 and 95 of the MFMA, the Municipality Supply Chain Management Regulations and section 217 of the Constitution. Such conduct is accordingly unlawful, improper and constitutes maladministration.

(e) Sewerage problems in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems.

(aa) The sewerage spillage had been temporarily rectified when the area was visited by the Public Protector on 19 April 2012. However, evidence indicated that the spillage was cleared up shortly before the Public Protector’s visit.

(bb) The failure of the Municipality to attend to the complaints in respect of the sewerage spillage expeditiously is in contravention of section 152 of the Constitution that requires local government to ensure the provision of services to communities and to ensure a safe and healthy environment.
(cc) However, a long term solution to the spillage is linked to corrective action regarding the sewage purification plant and the piping in the entire area. This requires major financial assistance from the provincial and national governments.

(dd) The dysfunctional bucket system and the conduct of the Municipal Manager, Mr. D Shongwe and the Council of Nala is in contravention of section 152 of the Council in that sustainable services are not delivered and a healthy and safe environment for the community is not created. This constitutes maladministration.

(f) Incomplete public park at the entrance of Monyakeng

(aa) An incomplete park does indeed exist. However, the Municipality did not build the park but received it as a donation from the provincial government.

(bb) The project was part of Arbor Week celebrations by the Department of Agriculture, Fisheries and Forestry during 2007. The action plan and budget for the week was obtained from the Department of Agriculture, Fisheries and Forestry.

(cc) The Council took a decision during 2006 to donate land for the project and the Department of Agriculture, Fisheries and Forestry donated trees to be planted. It was the responsibility of the community to plant and maintain the trees in terms of a Council decision. But the failure to communicate such decision and to take measures to address the situation in the absence of any action was improper and constitutes maladministration.

(g) New community hall allegedly not built according to tender specifications
(aa) The Multi-Purpose Centre was indeed erected.

(bb) While the information obtained during the investigation indicates that the funds allocated through the Municipal Infrastructure Grant were insufficient to complete the project as specifications were altered, which therefore constitutes poor planning and accordingly, maladministration.

(cc) The Department of Human Settlements, undertook in writing to Mr. Chris Mokomeia that funds will be allocated in the 2013/2014 financial year to complete the building according to original specifications with funds transferred during the following financial year. The Municipal Manager Mr. D Shongwe did not ensure that funds were requested from Provincial Government to ensure the completion of the building according to original specifications.

(h) Alleged Municipality’s irregular acceptance of tender bids from companies with invalid tax clearance certificates

(aa) The allegation regarding the acceptance of bids with invalid tax clearance certificates is substantiated, in that the names on the tax certificates differed from the names on the tender bid documents.

(bb) Treasury Regulation 16A9.1(d) requires that accounting officers of municipalities and municipal entities must ensure that the preferred bidders’ tax matters are in order and the municipal rates and taxes or municipal charges owed by the preferred bidder or any of its directors to the municipality or municipal entity, or to any other municipality or municipal entity, are not in arrears for more than three months.
(cc) Treasury Regulation 16A9 further requires that accounting officers of municipalities and municipal entities must ensure that the names of the preferred bidders and their directors, trustees or shareholders are not listed on the Register for Tender Defaulters and the Database of Restricted Suppliers and a process must be conducted to determine whether the preferred bidders have the capability and ability to execute the contract.

(dd) The failure by the Municipal Manager to properly assess bids during December 2012 in terms of SCM legislation and policies constitutes maladministration.

(i) Alleged payment of R3 936 822.69 to a law firm to conduct the disciplinary hearing of the suspended Municipal Manager.

(aa) The evidence shows that the Municipality spent R2 800 000.00 as fees for a law firm instructed to, implement the KPMG report by:

i. recovering funds in the amount of R230,000.00 from the former Mayor for inappropriately using said funds to erect a wall at a private residence;

ii. recovering funds in the amount of R10,000.00 from the current Speaker used inappropriately for private purposes;

iii. ensuring that disciplinary and criminal charges against the Former Municipal Manager, Mr. D Shongwe and Former Manager Technical Services for alleged theft, fraud, corruption and other criminal charges were instituted; and
IV. Advising whether appropriate disciplinary and criminal action needs to be taken against the Former Municipal Manager, Mr. D Shongwe.

(bb) Evidence further shows that the Municipality approached COGTA during July 2012 for financial assistance in respect of legal fees for the implementation of the KPMG report, amounting to R900 000.00, that could not be covered by its own budget.

(cc) The allegation that an amount of R3 936 822.69 was paid to a law firm solely to conduct the disciplinary hearing of the suspended Municipal Manager is, accordingly, not substantiated.

(j) Alleged irregular payment of R90 000.00 as bonus to the Municipal Manager

(aa) The Municipal Manager was paid the alleged bonus on 25 January 2013, after 2 months of employment.

(bb) The Public Protector is satisfied with the explanation that this was an administrative error in the capturing of the Municipal Manager’s salary structuring instructions at the Municipality’s payroll section. Evidence shows that the Mayor of the Council was informed about the discrepancy on 28 January 2013 and the error was corrected before the Public Protector’s second visit to Naia on 6 February 2013, when this additional complaint was lodged.

(cc) The amount was repaid on 4 February 2013 and proof was submitted to the Public Protector.
(k) Alleged irregular appointment of the Municipal Manager as an acting and thereafter a permanent incumbent

(aa) No evidence supports the allegation that the Municipal Manager's secondment to and appointment at the Municipality was irregular.

(bb) The Municipal Manager, Mr. Chris Mokomela was seconded as Acting Municipal Manager from COGTA on request of the Nala Local Municipal Council for three periods of three months in terms of section 54A of the MSA. Council Resolutions were taken to request secondment and to extend the secondment after the first three months, during January 2012 and during June 2012 respectively.

(cc) The post of Municipal Manager was advertised by the Nala Local Municipal Council. Mr. Chris Mokomelo, then Acting Municipal Manager applied, was interviewed and appointed.

(dd) Council resolved to appoint the Acting Municipal Manager and the letter of appointment was signed by the MEC of COGTA. He was appointed permanently as a municipal employee as of 1 December 2012.

(l) Alleged irregular payments to officials on the Payroll system

(aa) The KPMG report indicated that possible discrepancies and overpayments exist on salary payments to officials.

(bb) The Municipal Manager decided to do a total audit on salary payments by the Municipality. Numerous cases of maladministration such as double salaries, irregular bonuses being paid were found.
(cc) Due to the discrepancies found, the Municipality requested VIP payroll on 5 October 2012 to submit a proposal for the conducting of a forensic audit of the payroll system to determine the extent of the misappropriation of funds on the payroll system.

(dd) The irregularities in the payments by the then Municipal Manager on the payroll system to officials are in contravention of section 6 of the MSA and constituted maladministration.

(m) **Unfinished housing project in Marantha**

(aa) The evidence indicates that the Marantha Housing Project is a Land Restitution project. The land claim was finalised and the project for the building of units for the successful claimants was registered with the Free State Department of Human Settlements on 14 April 2009.

(bb) Only four units to date were completed and the appointed contractor abandoned the site. Infra-structure development of the site was also not completed.

(cc) The Municipality will receive R2.8 million from the Free State Department of Human Settlements for the financial year 2013/14 for infra-structure development in Marantha. The building of the remaining units will commence as soon as the infra-structure is completed. The Special Investigative Unit is currently investigating all contractors that were appointed by the Free State Department of Human Settlements who did not complete projects.

(n) **Alleged lack of security at Mmabana School**
(aa) Evidence indicates that the Free State Department of Education is responsible for the security at the school.

(bb) After the commencement of the Public Protector's investigation, the Department of Education took corrective measures at the school and the security was improved.

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

(a) The Municipal Manager should ensure that:

(aa) The Municipality's supply chain management framework and practices are aligned with the provisions of the applicable legislation in respect of Supply Chain Management as well as section 217 of the Constitution;

(bb) Supply Chain Management Officials of the Municipality and the members of bid committees are properly trained in respect of the proper application of the procurement system as contemplated by the provisions of section 217 of the Constitution, the MFMA, Treasury Regulations and prescripts and the relevant procurement policies;

(cc) All officials implicated in the forensic investigation are expeditiously charged in terms of the disciplinary policy of the Municipality. An evaluation by the Municipality of the KPMG forensic report will reveal the names of further officials to be charged;
(dd) The irregularities in the payments by the then Municipal Manager on the payroll system to officials is investigated in terms of the MFMA and if the investigation warrants such a step, disciplinary proceedings must be instituted against the officials responsible in accordance with systems and procedures referred to in section 67 of the MSA, read with Schedule 2 of that Act;

(ee) The irregular payments by the then Municipal Manager on the payroll system are recovered from recipients of irregular payments;

(ff) All irregular and fruitless or wasteful expenditure in terms of the forensic report is recovered from implicated defaulting contractors and implicated officials;

(gg) The irregular and fruitless or wasteful expenditure by the Speaker of the Council must be referred to the Council for an investigation in terms of section 32 of the MFMA and if the investigation warrants such a step, disciplinary proceedings must be instituted against the Speaker in accordance with systems and procedures referred to in the MFMA;

(hh) The irregular and fruitless or wasteful expenditure by the ex-mayor of the Council must be determined and recovered; and

(ii) The lack of technical capacity at the Municipality in respect of project management and project monitoring is addressed urgently.

(b) **The Nala Local Municipal Council should ensure that:**
(aa) The Council and Municipality adhere to the objects of local government as set out in section 152 of the Constitution;

(bb) The Municipality adheres to the prescripts of section 217 of the Constitution and contract for goods or services in accordance with a system that is fair, equitable, transparent, competitive and cost-effective;

(cc) The Municipality’s supply chain management framework and practices are aligned to the provisions of the applicable legislation in respect of Supply Chain Management as well as section 217 of the Constitution;

(dd) All irregular and fruitless or wasteful expenditure in terms of the forensic report is recovered from implicated defaulting contractors and implicated officials;

(ee) The recommendations of the KPMG forensic report are fully implemented expeditiously;

(ff) Quarterly reports are submitted to the Public Protector on the status of criminal investigations in respect of officials and companies implicated;

(gg) Quarterly reports are submitted to the Public Protector on the status of civil proceedings in respect of wasteful and irregular expenditure;

(hh) The irregular and fruitless or wasteful expenditure by the Speaker of the Council is investigated in terms of section 32 of the MFMA and if the investigation warrants such a step, disciplinary proceedings must be instituted against the Speaker
in accordance with systems and procedures referred to in the
MFMA; and

(ii) The Speaker of the Nala Local Municipal Council and the Council
fulfil their constitutional duties in terms of the Constitution, MSA
and Structures Act in respect of public participation. The Council
must submit the programme for public participation for the
2013/14 financial year to the Public Protector. The Council must
also submit attendance registers for all meetings held.

