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REPORT ON AN INVESTIGATION INTO ALLEGED UNDUE DELAY BY THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY TO ALLOCATE A LOW COST HOUSE TO MR M E MPHAHLELE APPROVED IN 2012
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Executive Summary

(i) This is my report issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

(ii) The report relates to an investigation into allegations of undue delay by the City of Tshwane Metropolitan Municipality (CoT) to allocate a low cost house to Mr ME Mphahlele (the Complainant) approved in 2012.

(iii) In the main, the Complainant alleged that he applied for a low cost housing and in 2012, when the houses were built and completed, he was allocated a house by the CoT. He stated that these houses were initially built for people who used to stay in a hostel in Mamelodi, and he was one of the beneficiaries as he used to stay in the hostel. After he was allocated a house, he was given a letter by a CoT official which stated that subsequent to the allocation that took place on 26 March 2012, he was requested not to occupy the unit allocated to him until further notice.

(iv) Two (2) years after he was prevented from moving into the house, he was told by the CoT that he could not move into the house as other people had already moved in and was never given reasons why he could not move into the house which was initially allocated to him. He was only told that this matter was allocated to a senior official to deal with and since then he was promised another house, but he had not received one at the date of this report. Each time when he called the CoT offices, he was always promised alternative accommodation. He went to the CoT’s offices several times and to date nothing has been done by the CoT.

(v) Based on an analysis of the allegation, I identified the following issues to inform and focus the investigation:
(a) Whether the CoT improperly prevented the Complainant from occupying the house which was allocated to him in Mamelodi in 2012;

(b) Whether the CoT is unduly delaying to allocate the Complainant another house or provide him with alternative accommodation; and

(c) Whether the conduct of the CoT improperly prejudiced the Complainant and if so, what it would take to place Complainant as close as possible to where he could have been had the CoT acted properly.

(vi) A formal investigation was conducted through meetings and interviews with the Complainant and the officials from the CoT, as well as the analysis and application of all relevant laws, policies and related prescripts.

(vii) I issued a notice dated 09 January 2020 in terms of section 7(9)(a) of the Public Protector Act to the City Manager advising him of my intended findings and affording him an opportunity to provide me with further evidence, failing which I would issue a report regarding the complaint. A response was received that units (including the one that was allocated to the Complainant) were illegally occupied and the matter handed over to the CoT’s Legal Department to secure an eviction order and that the legal process had not been finalised at the date of this report.

(viii) Key laws and policies taken into account to determine if there had been undue delay by the CoT and prejudice to the Complainant were principally those imposing administrative standards that should have been complied with by the CoT and its officials when a complaint of undue delay to allocate a low cost house which was approved for Mr ME Mphahlele (the Complainant) in Mamelodi in 2012 was reported. Those are the following:

(a) The Constitution;
(b) The Housing Act 107 pf 1997;
(c) Department of Housing: A New Housing Policy and Strategy for South Africa White Paper, 1994;
(d) National Housing Code, 2009;
(e) Social Housing Policy for South Africa, 2003;
(f) The Public Protector Act;
(g) Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act); and
(h) Batho Pele Principles.

(ix) Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the complaint received as against the concomitant responses from CoT, I make the following findings:

(a) Regarding whether the CoT improperly/irregularly prevented the Complainant from occupying the house allocated to him in Mamelodi in 2012:

(aa) The allegation that the CoT improperly prevented the Complainant from occupying the house that was allocated to him in Mamelodi in 2012 is substantiated.

(bb) My investigation revealed that the CoT properly allocated the Complainant Family Unit number 4, Block D Mabateng, Mamelodi West on 04 April 2012, but subsequently improperly prevented him from occupying the house. The low cost housing project was the Gauteng Provincial Department of Human Settlements' initiative which the CoT took over and included it in its 2014/2015 budget.

(cc) Evidence at my disposal revealed that according to the CoT, the problem was that the houses were illegally invaded by residents from the old hostels and others from the community. Furthermore, that there was still no occupational certificates issued by the Gauteng Provincial Department of Human Settlements, that the
affected houses (housing units) remain invaded and that the CoT does not have
capacity to provide alternative accommodation for any of the beneficiaries,
including the Complainant.

(dd) The conduct of the CoT was in violation of section 195(1)(a), (e), (f) and (g) of the
Constitution, section 9(1)(a)(i) and (e) of the Housing Act and Principle 7 of the
Batho Pele Principles.

(ee) The CoT's conduct also amounts to improper conduct as envisaged in section
182(1)(a) of the Constitution and maladministration as envisaged in section
6(4)(a)(i) of the Public Protector Act.

(b) Regarding whether the CoT is unduly delaying