(c) The Member of the Executive Council for the Free State
Department of Co-operative Governance, Tradition Affairs and
Human Settlements should ensure that:

(aa) The support needed by the Municipality to strengthen its capacity
is assessed and the challenges experienced by the Nala Local
Municipality in general and specifically in respect of the
eradication of the bucket system and the waste water treatment
plant is addressed with the National Government and the
National Council of Provinces;

(bb) The Turn-around Strategy, submitted to the Council after
performance assessment of the Municipality in 2010 by National
and Provincial Departments of Cooperative Governance and
Traditional Affairs is implemented and the action plan for
implementation monitored;

(cc) The implementation of the recommendations of the KPMG
forensic report is undertaken and civil action in respect of
defaulting contractors and officials for recovery of fruitless and
wasteful expenditure is instituted expeditiously; and
(dd) Regular follow up with the National Prosecuting Authority on the investigation and prosecution in terms of the KPMG forensic report.
REPORT ON A SYSTEMIC INVESTIGATION INTO ALLEGED MALADMINISTRATION BY THE NALA LOCAL MUNICIPALITY

1. INTRODUCTION

1.1 "Pipes to Nowhere" is a report of the Public Protector on a systemic investigation in terms of section 182 of the Constitution and Section 8(1) of the Public Protector Act, 1994.

1.2 It is submitted in terms of section 182(1)(b) of the Constitution of the Republic of South Africa Act, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994 to the:

1.2.1 The Mayor: Nala Local Municipality, Mr. T A Mogoje;

1.2.2 The Speaker of the Nala Local Council, Ms. N Mashiya;

1.2.3 The Municipal Manager: Nala Local Municipality, Mr. B C Mokomela;

1.2.4 The Member of the Executive Council (MEC) for Co-Operative Governance and Traditional Affairs, Free State Provincial Government, Ms. M Mlamleli;

1.2.5 Head of the Free State Department (HOD) of Co-Operative Governance and Traditional Affairs (COGTA), Mr. K Ralikontsane; and

1.2.6 The Free State Premier, Mr. S E Magashule

1.3 The report is also provided to the Complainants in terms of section 8(3) of the Public Protector Act.

1.4 It communicates the Public Protector’s findings and directives on remedial action following a systemic investigation into a complaint lodged by a group of concerned citizens from Nala Local Municipality on 14 March 2012,
alleging maladministration and undue delay against Nala Local Municipality and the non-implementation of recommendations of a KPMG forensic investigation report submitted to the Nala Local Council during September 2010.

2. THE COMPLAINT

2.1 The complaint was lodged on 14 March 2012 by a group of concerned Citizens from Nala Local Municipality (the Complainants), who approached the Public Protector with allegations of maladministration and undue delay in respect of Nala Local Municipality.

2.2 The Complainants alleged a lack of service delivery and maladministration, mainly with reference to a failure to implement a KPMG Forensic Audit Report dated 20 September 2010 and tabled at the Nala Local Municipal Council. It was specifically alleged that not all officials responsible had been held accountable for actions as indicated in the report, which shows impunity in respect of accountability. The allegation of impunity was also made in regard to failure to recover municipal funds paid unlawfully to contractors for work not done or projects incorrectly executed.

2.3 The Complainants also alleged lack of action by Nala Local Municipal Council or the Free State Provincial Executive in respect of implementation of recommendations in the same report, mainly relating to disciplinary action, criminal action and recovery of municipal funds paid out wrongfully.

2.4 The issue of sewage spillage and an alleged dysfunctional bucket sewage system featured prominently in the allegations.

2.5 Concerns were raised by the community about the lack of communication by the Acting Municipal Manager to the community.
2.6 The Public Protector was specifically invited to come to the community to observe for herself the indignity and health hazards the community was subjected to, particularly due to a dysfunctional bucket toilet system and a sewage spillage that had engulfed large portions of the community, including people’s homes.

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

3.1 The Public Protector was 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 as 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 appropriate alternative dispute resolution mechanism.

3.4 The Public Protector may investigate any alleged improper or dishonest conduct with respect to public money,¹ any alleged offence created by specified sections of the Prevention and Combating of Corrupt Activities Act, 2004 with respect to public money,² and any alleged improper or

unlawful receipt of improper advantage by a person as a result of conduct by various public entities or functionaries.3

3.5 Nala Local Municipality is an organ of state and its conduct amounts to conduct in state affairs. The matter, accordingly, falls within the Public Protector’s mandate.

3.6 The jurisdiction of the Public Protector was not disputed by any of the parties.

4. **THE ISSUES CONSIDERED BY THE PUBLIC PROTECTOR**

4.1 The Public Protector considered and investigated the following issues:

4.1.1 Lack of service delivery and maladministration;

4.1.2 Lack of communication between the Municipality and the community;

4.1.3 Incomplete and non-operational sewerage plant;

4.1.4 Unconnected flush system toilets, leading to implementation of the bucket system that is not regularly collected;

4.1.5 Sewerage problems in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems;

4.1.6 Incomplete Public Park at the entrance of Monyakeng;

4.1.7 Allegation that the new community hall was not built according to tender specifications;

4.1.8 Allegation that Municipality is accepting tender bids from companies with invalid tax clearance certificates;

3 Sections 6(4)(a)(iv) and 6(5)(c), Public Protector Act, 1994
4.1.9 Allegations of payment of R3 936 822.69 to a law firm to conduct the disciplinary hearing of the suspended Municipal Manager;

4.1.10 The alleged irregular payment of R90 000.00 as a bonus to the Municipal Manager;

4.1.11 The Appointment of the Municipal Manager as an acting and permanent incumbent is irregular;

4.1.12 Allegations of irregular payments to officials on the Payroll system;

4.1.13 Unfinished housing project in Marantha; and

4.1.14 Alleged lack of security at Mmabana School.

5. THE INVESTIGATION

5.1 Investigation approach

5.1.1 If the Public Protector decides to conduct or proceed with an investigation, the mandate given to her requires of her to conduct an enquiry on the merits of the complaint that transcends lawfulness and include considerations of equity, good administration and proper conduct. This investigation was conducted in terms of section 7 of the Public Protector Act and comprised of three components, namely:

5.1.1.1 An enquiry into what happened;

5.1.1.2 Establishing what should have happened; and

5.1.1.3 Determining if there is a discrepancy between what happened and what should have happened and;

5.1.1.4 Determining appropriate remedial action.
5.2 Key sources of information

5.2.1 Meeting with Complainants on 18 April 2013;

5.2.2 KPMG forensic investigation report dated 20 September 2010;

5.2.3 Inspection *in loco* on 18 April 2012;

5.2.4 Correspondence with Free State Premier and Municipal Manager, Nala Local Municipality;

5.2.5 Inspection *in loco* on 30 May 2012;

5.2.6 Further correspondence with the Municipal Manager, Nala Local Municipality;

5.2.7 Meeting with Municipal Manager and Chief Financial Officer of Nala Local Municipality and Complainants on 27 November 2012;

5.2.8 Further correspondence with the Municipal Manager, Nala Local Municipality;

5.2.9 Responses in respect of the Marantha Housing Project;

5.2.10 Response in respect of lack of security at Mmabana School;

5.2.11 Meeting between Public Protector and Complaints on 6 February 2013;

5.2.12 Meeting between Public Protector and Municipal Manager on 6 February 2013;

5.2.13 Inspection *in loco* on 6 February 2013;
5.2.14 Meeting between Public Protector, Community and Municipal Manager after *inspection in loco*;

5.2.15 Meeting with the Municipal Manager on 15 February 2013;

5.2.16 Interventions by National and Provincial Departments of Co-operative Governance and Traditional Affairs; and

5.3 Legislation and other prescripts

5.3.1 The Constitution of the Republic of South Africa, 1996;

5.3.2 The Local Government Transition Act, 1993;

5.3.3 Local Government: Municipal Finance Management Act, 2003 (MFMA) and Municipal Supply Chain Management Regulations;

5.3.4 Duties of Municipal Accounting Officer in terms of the Municipal Systems Act (MSA) and MFMA;

5.3.5 Appointment of the Municipal Manager in terms of the MSA;

5.3.6 Duties of the Council in terms of the Local Government Municipal Structures Act, 1998 (Structures Act);

5.3.7 Duties of the Council in respect of public participation in terms of the MSA;

5.3.8 Duties of the provincial government in terms of the MFMA; and

5.3.9 Code of Conduct for Councillors in terms of section 70 and Schedule 1 of the MSA.
6. EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

6.1 Meeting with Complainants on 18 April 2012

6.1.1 The Public Protector paid a visit to Nala on 18 April 2012 at the request of the Complainants.

6.1.2 During a meeting with the Complainants and community members the main issues were identified:

(a) Alleged lack of service delivery and maladministration, mainly with reference to a failure to implement a KPMG Forensic Audit Report dated 20 September 2010 and tabled at the Nala Local Municipal Council. It was specifically alleged that not all officials responsible had been held accountable for actions as indicated in the report, which shows of impunity in respect of accountability. It was also alleged that the municipality had failed to recover monies owed by service providers that had defrauded government by claiming and getting paid for work not done or incomplete projects;

(b) Alleged lack of action by Nala Local Municipal Council/Free State Provincial Executive in respect of implementation of recommendations in same report; and

(c) Concerns were raised by the community regarding the lack of communication by the Acting Municipal Manager to the community.

6.2 KPMG forensic investigation report dated 20 September 2010
6.2.1 The Executive Summary of the KPMG report only was tabled in the Nala Local Municipal Council on 14 November 2011. The KPMG investigation covered the financial years 2008/2009 and 2009/2010.

6.2.2 The KPMG report investigated a total of 51 contracts. The report found that in 25 of the contracts the Supply Chain Management Policy (SCM) was not adhered to or ignored. The report further found that in seven of the contracts investigated there were incidents that would amount to the manipulation of the SCM process.

6.2.3 The KPMG report also found that there was a lack of performance by contracted parties, where projects were abandoned and left incomplete. In some instances the municipality appointed new contractors to complete the projects at extra costs.

6.2.4 The KPMG report further found that documentation used in the tender process was amended in some instances. The amendments resulted in the appointment of parties who would not have qualified initially.

6.2.5 The KPMG report further indicated that documents may have been purposely destroyed; breaches of internal control procedures and contraventions of the Municipal Finance Management Act (MFMA) were found.

6.2.6 The KPMG report found that companies handed contracts by the Municipality worth R70 million to implement the flush toilet system in Monyakeng did not complete the project. The municipality had spent an additional R30 million on the flush toilet system project and the project remained incomplete.

6.2.7 During January 2007 the Municipality still had to eradicate the bucket system in respect of 9,026 households. The Municipality had
R7,374,437.00 available from MIG's for the financial year 2006/2007. A further R74,413,327.00 was allocated to the Municipality through MIG specifically for bucket eradication.

6.2.8 A total amount of R81,787,764.00 was available during the 2007/2008 financial year for the bucket eradication projects and if the amount was expended regularly a total of 2,501 household would still have to be serviced.

6.2.9 The report further revealed that a former Mayor used R230,000.00 from public funds to erect a security wall around a private home.

6.2.10 The report found that the Speaker of the Council used a municipal credit card to buy alcohol to the amount of R10,000.00.

6.2.11 The report also revealed that R160,477.00 worth of fuel was used in 207 vehicles that did not appear on the asset register of the Nala Local Municipality.

6.2.12 The report recommended that its findings be submitted to the National Prosecuting Authority so that officials responsible for financial mismanagement can be charged.

6.3 Inspection in loco: 18 April 2012

6.3.1 After the meeting between the Complainants and the Public Protector on 18 April 2012, an inspection in loco with the Complainants was conducted and the following were observed:

(a) Unfinished housing project in Marantha, Wesselsbron;

* Bucket Eradication; Status & Action Plans; Presentation to Select Committee on Land & Environmental Affairs on 23 February 2007
(b) Incomplete Public Park at the entrance of Monyakeng;

(c) Sewerage spillage in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems;

(d) Alleged lack of security at Mmabana School in Monyakeng;

(e) Unconnected flush system toilets, leading to implementation of bucket system that is not regularly collected; and

(f) Incomplete and non-operational sewerage plant.

6.3.2 During the inspection in loco, visits were conducted at a household where a grandmother vented her frustration at a dysfunctional bucket system while having a toilet that wouldn’t flush because it had pipes to nowhere.

6.3.3 The sewerage spillage in the area of Phase 1 of Monyakeng was attended to very recently and is situated next to the local school. The residents complained about the odour and sewerage spillages near their homes making life unbearable and posing health hazards.

6.3.4 The municipality conceded that the drying up was a temporary measure as the entire system needed overhauling and that the overhauling, which incorporated the finalization of the building of the purification plant and re-piping in places where there were pipes to nowhere or inferior quality piping, required an injection of R200 million.

6.3.5 The Municipality indicated that funds, to rectify the sewerage system were not available from municipal funds and a request for assistance was submitted to Provincial and National Government.
6.3.6 The Public Protector was informed that service providers contracted to install the sewage system had allegedly been paid and the Municipality lacked the technical capacity at the time to conduct proper quality assurance before payment was made.

6.4 Correspondence with the Municipal Manager, Nala Local Municipality

6.4.1 The Municipal Manager was requested in writing on 19 April 2012 to respond to the allegations of the Complainants.

6.4.2 The Municipal Manager responded on 7 May 2012 as follows:

(a) The cable for the waste water treatment plant was stolen and a new cable was procured. The financial implication was R109, 000.00.

(b) The aerators at the waste water treatment plant were repaired at a cost of R90, 000.00.

(c) A cost evaluation was done for the repair of the electrical panel at the waste water treatment plant and the amount required is R410, 000.00.

(d) Security was procured to guard the waste water treatment plant at a cost of R50, 000.00. Shift schedules are in place and routine checks are done by the security company appointed.

(e) Service providers were appointed at a cost of R21, 000.00 for the suction of sludge at the waste water treatment plant.

(f) In respect of the regular removal of buckets an additional 13 contract workers were appointed and one additional tractor and suction trailer added. The schedule was changed to twice weekly and the 2000 households were divided into four sections.
6.4.3 The Municipal Manager further reported that the Municipality is facing severe financial challenges. Previous irregular expenditure resulted in the current situation and the Municipality is almost bankrupt.

6.4.4 The Municipal Manager further reported that the lack of technical capacity at the Municipality resulted in problems in respect of project management and project monitoring.

6.5 Inspection in loco: 30 May 2012

6.5.1 An inspection in loco was undertaken on 30 May 2012. The situation at the waste water treatment plant had not changed. The Complainants indicated that they have not observed any security at the plant.

6.5.2 The sewerage system is unconnected and the KPMG report is crucial as to the amount of money spent on a system that does not operate. To date officials implicated in the report are still employed by the municipality without being charged or suspended to date.

6.5.3 The Complainants indicated that a second tractor was not procured by the Municipality, the 13 additional members were not appointed and buckets are removed on a weekly basis.

6.5.4 The Complainants reported that the Municipality did meet with members of the Community in respect of the unfinished housing project at Marantha and a task team was appointed to oversee the completion of the project.

6.5.5 The Complainants could not submit any further information on the unfinished park at the entrance to Monyakeng. They reported that the project commenced in 2008 when the Department of Water Affairs donated funds. The then Mayor of Nala was in charge of the project.
6.5.6 The Complainants raised a further issue in respect of the Multi-Purpose Community Centre. They alleged that the new Community Hall was not built according to tender specifications.

6.5.7 The Complainants further raised the issue of the legality of the appointment of the acting Municipal Manager. It was submitted that the appointment was contrary to legislative prescripts.

6.6 Further correspondence with the Municipal Manager, Nala Local Municipality

6.6.1 Further correspondence was addressed to the Municipal Manager during June 2012 and a response was requested on the progress of the implementation of the KPMG report recommendations as well as other issues raised by the Complainants.

6.6.2 The Municipal Manager responded that disciplinary action was taken against the suspended Municipal Manager who was dismissed by the disciplinary committee.

6.6.3 The Municipal Manager further indicated that disciplinary action was instituted against the Fleet Officer of the Municipality.

6.7 Meeting with Municipal Manager and Chief Financial Officer of Nala Local Municipality and Complainants on 27 November 2012

6.7.1 The Public Protector met with the Complainants, the Municipal Manager, a Consultant appointed by the Free State Department of Co-operative Governance to assist the Municipality with financial matters and the Chief Financial Officer of the Municipality on 27 November 2012.
6.7.2 The purpose of the meeting was to address the allegation that the Municipality does not communicate with the community. The Complainants indicated that although ward committees were elected no meetings at that point had been held.

6.7.3 The Complainants conceded that the task of the officials at the municipality was to report to the Council and the Council through the Speaker should communicate with the community.

6.7.4 The Municipality responded that there was a constitutional obligation on the part of the Council to communicate with the community. The Councillors were all trained during October 2012 on their Constitutional Duties, Governance and Ethics issues. Community meetings were held in Bothaville and Wesselsbron during November 2012. All Councillors were present and the community was afforded the opportunity to pose questions to the Councillors.

6.7.5 One of the Complainants indicated that he was not aware of the meeting that was held. The other Complainants did not comment on the meeting that took place during November 2012 in Wesselsbron.

6.7.6 The Municipality further submitted that a further two meetings took place with the community members residing in informal settlements to explain the plans in respect of their informal settlements. Council meetings are also advertised and open to all community members.

6.7.7 The Municipality acknowledged that up to November 2012 a lack of communication existed in Nala. This had been addressed with the training of the Councillors and two mass meetings that had taken place. The Municipal Manager submitted the schedule for future meetings with the Community.
6.7.8 The Municipality has referred the KPMG forensic report to the Auditor-General and the HAWKS. Criminal proceedings commenced and a dossier opened with SAPS (HAWKS Pretoria) Case No. CAS167/01/2012. A task team of the justice cluster was established and all the allegations are being investigated by the Hawks for criminal prosecution.

6.7.9 The Complainants responded that they did receive an investigation progress report from the Hawks the preceding week. The Complainants want progress on the disciplinary hearings.

6.7.10 The Municipal Manager indicated that the previous Municipal Manager was internally charged. The result of the hearing was dismissal of the previous Municipal Manager.

6.7.11 The Municipal Manager further submitted that the KPMG forensic report dated 20 September 2010 and the previous Municipal Manager did not act on the recommendations.

6.7.12 The Municipal Manager further submitted that it was difficult to charge employees now, due to the rule in the labour legislation that an employee should be charged within six months of the Employer being aware of the alleged transgression.

6.7.13 The Chief Financial Officer reported that the Municipality had as a result of the KPMG report started a total audit on their salary payments. They had identified numerous cases of maladministration such as double salaries, bonuses among others being irregularly paid. As new evidence was found, the Municipality immediately started disciplinary processes.

6.7.14 The Municipal Manager indicated that the civil process to recover monies irregularly received was a tedious process that also frustrated him. The specific case against an employee who cashed cheques to the amount of
R645, 000.00 was set down in criminal court for hearing on 23 to 25 January 2013.

6.7.15 The Chief Financial Officer of the Municipality appealed to the Complainants to report and submit evidence on any member whom they were of the opinion should be disciplined.

6.7.16 The Municipal Manager undertook that regular ward committee meetings would be held and ward committee members would inform community members. The Municipality further undertook that mass meetings between communities and councillors should take place on a quarterly basis. The meetings would be alternated between Monyakeng and Wesselsbron. The same procedure would be followed in Bothaville.

6.7.17 The Municipal Manager undertook to approach the Mayor and Speaker to arrange a mass meeting to inform the community on the actions taken in respect of the KPMG report.

6.7.18 The Public Protector was provided with the attendance registers of the mass meetings held with the community during November 2012.

6.7.19 The Municipal Manager reported that Phase 1 of the waste water plant is 90% completed and as soon as funds become available Phase 2 of the operation would commence.

6.8 Further correspondence with Municipal Manager, Nala Local Municipality

6.8.1 On 27 November 2012 the Municipal Manager was requested to submit a written progress report on the status of the waste water treatment plant’s maintenance. The Municipal Manager was requested to indicate timelines for completion of the project.
6.8.2 The Municipal Manager was further requested to submit a report with action plans and timelines for the sewerage system in Monyakeng to be fully operational.

6.9 Responses in respect of the Marantha Housing Project

6.9.1 The Head of Housing at the Nala Local Municipality, Mr Du Toit informed the Public Protector that the Marantha Housing Project is a land restitution project. The Housing Project is the responsibility of the Land Claims Commission and the Free State Department of Human Settlement. The information was that 112 Houses were to be built in this area.

6.9.2 The Project Officer from the Land Claims Commission confirmed that this claim had been settled. Each household had received an amount of R40 000.00 and it was divided in three categories, namely:

(a) Financial Compensation;

(b) Housing Contribution; and

(c) Restoration.

6.9.3 The Land Claims Commission confirmed that financial compensation in the amount of R25, 000.00 was paid to the beneficiaries and an amount of R15, 000.00 was paid to Free State Department of Human Settlement to be combined with each land restitution beneficiaries’ RDP housing subsidy.

6.9.4 According to the Land Claims Commission the infrastructure development was not completed by the Municipality. A contractor was appointed but the contract was terminated due to non-adherence and a new contractor was appointed on the 17 July 2012 to complete the Marantha Housing Project.
6.9.5 The Free State Department of Human Settlement informed that a contractor was appointed and two model houses were built for beneficiaries to select a house of their choice.

6.9.6 A total of 18 half built structures were demolished and will be re-built. Consultation with the beneficiaries on the delay of the project was held on 17 July 2013.

6.9.7 The list of all 112 beneficiaries was made available to the Public Protector.

6.10 Response in respect of lack of security at Mmabana School

6.10.1 Mr. Maikoa, the Principal of Mmabana School has confirmed that the fence of the school was repaired by the Department of Education during April 2012.

6.10.2 The Department of Education also installed an alarm system to reduce security risks such as burglaries.

6.11 Meeting between Public Protector and Complainants on 6 February 2013

6.11.1 The Complainants informed the Public Protector that officials implicated in the KPMG report were still employed by the Municipality. The suspended Municipal Manager was dismissed by a disciplinary hearing on 16 January 2012.

6.11.2 The Complainants approached National Treasury and requested that it invoke section 216 of the Constitution to stop the transfer of all funds, as the Municipality was in breach of the measures prescribed to promote transparency, accountability and effective financial management.
6.11.3 On 1 February 2013 a meeting was held between National Treasury and the Municipality. It was decided to lift the suspension of funds in terms of section 216 and National Treasury required 9 conditions to be adhered to before 30 June 2013.

6.11.4 The Complainants informed the Public Protector that new allegations of corruption currently at the municipality were raised with Municipal Manager, namely:

(a) A law firm was allegedly paid R4 million to preside over the disciplinary hearing of the suspended Municipal Manager;

(b) During December 2012 it was discovered that service providers contracted and paid by the Municipality did not submit valid tax clearance certificates;

(c) During September 2012 the Speaker of the Council acknowledged the debt incurred on a government credit card and undertook to repay the Municipality by 15 February 2013. The Council did not take any steps against her;

(d) The amount of R230,000.00 that an ex-mayor had used to build a wall around a private home had not been recovered by the Municipality; and

(e) The current Municipal Manager was seconded by the Free State Department of Co-Operative Governance (COGTA) during February 2012. He was employed by the Municipality during November 2012. He received a full bonus in the amount of R90, 000.00 in January 2013.
6.12 Meeting between Public Protector and Municipal Manager on 6 February 2013

6.12.1 The Municipal Manager reported that he had been seconded by COGTA as acting Municipal Manager in February 2012. He found the following:

(a) No billing accounts were generated for 20 months;

(b) Systems at the Municipality had collapsed;

(c) Numerous incomplete projects were abandoned by contractors;

(d) Basic services were not delivered; and

(e) Numerous critical posts were vacant and due to grievances of employees there was constant strike action.

6.12.2 The first objective was to obtain financial viability at the Municipality. Financial statements required by National Treasury legislation were not submitted since the 2009/2010 financial year. However no documents could be found as the documents were either destroyed or removed.

6.12.3 The Municipal Manager reported that phase 1 of the waste water treatment plant was between 80-90% completed and operational. Fraud and corruption was suspected in the incomplete sewer system.

6.12.4 The Municipal Manager reported the following in respect of the implementation of the recommendation of the KPMG forensic report:

(a) The Municipality submitted a list of defaulting contractors to National Treasury for “blacklisting” in terms of Treasury Regulations;
(b) The Municipality embarked on civil recovery in respect of defaulting contractors. COGTA was requested to instruct the state attorney to assess the claims and implement civil recovery;

(c) The Speaker of the Council signed an acknowledgement of debt incurred on the government credit card;

(d) All financial information on the money the ex-mayor used to build a wall around a private home was destroyed. A quantity surveyor was instructed to determine the value of the wall and the amount will be recovered through civil processes;

(f) The official implicated in the report in respect of R160 477.00 worth of fuel used in 207 vehicles that did not appear on the asset register of the Nala Municipality, was disciplined and the last day of the hearing was set down for 11 February 2013;

(g) The Municipality has referred the KPMG forensic report to the Auditor General and to the Hawks. A task team of the justice cluster was established and all the allegations are investigated by the Hawks for criminal prosecution; and

(h) The specific case against an employee who cashed cheques to the amount of R665 293.12 was set down in criminal court for hearing on 23 to 25 January 2013.

6.12.5 The Municipal Manager reported that the incomplete public park at the entrance of Monyakeng was a project of the Department of Water Affairs. The Municipality made land available for the project and documents indicate that the budget of the Department of Water Affairs for the project was R413, 000.00.
6.12.6 The Chief Financial Officer of Nala Local Municipality reported to the Public Protector that the Municipal Manager was appointed on 1 December 2012. He structured his package to receive a birthday bonus monthly. However, due to his package being captured incorrectly by VIP systems he received a full bonus during January 2013.

6.12.7 The Municipal Manager informed the Mayor of the Municipality and the amount received was repaid. The VIP system owner has apologised to the Municipality for the incorrect capturing of data.

6.12.8 The Municipal Manager reported that the sewer network was evaluated and it was determined that R200 million is needed to get it fully operational.

6.12.9 The Technical Director of the Municipality reported that a consulting firm UWP was contracted to investigate the total flush toilet system and the waste water treatment plant. The consultants found the system non-functional. The permanent solution would be to redo the whole system at a cost of approximately R200 million.

6.12.10 The consultants also indicated that in the interim certain "hotspots" can be rectified. The Municipality has corrected approximately 50 manholes and connected approximately 200 meter pipes in the system.

6.12.11 The Municipal Manager also informed the Public Protector that the community of Monyakeng are not paying municipal accounts and they are discouraged by community leaders to pay the accounts.

6.13 Inspection in loco: 6 February 2013

6.13.1 After the meeting between the Public Protector, Municipal Manager and Complainants an inspection in loco was conducted and the following were observed:
(a) Marantha housing project: two houses were built as sample for beneficiaries to select a house of their choice. Currently 18 Houses have been demolished and the contractor have started with construction of the houses;

(b) Public Park: No progress was observed;

(c) Phase 1 Sewerage Spillage: no further spillages were observed;

(d) Waste Water Treatment Plant: Considerable improvement was observed. The plant was fenced and cables installed. Electrical panels were fixed. Aerators were working. No overflow was observed; and

(e) Bucket system: the flush toilet system was still not connected due to financial constraints. The Municipal Manager undertook to collect buckets twice per week.

6.14 Meeting between Public Protector, Community and Municipal Manager after inspection *in loco* on 6 February 2013

6.14.1 The Municipal Manager undertook to the Public Protector and the community:

(a) to be accessible to the community;

(b) to use available funds to address problems in the flush toilet system that can be addressed;

(c) to collect buckets twice weekly;

(d) to address all the issues raised; and
(e) to improve communication with the community through the Council.

6.14.2 The Municipal Manager requested the Public Protector to address the challenges experienced by the Municipality with the National Government and the National Council of Provinces.

6.14.3 The Chief Financial Officer of the Municipality requested the complainants to raise concerns with Municipality and submit supporting documentation to substantiate the concerns. The Public Protector stressed the fact that supporting documentation must be made available.

6.14.4 The Public Protector further stressed the fact that services delivered should be paid for by the community and the community should not be discouraged to pay municipal accounts.

6.15 Meeting with the Municipal Manager on 15 February 2013

6.15.1 The Public Protector met with the Municipal Manager and the Consultant appointed by the Free State Department of Co-operative Governance to assist the Municipality with financial matters on 15 February 2013.

6.15.2 The Municipal Manager provided further feedback on the complaints and submitted documentation requested by the Public Protector. The Municipal Manager reported on all the allegations by the Complainants.

6.15.3 Lack of service delivery and maladministration as well as failure to implement recommendations of the KPMG report

(a) All criminal cases were referred to the HAWKS with the documentation that could be found. A justice cluster task team was set up to assist with the criminal investigations. The trial of the
Financial Officer was finalised on 7 February 2013. He was found guilty and sentenced to 15 years imprisonment;

(b) The Municipality has no funds to institute civil action. The Council approached COGTA who appointed the State Attorneys to assess each case and institute civil action. The process of recovery is ongoing;

(c) The Technical Director resigned but disciplinary action continued. The Fleet Manager was charged and the disciplinary hearing is currently ongoing;

(d) The matter of the Speaker using her government credit card for private expenditure was referred to the Council for discussion in terms of Code of Conduct for Councillors. Council submitted that as a Credit Card Policy is not in place no disciplinary steps can be taken; and

(e) The wall erected by the ex-mayor around a private home with public funds was also referred for civil actions referred to the State Attorneys. The amount is currently disputed as no documents could be found. A Quantity Surveyor report on the value of the wall was requested.

6.15.4 Lack of Communication between the Municipality and the Community

(a) The Municipal Manager reported that the Mayor and Councillors held meetings in Ward 1 to 12 during January 2013 and the meetings were advertised.

(b) The Municipal Manager undertook to be accessible to the Community.
6.15.5 Incomplete and un-operational sewerage plant

(a) The Municipal Manager submitted a report in respect of progress made with and the cost to repair the incomplete and un-operational sewerage plant.

(b) The Municipal Manager also reported that at a meeting on 11 February 2013 between the Municipality, the Free State Department of Human Settlements and the Department of Water Affairs a joint action plan for the waste water treatment plant was drafted.

(c) The Municipality undertook that Phase 1 of the plant would be maintained and be operational.

(d) All tender and other documents in respect of the incomplete project were submitted to the HAWKS for criminal investigation.

6.15.6 Unconnected flush system toilets, leading to implementation of the bucket system that is not regularly collected

(a) The Municipal Manager submitted a report about the unconnected flush system toilets. The report indicated the progress made and the cost of the repairs done to the system.

(b) The report further stated that to eradicate the bucket system and to complete the unconnected flush system would cost the Municipality R200 million.
(c) The Municipality undertook to remove buckets twice a week.

(d) All tender and other documents relating to the incomplete project were submitted to the HAWKS for criminal investigation.

6.15.7 Sewerage problems in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems

The sewerage spillage was cleaned before 18 April 2012 when Public Protector did an inspection in loco.

6.15.8 Incomplete Public Park at the entrance of Monyakeng

(a) The Municipal Manager reported that the public park was a project of the Department of Agriculture, Fisheries and Forestry as part of Arbor Week. A copy of the project plan for the Arbor Week of 1 to 7 September 2007 was submitted.

(b) The Budget for the week amounted to R413,000.00 and included catering.

(c) The Municipal Manager also submitted a letter dated 11 May 2006 addressed to the Department of Agriculture, Fisheries and Forestry.

(d) The letter stated that the Council decided to donate land for the park and would arrange the provision of water for irrigation from the Council budget.

(e) The letter clearly stated that the Department of Agriculture, Fisheries and Forestry and the Community should take further responsibility for the development of the public park.
6.15.9 Allegation that the new community hall was not built according to tender specifications

(a) The Municipal Manager reported he only has the information that was provided to him. The community hall was built with a municipal infrastructure grant and funds provided by the Department of Human Settlement funds.

(b) The centre initially would have consisted of a community hall and an indoor sport hall. The municipal infrastructure grant and funds provided by the Department of Human Settlement funds was not sufficient and specifications were altered and only the hall was built.

(c) The Department of Human Settlements undertook to complete the indoor sport hall with transferred funds during the next financial year. The Municipality is awaiting a letter from the Department of Human Settlements on the funding of the completion of the indoor sport hall.

6.15.10 Allegations that Municipality is accepting tender bids from companies with invalid tax clearance certificates

(a) The Municipal Manager reported that the discrepancies were noted. An investigation on the tender process and contracts awarded to the companies complained against by the Complainants is being conducted.

(b) The investigation was to be completed by 22 February 2013.

6.15.11 Allegations of payment of R3 936 822.69 to a law firm to conduct the disciplinary hearing of the suspended Municipal Manager
(a) The Municipal Manager reported that Municipality did not have funds to conduct the hearings.

(b) A service level agreement was concluded between COGTA, Nala Local Municipality and the Attorneys. The agreement determined that COGTA would pay the accounts submitted by the attorneys for services rendered in respect of the implementation of recommendations of the KPMG report. A letter dated 11 July 2012 was addressed to COGTA requesting financial assistance.

(c) Invoices received by the Municipality were submitted to COGTA who paid the accounts.

(d) The Municipal Manager submitted sundry payment advices of COGTA indicating the transfer of money as financial assistance for the payment of the law firm.

6.15.12 Alleged irregular payment of R90 000.00 as bonus to the Municipal Manager

(a) The Municipal Manager reported that he was appointed at Nala Local Municipality on 1 December 2012. He negotiated a salary package and structured the package to receive his birthday bonus monthly.

(b) The system administrator (VIP) captured the package incorrectly and he received a full birthday bonus during January 2013.

(c) He immediately informed that Mayor of the Council about the discrepancy and submitted a copy of a letter addressed to the Mayor dated 28 January 2013.
(d) The money was repaid on 4 February 2013 and proof was submitted to the Public Protector.

6.15.13 The Appointment of the Municipal Manager as Acting and as permanent Municipal Manager is irregular

(a) The Municipal Manager reported that he was seconded from COGTA on request of the Nala Local Municipal Council for three periods of three months in terms of the MSA. Council Resolutions were taken.

(b) During the third period the post of Municipal Manager was advertised by the Nala Local Municipal Council. He applied and was interviewed. The interview panel consisted of the HOD for COGTA, the Municipal Manager of Dihlabeng, the MEC for Education and the Chairperson of SALGA.

(c) Council resolved to appoint him and the letter of appointment was signed by MEC of COGTA. Salary package negotiations with the Mayor was concluded in November 2012 and he was appointed permanently as a municipal employee as from 1 December 2012. A copy of the appointment letter was submitted to the Public Protector.

(d) The Municipal Manager submitted copies of all the Council Resolutions extending his acting term as well as the Council Resolution appointing him to the position of Municipal Manager.

6.15.14 Allegations of irregular payments to officials on the Payroll system

(a) The KPMG report dates back to 2009 and the previous Municipal Manager never acted on it. It is difficult to charge employees due to the 6 month rule in the labour legislation. However, as new evidence is obtained employees are disciplined.
(b) The Municipality has as a result of the KPMG report started a total audit on their salary payments. They have identified numerous cases of maladministration such as double salaries, bonuses being paid.

(c) VIP payroll was instructed on 5 October 2012 to submit a proposal for the conducting of a forensic audit of the payroll system to determine whether or not misappropriation of funds occurred.

6.15.15 Unfinished housing project in Marantha

The Municipal Manager reported that in respect of the un-finished housing project in Marantha, the Free State Department of Human Settlements would allocate R2.8 million for the 2013/14 financial year for infrastructure development at the site.

6.15.16 Alleged lack of security at Mmabana School

The security at the school is the responsibility of the Free State Department of Education.

6.16 Interventions by National and Provincial Departments of Cooperative Governance and Traditional Affairs

6.16.1 The National and Provincial Departments of Cooperative Governance and Traditional Affairs conducted municipal performance assessments in all Municipalities during 2010. The outcomes of the Municipal Assessments were presented for noting in the Free State Provincial Executive Council, Member of the Executive Committee for Free State Department of Local Government and Council meetings.
6.16.2 This report was further directed to develop and implement together with the Free State Provincial Department of Local Government a specific Turnaround Strategy for Nala Local Municipality.

6.16.3 During February 2010 the team responsible for Nala Local Municipality visited the Municipality and undertook the following:

(a) Meeting with Senior Managers of the Municipality to brief them of the process of the Municipal Turnaround Strategy (the MTAS);

(b) Explain the implementation plan, guidelines and information around structural arrangements for Turnaround Implementation Plan with COGTA within the Municipality;

(c) Request the senior managers to provide all necessary supporting documents in order to draft MTAS;

(d) The Provincial team also met with Council to outline the MTAS process of the Municipality; and

(e) The draft MTAS was presented for adoption before the Council meeting.

6.16.4 The Assessment of Nala Local Municipality revealed amongst others the following shortcomings in the political and administrative processes:

(a) The Municipality has not complied with the Municipal Systems Act by submitting Section 46 reports as required by the Act for two consecutive years;

(b) The Municipality failed to develop a Performance Management Framework to regulate the performance of its staff;
(c) Vacant posts of the Municipality have been vacant for more than six months;

(d) The inability to spend Municipal Infrastructure Grant (MIG) funds where expenditure is at 25% as at the end of November 2009, whereas the target was 50%;

(e) The inability to provide quarterly reports in compliance with the MFMA;

(f) The overall financial management of the municipality is in disarray creating an inability of the Auditor-General to access documentation for audit purposes; and

(g) The suspension of Municipal Manager and the appointment of a non-section 56 manager in terms of the MSA as the Acting Municipal Manager further reflected a need for a new strategy and approach.

6.16.5 The key focal areas of the Turnaround Strategy were:

(a) To build and enhance the governance system in order to enable improved service delivery;

(b) To strengthen the financial management system that will enhance the institutional capacity of the municipality;

(c) To ensure access to service delivery across the municipal area;

(d) To ensure functionality of the Labour Relations Forum; and

(e) To improve Local Economic Development of the Municipality.
6.16.6 Based on the report above the Free State Provincial Executive Council resolved to intervene in terms of section 139(1)(b) of the Constitution to assume responsibility for the relevant obligations in Nala Local Municipality to the extent is necessary to maintain essential national standards and meet established minimum standards for the rendering of services.

6.16.7 During the engagements with the Council of the Municipality, the Council committed to improving relations amongst themselves and to exercise their oversight role over Municipal administrative affairs. Thereby improving and enhancing the capacity of the Municipality to deliver effective and efficient service delivery.

7. EVALUATION OF THE EVIDENCE AND INFORMATION OBTAINED DURING THE INVESTIGATION

7.1 Lack of service delivery and maladministration as well as failure to implement recommendations of the KPMG report

7.1.1 The evidence and information obtained during the investigation in this regard indicate that the KPMG report was submitted to the previous Municipal Manager during 2010 and the report was tabled in Nala Local Municipal Council on 14 November 2011.

7.1.2 The current Municipal Manager was seconded to the Municipality at request of the Naia Council by COGTA on 1 February 2012. The first objective was to obtain financial viability at the Municipality.

7.1.3 The evidence and information obtained during the investigation in this regard indicate that the recommendations of the KPMG report are in the process of being implemented. Criminal investigations are being conducted by a team from the justice cluster. Civil recovery of wasteful and fruitless expenditure was referred to the State Attorney.
7.1.4 Disciplinary action was taken against the suspended Municipal Manager who was dismissed by the disciplinary committee. Disciplinary action was instituted against the Fleet Officer and the Technical Director of the Municipality.

7.2 Lack of Communication between the Municipality and the Community

7.2.1 The Municipality acknowledged that up to November 2012 a lack of communication existed in Nala. This was now being addressed with the training of the Councillors and two mass meetings that took place. The Municipal Manager submitted the schedule for future meetings with the Community.

7.2.2 The Municipality further undertook that mass meetings between communities and councillors should take place every three months. The meetings can be alternated between Monyakeng and Wesselsbron.

7.2.3 The task of the officials at the Municipality was to report to the Council and the Council through the Speaker should communicate with the members of the community and arrange public participation regarding the processes of the Municipality.

7.3 Incomplete and non-operational waste water treatment plant

7.3.1 The evidence found during the investigation indicated that there was a lack of performance by contracted parties, where projects were abandoned and left incomplete. The waste water treatment plant was in-complete and not operational.

7.3.2 The evidence and information obtained during the investigation in this regard indicate that the lack of technical capacity at the Municipality...
resulted in problems in respect of project management and project monitoring.

7.3.3 Phase 1 of the waste water plant is 90% completed and as soon as funds become available phase 2 of the operation will commence. A joint business plan for the completion of the water treatment plant was drafted by the Department of Water Affairs, Free State Department of Human Settlements and the Municipality.

7.3.4 All tender and other documents relating to the incomplete project were submitted to the HAWKS for criminal investigation.

7.3.5 The Municipality submitted a list of defaulting contractors to National Treasury for "blacklisting" in terms of Treasury Regulations.

7.4 Unconnected flush system toilets, leading to implementation of the bucket system that is not regularly collected

7.4.1 During the investigation it was found that there was a lack of performance by contracted parties, where the flush system projects were abandoned and left incomplete. The municipality appointed new contractors to complete the projects at extra costs and the project was again abandoned and left unconnected.

7.4.2 The Municipality acknowledge that the non-completion of the project was mainly due to a lack of proper management thereof by the Municipality.

7.4.3 During the Public Protector's visit on 6 February 2013 the Municipality undertook to remove buckets twice a week.

7.4.4 All tender and other documents relating to the incomplete project were submitted to the HAWKS for criminal investigation.
7.4.5 The Municipality submitted a list of defaulting contractors to National Treasury for "blacklisting" in terms of Treasury Regulations

7.5 Sewage problems in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems

7.5.1 The sewerage spillage was rectified when the area was visited by the Public Protector on 18 April 2012. Evidence however indicated that the spillage was corrected shortly before the visit of the Public Protector.

7.5.2 No further spillages were observed during inspections on 30 May 2012 and 6 February 2013.

7.6 Incomplete Public Park at the entrance of Monyakeng

7.6.1 The evidence and information obtained during the investigation in this regard indicate that the incomplete public park at the entrance of Monyakeng was the result of a submission by a group of Community Members to the Department of Water Affairs. The project was part of Arbor Week celebrations by the Department of Water Affairs during 2007.

7.6.2 The Municipality made land available for the project and documents indicate that the Department of Water Affairs budgeted R413 000.00 for the week.

7.7 Allegation that the new community hall was not built according to tender specifications

7.7.1 The information obtained during the investigation in this regard indicates that the community hall was built with a municipal infrastructure grant and funds provided by the Department of Human Settlement funds.
7.7.2 The funds allocated were insufficient to complete the project. The specifications were altered in order to remain within the allocated budget. The Department of Human Settlements undertook to complete the building according to original specifications with transferred funds during the following financial year.

7.8 Allegations that Municipality is accepting tender bids from companies with invalid tax clearance certificates

7.8.1 The evidence and information obtained during the investigation in this regard indicate that the Municipality realised the discrepancies and the matter is currently under investigation.

7.8.2 The Municipality's investigation in that regard was incomplete at the time when the Public Protector's investigation was finalised.

7.8.3 The Municipality acknowledged that a discrepancy had been found and therefore an investigation was ordered.

7.9 Allegations of payment of R3 936 822.69 to a law firm to conduct the disciplinary hearing of the suspended Municipal Manager

7.9.1 The evidence and information obtained during the investigation in this regard indicate that on 11 July 2012 the Municipality requested financial assistance from COGTA to conduct the disciplinary hearings in respect of the findings in the KPMG report.

7.9.2 A service level agreement was concluded between COGTA, Naia Local Municipality and the Attorneys indicating that COGTA would pay the accounts submitted by the attorneys for services rendered in respect of the implementation of recommendations of the KPMG report.
7.10  Alleged irregular payment of R90 000.00 as bonus to the Municipal Manager

7.10.1  The Municipal Manager received an irregular payment as a bonus.

7.10.2  The Municipal Manager informed the Mayor and the overpayment was immediately repaid.

7.10.3  The system administrator (VIP) captured the salary structure incorrectly and subsequently apologised in writing to the Municipality for the incorrect capturing.

7.11  The Appointment of the Municipal Manager as Acting and permanently is irregular

7.11.1  The evidence did not support the allegation that the Municipal Manager’s appointment was irregular.

7.11.2  The Municipal Manager was seconded from COGTA on request of the Nala Local Municipal Council for three periods of 3 Months in terms of the Municipal Systems Act.

7.11.3  Council Resolutions were taken to extend the initial period and was approved by the MEC for COGTA.

7.12  Allegations of irregular payments to officials on the Payroll system

7.12.1  The evidence and information obtained during the investigation in this regard indicated that VIP payroll administrators was instructed on 5 October 2012 to submit a proposal for the conducting of a forensic audit of the payroll system to determine whether or not misappropriation of funds had occurred.
7.12.2 The forensic audit is being conducted and has already identified numerous cases of maladministration such as double salaries, bonuses being paid.

7.13 Unfinished housing project in Marantha

7.13.1 The evidence and information obtained during the investigation in this regard indicate that the Marantha Housing Project is a land restitution project. The land claim was finalised and the project was registered with the Free State Department of Human Settlements.

7.13.2 The Municipality will receive R2.8 million from the Free State Department of Human Settlements for the financial year 2013/14 for infra-structure development in Marantha.

7.13.3 The project for the building of 41 houses for the claimants commenced during the 2008/2009 financial year. However the contractor abandoned the project and 41 houses were not completed.

7.13.4 Project number F09020006/1 was allocated by the Department of Human Settlements on the Township Location Report issued on 27 July 2012.

7.14 Alleged lack of security at Mmabana School

7.14.1 The evidence and information obtained during the investigation in this regard indicate that the Free State Department of Education is responsible for the security at the school.

7.14.2 The Department of Education took corrective measures at the school after the intervention of the Public Protector.
8. LEGAL AND REGULATORY FRAMEWORK


8.1.1 The objects of local government as set out in section 152 of the Constitution are:

"(a) to provide democratic and accountable government for local communities;
(b) to ensure the provision of services to communities in a sustainable manner;
(c) to promote social and economic development;
(d) to promote a safe and healthy environment; and
(e) to encourage the involvement of communities and community organisations in the matters of local government".

8.1.2 Section 217 of the Constitution refers to organs of state in the national, provincial and local sphere of government and provides that organs of state must contract for goods or services in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

8.2 Local Government: Municipal Finance Management Act, 2003 and Municipal Supply Chain Management Regulations

8.2.1 The MFMA provides that organs of state falling within the ambit of the Act must have and implement a supply chain management policy which is 'fair, equitable, transparent, competitive and cost-effective'. A supply chain management policy must also comply with a prescribed regulatory framework which complies with the principles of fairness, equity, transparency, competitiveness and cost-effectiveness.
8.2.2 In terms of sections 62 and 95 of the MFMA, accounting officers are fully responsible and should be held accountable for any expenditures relating to Supply Chain Management (SCM) within their line of responsibility. Any expenditure incurred should be subject to appropriate regulations and accounting officers' directives and procedures. Guidelines issued by the National Treasury will provide the necessary parameters. It is the responsibility of each accounting officer to implement the SCM policy adopted by council. The Accounting Officer may develop an implementation plan to assist with managing the implementation of the SCM policy.

8.2.3 The municipal council has an oversight role in ensuring that the Accounting Officer executes council's policy. The council is empowered to make supply chain policies within the ambit of the applicable legislation, such as the prescripts contained in the MFMA, the Preferential Procurement Policy Framework Act, 2000 and the Broad-Based Black Economic Empowerment Act, 2003. The accounting officer should on a monthly basis report to the Executive Mayor and, on at least a quarterly basis, to Council on implementation of the supply chain management policy.

8.2.4 In terms of the Municipality Supply Chain Management Regulations (MSCM) a supply chain management policy must make provision for effective systems for demand management, acquisition management, logistics management, disposal management, risk management, and performance management.

8.2.5 Section 32 of the MFMA (the MFMA in general) does not permit a council to authorise or condone irregular or fruitless and wasteful expenditure under any circumstances. Irregular or fruitless and wasteful expenditure may only be recovered from the person liable for that expenditure or certified by the council as irrecoverable and written off. Under exceptional circumstances the National Treasury may be approached to condone such expenditure in terms of section 170 of the MFMA.
8.3 Duties of Municipal Accounting Officer in terms of the Municipal Systems Act and MFMA

8.3.1 Section 6(2)(c), (e), and (f) of the Municipal Systems Act, 2000 (MSA) and MFMA provides that the administration of a municipality must take measures to prevent corruption; give members of a local community full and accurate information about the level and standard of municipal services that they are entitled to receive; and inform the local community about how the municipality is managed, of the costs involved and the persons in charge.

8.3.2 Among the services which municipalities are required to provide to residents within their demarcated areas are water, electricity, sanitation, street lighting, solid waste disposal, and the construction and maintenance of roads.

8.3.3 Section 32(6) of the MFMA determines the duties of the Municipal Accounting Officer as follows:

"(6) The accounting officer must report to the South African Police Service all cases of alleged –
(a) irregular expenditure that constitute a criminal offence; and
(b) theft and fraud that occurred in the municipality."

8.4 Appointment of the Municipal Manager in terms of the MSA

8.4.1 Section 54A of the MSA prescribes the procedure for the appointment of the Municipal Manager or for the appointment of an acting Municipal Manager.

8.4.2 The Municipal Council is mandated to appoint the Municipal Manager or acting Municipal Manager who is the head of the administration of the municipal council.
8.4.3 The Municipal Council can only appoint an acting Municipal Manager for a period of three months and may apply in writing to the MEC for local government to extend the period of appointment of an acting Municipal Manager.

8.4.4 Section 54A(4) of the MSA instructs the Municipal Council to advertise the vacant post of the Municipal Manager nationwide and select a suitable person who complies with the requirements of the post for appointment.

8.4.5 Section 54A(6) of the MSA allows the Council to request the MEC for local government to second a suitable person to act as Municipal Manager until a suitable person is appointed.

8.5 Duties of the Council in terms of the Local Government Municipal Structures Act, 1998

8.5.1 Section 19 of the Local Government Municipal Structures Act (the Structures Act) places certain duties on the municipal council.

8.5.2 Section 19(1) of the Structures Act instructs that a council “must strive within its capacity to achieve the objectives set out in section 152 of the Constitution”.

8.5.3 A municipal council must also in terms of Section 19(2) of the Structures Act annually review the needs and prioritise the needs of the community. It must further review the public participation processes annually.

8.5.4 Section 19(3) of the Structures Act requires a municipal council to “develop mechanisms to consult the community and community organisations in performing its functions and exercising its powers”.
8.6 Duties of the Council in respect of public participation in terms of the MSA

8.6.1 The Preamble to the MSA states that "Whereas a fundamental aspect of the new local government system is the active engagement of communities in the affairs of municipalities of which they are an integral part, and in particular in planning, service delivery and performance management".

8.6.2 Section 15 of the MSA affords members of the local community inter alia the right to contribute to the decision-making processes of the municipality, to submit written or oral recommendations, to make representations and submit complaints to the municipal council, to prompt responses to their written or oral communications and to be informed of decisions taken by the municipal council.

8.6.3 Section 16 of the MSA requires the Council to develop a system of participatory governance and to encourage public participation in the affairs of the municipality.

8.6.4 The key principles underlying the role of the Speaker are chair of council meetings, implementation of the Code of Conduct and exercise of delegated functions including facilitating public participation in legislative matters and establishment and functioning of ward committees.\(^7\)

8.7 Duties of the provincial government in terms of the MFMA

8.7.1 In terms of section 135 of the MFMA "the primary responsibility to avoid, identify and resolve financial problems in a municipality rests with the municipality itself".

\(^7\) SALGA: Guideline Document on the Roles and Responsibilities of Councillors, Political Structures and Officials March 2011
8.7.2 Section 136(1) of the MFMA however determines;

"If the MEC for local government in a province becomes aware that there is a serious financial problem in a municipality, the MEC must promptly—
(a) consult the mayor of the municipality to determine the facts;
(b) assess the seriousness of the situation and the municipality’s response to the situation; and
(c) determine whether the situation justifies or requires an intervention in terms of section 139 of the Constitution."

8.8 Public Protector Act, 1994

8.8.1 Section 7(9) of the Public Protector Act provides that:

"If it appears to the Public Protector during the course of investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such a person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances."

8.8.2 The Public Protector issued a Provisional Report in accordance with section 7(9) of the Public Protector Act on 24 August 2012. The Provisional Report was distributed on the basis of confidentiality to provide the recipients therein an opportunity to respond to its contents.

8.8.3 The provisional report was submitted to the Mayor of Nala Local Municipality, the Speaker of the Nala Local Council, the Municipal Manager of Nala Local Municipality, the Member of the Executive Council for Co-Operative Governance and Traditional Affairs, Free State Provincial Government, the Head of the Free State Department of Co-Operative
Governance and Traditional Affairs and the Complainants. No responses were received thereto by the 3rd July 2013 deadline. Therefore the conclusion is that the Public Protector’s provisional findings and remedial action are not disputed.

9. ANALYSIS AND CONCLUSION

9.1 Lack of service delivery and maladministration

9.1.1 Section 156 of the Constitution requires local government to “ensure the provision of services to communities in a sustainable manner”. Section 62 of the MSA describes the services to be provided to the communities. The services which municipalities are required to provide to residents within their demarcated areas are for example water, electricity, sanitation, street lighting, solid waste disposal, and the construction and maintenance of roads.

9.1.2 Section 19(1) of the Structures Act requires that a municipal council “must strive within its capacity to achieve the objectives set out in section 152 of the Constitution”. A municipal council must also annually review and prioritise the needs of the community.

9.1.3 From the evaluation of evidence it is clear that most of the systemic service delivery failures and maladministration complaints are substantiated including the failure to expeditiously implement the recommendations of the forensic investigation report of KPMG.

9.1.4 From the evidence obtained it is clear that the lack of service delivery and the implementation of the recommendations of the forensic investigation report of KPMG were only addressed when the current Municipal Manager was seconded by COGTA during 2012.
9.2 Lack of Communication between the Municipality and the Community

9.2.1 Section 152 of the Constitution, section 16 of the MSA and section 19(3) of the Structures Act requires a municipal council to ensure public participation by the community in the affairs of the Municipality.

9.2.2 The Municipality conceded that up to November 2012 a lack of communication between the Council and the Community existed. The lack of communication was addressed with the training of the Councillors during October 2012 and two mass meetings that took place where all Councillors were present and the community afforded the opportunity to address questions to the Councillors during the meeting.

9.2.3 The Municipal Manager submitted the schedule for future meetings with the Community to ensure adherence to the requirements of public participation in terms of the applicable legislation.

9.3 Incomplete and non-operational sewerage plant

9.3.1 Section 217 of the Constitution requires that organs of state must contract for goods or services in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

9.3.2 The MSCM prescribes that a supply chain management policy must make provision for effective systems for demand management, acquisition management, logistics management, disposal management, risk management, and performance management.

9.3.3 The ultimate responsibility for the expenditure of a municipality rests with the municipal manager, as the accounting officer.

9.3.4 From the evidence obtained and the observation made, it is clear that the expenditure on the incomplete and non-operational sewerage plant resulted
in irregular and fruitless and wasteful expenditure, and is regarded as financial misconduct by the then Municipal Manager.

9.4 Unconnected flush system toilets, leading to implementation of the bucket system that is not regularly collected

9.4.1 In terms of section 217 of the Constitution organs of state must contract for goods or services in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.

9.4.2 The MSCM required that a supply chain management policy must make provision for effective systems for demand management, acquisition management, logistics management, disposal management, risk management, and performance management.

9.4.3 The ultimate responsibility for the expenditure of a municipality rests with the municipal manager, as the accounting officer.

9.4.4 From the evidence obtained and observation made it is clear that the expenditure on the incomplete and non-operational flush toilet system resulted in irregular, fruitless and wasteful expenditure, and is regarded as financial misconduct by the then Municipal Manager.

9.4.5 The Municipality undertook to remove buckets twice a week after the intervention of the Public Protector.

9.5 Sewerage problems in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems

9.5.1 The sewerage spillage was rectified when the area was visited by the Public Protector on 18 April 2012. Evidence, however indicated that the spillage was corrected shortly before the visit of the Public Protector.
9.5.2 No further spillages were observed during subsequent inspections.

9.5.3 Section 152 of the Constitution requires local government to ensure the provision of services to communities and to ensure a safe and healthy environment.

9.5.4 The Municipality failed to attend to the complaints in respect of the sewerage spillage expeditiously.

9.6 Incomplete Public Park at the entrance of Monyakeng

9.6.1 The Public Park at the entrance of Monyakeng is not completed.

9.6.2 The Municipal Council of Nala took a decision during 2006 that indicates the development of the park was a community project and the obligation of the Municipality was to donate land and supply water to the park.

9.6.3 Documents obtained from the Department of Agriculture, Fisheries and Forestry indicate that on request of the community of Nala, trees were donated during Arbor week that were to be planted at the park by the community.

9.6.4 The Council did undertook to supply equipment to assist with the planting of trees as and when a written request from the community was received.

9.7 Allegation that the new community hall was not built according to tender specifications

9.7.1 The visit to the Multi-Purpose Centre confirmed that it had been erected. Evidence does not support the allegation of irregularity although the community alleged that it was not built according to original specifications.
9.7.2 Evidence obtained during the investigation indicates that the funds allocated through the MIG were insufficient to complete the project and specifications were altered. The project was first advertised in the tender bulletin during the 2009 financial year and re-advertised during the 2010 financial year.

9.7.3 Funds were allocated by the Provincial Government and the project was also registered as an Expanded Public Works Project.

9.7.4 The Department of Human Settlements undertook to complete the building according to original specifications with transferred funds during the next financial year. An amount of R4 million was allocated under reference MIG/FS0758/CF/10/11 for the 2012 2013 financial year.

9.8 Allegations that Municipality is accepting tender bids from companies with invalid tax clearance certificates

9.8.1 The evidence indicate that SARS has not certified the bidder’s tax matters are in order or that arrangements have been made to the satisfaction of SARS, that the outstanding tax obligations will be met as required by SCM legislation.

9.8.2 The evidence indicates that it was not ensured that the preferred bidders’ tax matters were in order and the municipal rates and taxes or municipal charges owed by the preferred bidder or any of its directors to the municipality or municipal entity, or to any other municipality or municipal entity, were not in arrears for more than three months.

9.8.3 The evidence and information obtained during the investigation in this regard indicate that the Municipality realised the discrepancies and is investigating the matter.
9.9 Allegations of payment of R3 936 822.69 to a law firm to conduct the disciplinary hearing of the suspended Municipal Manager

9.9.1 The Municipality approached COGTA during July 2012 for limited financial assistance in respect of legal fees due to a private law firm for the implementation of the KPMG Forensic Report recommendations.

9.9.2 The legal fees due included the following:

(a) the former Mayor reimbursing Council for fund inappropriately used to erect a wall at a private residence;

(b) the current Speaker reimbursing the Council for funds inappropriately used for private purposes;

(c) the disciplinary and criminal charges of the previous Municipal Manager and previous Manager Technical Services for alleged theft, fraud, corruption and other criminal charges; and

(d) appropriate disciplinary and criminal action against other officials implicated in criminal and other irregular activities.

9.9.3 The amount invoiced by the attorneys appointed for the above amounted to approximately R1.9 million and the final account amounted to R900,000.00 and was paid by COGTA.

9.10 Alleged irregular payment of R90 000.00 as bonus to the Municipal Manager

9.10.1 The Municipal Manager reported that he was appointed at Nala Local Municipality on 1 December 2012. He negotiated a salary package and structured the package to receive his birthday bonus monthly.
9.10.2 The salary system administrator (VIP) captured the package incorrectly and he received a full birthday bonus during January 2013. He immediately informed that Mayor of the Council regarding the discrepancy and submitted a copy of a letter addressed to the Mayor dated 28 January 2013.

9.10.3 Repayment of the amount was done on 4 February 2013 and proof was submitted to the Public Protector.

9.11 Alleged irregular appointment of the Municipal Manager as an acting and thereafter a permanent incumbent

9.11.1 The Municipal Manager reported that he was seconded from COGTA at the request of the Nala Local Municipal Council for three periods of 3 months in terms of the MSA. Council Resolutions were taken to request secondment and to extend the secondment after the first three months.

9.11.2 The post of Municipal Manager was advertised by the Nala Local Municipal Council. The Municipal Manager (then Acting) applied and was interviewed. The interview panel consisted of the Head of Department for COGTA, the Municipal Manager of Dihlabeng, the MEC for Education and the Chairperson of SALGA.

9.11.3 Council resolved to appoint the Acting Municipal Manager and the letter of appointment was signed by the MEC of COGTA. Salary package negotiations with the Mayor was concluded in November 2012 and he was appointed permanently as a municipal employee from 1 December 2012. A copy of the appointment letter was submitted to the Public Protector.
9.11.4 The Municipal Manager submitted copies of all the Council Resolutions extending his acting term as well as the Council Resolution appointing him to the position of Municipal Manager.

9.12 Allegations of irregular payments to officials on the Payroll system

9.12.1 As a result of the KPMG report, the Municipality, decided to audit their salary payments. They have identified numerous cases of maladministration such as double salaries, bonuses being paid.

9.12.2 Due to the discrepancies found the Municipality requested VIP payroll administrators on 5 October 2012 to submit a proposal for the conducting of a forensic audit of the payroll system to determine the extent of the misappropriation of funds on the payroll system.

9.13 Unfinished housing project in Marantha

9.13.1 The evidence and information obtained during the investigation in this regard indicate that the Marantha Housing Project is a land restitution project. The land claim was finalised and the project for the building of units for the successful claimants was registered with the Free State Department of Human Settlements on 14 April 2009.

9.13.2 During 2011 only four units were completed before the appointed contractor abandoned the site. Infra-structure development of the site was also not completed.

9.13.3 The Municipality will receive R2.8 million from the Free State Department of Human Settlements for the financial year 2013/14 for infra-structure development in Marantha. The building of the remaining units will commence as soon as the infra-structure is completed.
9.14 Alleged lack of security at Mmabana School

9.14.1 The evidence and information obtained during the investigation in this regard indicate that the Free State Department of Education is responsible for the security at the school.

9.14.2 After the intervention of the Public Protector, the Department of Education took corrective measures at the school and the security was improved.

9.15 No objections or comments were received from any of the parties affected by the investigation.

10 FINDINGS

The Public Protector makes the following findings:

10.1 Lack of service delivery and maladministration

10.1.1 Most of the systemic service delivery failures and maladministration complaints are substantiated, including the failure to expeditiously implement the recommendations of the forensic investigation report of KPMG.

10.1.2 The Municipal Manager at the time, Mr. D Shongwe, (Former Municipal Manager) received the KPMG report during 2010 and failed to table the report in the Council or to release the findings of a KPMG forensic investigation that was conducted in respect of the Nala Local Municipality.

10.1.3 The executive summary of the report was only tabled in the Council on 14 November 2011, whereas the report was received by the Municipal Manager, Mr. D Shongwe on 20 September 2010. This is in contravention
of section 6(2) of the Municipal Systems Act, 2000 (MSA) and section 32 of the MFMA and constitutes improper conduct and maladministration.

10.1.4 The Former Municipal Manager did not adhere to Supply Chain Management (SCM) Policies and in some cases engaged in incidents amounting to manipulation of the SCM Process such as in the case of the Bucket Eradication Phase 3 tender. This is in contravention of sections 62 and 95 of the Municipal Finance Management Act (MFMA), the Municipal SCM Regulations and section 217 of the Constitution of the Republic of South Africa (Constitution) and therefore constitutes improper conduct and maladministration.

10.1.5 The Former Municipal Manager, Mr. D Shongwe, the Mayor, Ms. Mpai Mogorosi and the Nala Council failed to take the required steps to implement the recommendations of the report. This is in contravention of section 32 of the MFMA and section 152 of the Constitution and constitutes improper conduct and maladministration.

10.1.6 The Former Municipal Manager failed to ensure that disciplinary proceedings were conducted in respect of officials implicated in the KPMG report in accordance with the MFMA and other the relevant prescripts. The conduct was unlawful, improper and constitutes maladministration.

10.1.7 The Former Municipal Manager, Mr. D Shongwe, the Mayor of the Council, Ms. Mpai Mogorosi and the Nala Local Municipal Council failed to ensure that the use of a government credit card for private expenditure by the Speaker of the Council Ms. N Mashiya and the allocation of public funds by the ex-mayor Ms. Mpai Mogorosi to build a wall at a private home, were referred to the Council for investigation in terms of section 32 of the MFMA. This constitutes maladministration.
10.2 Lack of Communication between the Municipality and the Community

10.2.1 The Speaker of the Nala Local Municipal Council, Ms. N Mashiya and the Council did not fulfill their constitutional duties in terms of section 152 of the Constitution, section 16 of the MSA and section 19(3) of the Structures Act to ensure public participation by the community in the affairs of the Municipality, resulting in a major breach of trust between the people and the municipality that further led to protest action by the community. The conduct of the Speaker of the Council Ms. N Mashiya was improper and constitutes maladministration.

10.3 Incomplete and non-operational sewerage plant

10.3.1 The allegation was confirmed during the Public Protector’s two visits to the plant and conceded by the Municipal authorities conceded to the fact during meetings with them.

10.3.2 The KPMG forensic investigation report’s finding that the defective situation was due to the Former Municipal Manager’s failure to adhere to the Supply Chain Management Policy and other prescripts were substantiated by documentary evidence relating to the relevant procurement process.

10.3.3 This is in contravention of sections 62 and 95 of the MFMA, the Municipality Supply Chain Management Regulations and section 217 of the Constitution, which essentially prescribes an open, competitive and cost effective procurement process. As a result the cost had escalated enormously. The conduct was accordingly unlawful, improper and constitutes maladministration.
10.4 Unconnected flush system toilets, leading to implementation of the bucket system that is not regularly collected

10.4.1 The allegation regarding unconnected flush toilets was confirmed during the first inspection in loco, which included a visit to the home of a senior citizen frustrated by a dysfunctional bucket system while having a waterborne sanitation system that has become a white elephant. The pipes of some of the toilets are not connected to the main system. In addition the entire piping system has several defects, including inferior piping that is inadequate to support the sewerage.

10.4.2 The evidence indicates that the company responsible for the incomplete and non-operational flush toilet system was paid for work not done resulting in irregular, fruitless and wasteful expenditure. This is regarded as financial misconduct by the Former Municipal Manager, Mr D Shongwe.

10.4.3 The situation was exacerbated by the Municipality's failure to implement the KPMG report. Had the report been implemented earlier, some of the irregular payments could have been reversed and /or assets of wrongdoers targeted.

10.4.4 The Municipal Manager's conduct is in contravention of sections 62 and 95 of the MFMA, the Municipality Supply Chain Management Regulations and section 217 of the Constitution. Such conduct is accordingly unlawful, improper and constitutes maladministration.

10.5 Sewerage problems in the area of Phase 1 of Monyakeng resulting in health and road accessibility problems

10.5.1 The sewerage spillage had been temporarily rectified when the area was visited by the Public Protector on 19 April 2012. However, evidence
indicated that the spillage was cleared up shortly before the Public Protector’s visit.

10.5.2 The failure of the Municipality to attend to the complaints in respect of the sewerage spillage expeditiously is in contravention of section 152 of the Constitution that requires local government to ensure the provision of services to communities and to ensure a safe and healthy environment.

10.5.3 However, a long term solution to the spillage is linked to corrective action regarding the sewage purification plant and the piping in the entire area. This requires major financial assistance from the provincial and national governments.

10.5.4 The dysfunctional bucket system and the conduct of the Municipal Manager, Mr. D Shongwe and the Council of Nala is in contravention of section 152 of the Council in that sustainable services are not delivered and a healthy and safe environment for the community is not created. This constitutes maladministration.

10.6 Incomplete Public Park at the entrance of Monyakeng

10.6.1 An incomplete park does indeed exist. However, the Municipality did not build the park but received it as a donation from the provincial government.

10.6.2 The project was part of Arbor Week celebrations by the Department of Agriculture, Fisheries and Forestry during 2007. The action plan and budget for the week was obtained from the Department of Agriculture, Fisheries and Forestry.

10.6.3 The Council took a decision during 2006 to donate land for the project and the Department of Agriculture, Fisheries and Forestry donated trees to be
planted. It was the responsibility of the community to plant and maintain the trees in terms of a Council decision. But the failure to communicate such decision and to take measures to address the situation in the absence of any action was improper and constitutes maladministration.

10.7 New community hall allegedly not built according to tender specifications

10.7.1 The Multi-Purpose Centre was indeed erected.

10.7.2 While the information obtained during the investigation indicates that the funds allocated through the Municipal Infrastructure Grant were insufficient to complete the project as specifications were altered, which therefore constitutes poor planning and accordingly, maladministration.

10.7.3 The Department of Human Settlements, undertook in writing to Mr. Chris Mokomela that funds will be allocated in the 2013/2014 financial year to complete the building according to original specifications with funds transferred during the following financial year. The Municipal Manager Mr. D Shongwe did not ensure that funds were requested from Provincial Government to ensure the completion of the building according to original specifications.

10.8 Alleged Municipality’s irregular acceptance of tender bids from companies with invalid tax clearance certificates

10.8.1 The allegation regarding the acceptance of bids with invalid tax clearance certificates is substantiated, in that the names on the tax certificates differed from the names on the tender bid documents.

10.8.2 Treasury Regulation 16A9.1(d) requires that accounting officers of municipalities and municipal entities must ensure that the preferred
bidders' tax matters are in order and the municipal rates and taxes or municipal charges owed by the preferred bidder or any of its directors to the municipality or municipal entity, or to any other municipality or municipal entity, are not in arrears for more than three months.

10.8.3 Treasury Regulation 16A9 further requires that accounting officers of municipalities and municipal entities must ensure that the names of the preferred bidders and their directors, trustees or shareholders are not listed on the Register for Tender Defaulters and the Database of Restricted Suppliers and a process must be conducted to determine whether the preferred bidders have the capability and ability to execute the contract.

10.8.4 The failure by the Municipal Manager to properly assess bids during December 2012 in terms of SCM legislation and policies constitutes maladministration.

10.9 Alleged payment of R3 936 822.69 to a law firm to conduct the disciplinary hearing of the suspended Municipal Manager

10.9.1 The evidence shows that the Municipality spent R2 800 000.00 as fees for a law firm instructed to, implement the KPMG report by:

10.9.1.1 recovering funds in the amount of R230,000.00 from the former Mayor for inappropriately using said funds to erect a wall at a private residence;

10.9.1.2 recovering funds in the amount of R10,000.00 from the current Speaker used inappropriately for private purposes;

10.9.1.3 ensuring that disciplinary and criminal charges against the Former Municipal Manager, Mr. D Shongwe and Former Manager Technical
Services for alleged theft, fraud, corruption and other criminal charges were instituted; and

10.9.1.4 advising whether appropriate disciplinary and criminal action needs to be taken against the Former Municipal Manager, Mr. D Shongwe.

10.9.2 Evidence further shows that the Municipality approached COGTA during July 2012 for financial assistance in respect of legal fees for the implementation of the KPMG report, amounting to R900 000.00, that could not be covered by its own budget.

10.9.3 The allegation that an amount of R3 936 822.69 was paid to a law firm solely to conduct the disciplinary hearing of the suspended Municipal Manager is, accordingly, not substantiated.

10.10 Alleged irregular payment of R90 000.00 as bonus to the Municipal Manager

10.10.1 The Municipal Manager was paid the alleged bonus on 25 January 2013, after 2 months of employment.

10.10.2 The Public Protector is satisfied with the explanation that this was an administrative error in the capturing of the Municipal Manager’s salary structuring instructions at the Municipality’s payroll section. Evidence shows that the Mayor of the Council was informed about the discrepancy on 28 January 2013 and the error was corrected before the Public Protector’s second visit to Naia on 6 February 2013, when this additional complaint was lodged.

10.10.3 The amount was repaid on 4 February 2013 and proof was submitted to the Public Protector.
10.11 Alleged irregular appointment of the Municipal Manager as an acting and thereafter a permanent incumbent

10.11.1 No evidence supports the allegation that the Municipal Manager's secondment to and appointment at the Municipality was irregular.

10.11.2 The Municipal Manager, Mr. Chris Mokomela was seconded as Acting Municipal Manager from COGTA on request of the Nala Local Municipal Council for three periods of three months in terms of section 54A of the MSA. Council Resolutions were taken to request secondment and to extend the secondment after the first three months, during January 2012 and during June 2012 respectively.

10.11.3 The post of Municipal Manager was advertised by the Nala Local Municipal Council. Mr. Chris Mokomelo, then Acting Municipal Manager applied, was interviewed and appointed.

10.11.4 Council resolved to appoint the Acting Municipal Manager and the letter of appointment was signed by the MEC of COGTA. He was appointed permanently as a municipal employee as of 1 December 2012.

10.12 Alleged irregular payments to officials on the Payroll system

10.12.1 The KPMG report indicated that possible discrepancies and overpayments exist on salary payments to officials.

10.12.2 The Municipal Manager decided to do a total audit on salary payments by the Municipality. Numerous cases of maladministration such as double salaries, irregular bonuses being paid were found.

10.12.3 Due to the discrepancies found, the Municipality requested VIP payroll on 5 October 2012 to submit a proposal for the conducting of a forensic audit.
of the payroll system to determine the extent of the misappropriation of funds on the payroll system.

10.12.4 The irregularities in the payments by the then Municipal Manager on the payroll system to officials are in contravention of section 6 of the MSA and constituted maladministration.

10.13 Unfinished housing project in Marantha

10.13.1 The evidence indicates that the Marantha Housing Project is a Land Restitution project. The land claim was finalised and the project for the building of units for the successful claimants was registered with the Free State Department of Human Settlements on 14 April 2009.

10.13.2 Only four units to date were completed and the appointed contractor abandoned the site. Infra-structure development of the site was also not completed.

10.13.3 The Municipality will receive R2.8 million from the Free State Department of Human Settlements for the financial year 2013/14 for infra-structure development in Marantha. The building of the remaining units will commence as soon as the infra-structure is completed. The Special Investigative Unit is currently investigating all contractors that were appointed by the Free State Department of Human Settlements who did not complete projects.

10.14 Alleged lack of security at Mmabana School

10.14.1 Evidence indicates that the Free State Department of Education is responsible for the security at the school.
10.14.2 After the commencement of the Public Protector’s investigation, the Department of Education took corrective measures at the school and the security was improved.

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 following remedial action should be taken:

11.1 The Municipal Manager should ensure that:

11.1.1 The Municipality’s supply chain management framework and practices are aligned with the provisions of the applicable legislation in respect of Supply Chain Management as well as section 217 of the Constitution;

11.1.2 Supply Chain Management Officials of the Municipality and the members of bid committees are properly trained in respect of the proper application of the procurement system as contemplated by the provisions of section 217 of the Constitution, the MFMA, Treasury Regulations and prescripts and the relevant procurement policies;

11.1.3 All officials implicated in the forensic investigation are expeditiously charged in terms of the disciplinary policy of the Municipality. An evaluation by the Municipality of the KPMG forensic report will reveal the names of further officials to be charged;

11.1.4 The irregularities in the payments by the then Municipal Manager on the payroll system to officials is investigated in terms of the MFMA and if the investigation warrants such a step, disciplinary proceedings must be instituted against the officials responsible in accordance with systems and procedures referred to in section 67 of the MSA, read with Schedule 2 of that Act;
11.1.5 The irregular payments by the then Municipal Manager on the payroll system are recovered from recipients of irregular payments;

11.1.6 All irregular and fruitless or wasteful expenditure in terms of the forensic report is recovered from implicated defaulting contractors and implicated officials;

11.1.7 The irregular and fruitless or wasteful expenditure by the Speaker of the Council must be referred to the Council for an investigation in terms of section 32 of the MFMA and if the investigation warrants such a step, disciplinary proceedings must be instituted against the Speaker in accordance with systems and procedures referred to in the MFMA;

11.1.8 The irregular and fruitless or wasteful expenditure by the ex-mayor of the Council must be determined and recovered; and

11.1.9 The lack of technical capacity at the Municipality in respect of project management and project monitoring is addressed urgently.

11.2 The Nala Local Municipal Council should ensure that:

11.2.1 The Council and Municipality adhere to the objects of local government as set out in section 152 of the Constitution;

11.2.2 The Municipality adheres to the prescripts of section 217 of the Constitution and contract for goods or services in accordance with a system that is fair, equitable, transparent, competitive and cost-effective;

11.2.3 The Municipality's supply chain management framework and practices are aligned to the provisions of the applicable legislation in respect of Supply Chain Management as well as section 217 of the Constitution;
11.2.4 All irregular and fruitless or wasteful expenditure in terms of the forensic report is recovered from implicated defaulting contractors and implicated officials;

11.2.5 The recommendations of the KPMG forensic report are fully implemented expeditiously;

11.2.6 Quarterly reports are submitted to the Public Protector on the status of criminal investigations in respect of officials and companies implicated;

11.2.7 Quarterly reports are submitted to the Public Protector on the status of civil proceedings in respect of wasteful and irregular expenditure;

11.2.8 The irregular and fruitless or wasteful expenditure by the Speaker of the Council is investigated in terms of section 32 of the MFMA and if the investigation warrants such a step, disciplinary proceedings must be instituted against the Speaker in accordance with systems and procedures referred to in the MFMA; and

11.2.9 The Speaker of the Nala Local Municipal Council and the Council fulfil their constitutional duties in terms of the Constitution, MSA and Structures Act in respect of public participation. The Council must submit the programme for public participation for the 2013/14 financial year to the Public Protector. The Council must also submit attendance registers for all meetings held.

11.3 The Member of the Executive Council for the Free State Department of Co-operative Governance, Tradition Affairs and Human Settlements should ensure that;

11.3.1 The support needed by the Municipality to strengthen its capacity is assessed and the challenges experienced by the Nala Local Municipality in general and specifically in respect of the eradication of the bucket
system and the waste water treatment plant is addressed with the National Government and the National Council of Provinces;

11.3.2 The Turn-around Strategy, submitted to the Council after performance assessment of the Municipality in 2010 by National and Provincial Departments of Cooperative Governance and Traditional Affairs is implemented and the action plan for implementation monitored;

11.3.3 The implementation of the recommendations of the KPMG forensic report is undertaken and civil action in respect of defaulting contractors and officials for recovery of fruitless and wasteful expenditure is instituted expeditiously; and

11.3.4 Regular follow up with the National Prosecuting Authority on the investigation and prosecution in terms of the KPMG forensic report.

12. MONITORING

12.1 The Public Protector is to be advised on the State’s response to this report, including planned action, indicating time lines, within 30 days of the issuing of this report.

12.2 Quarterly reports are to be submitted to the Public Protector. A final report should be submitted by 30 March 2014.

ADV T N MADONSELA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 25/02/2013
Assisted by: Erika Cilliers, Vincent Maseko and Eric Mofokeng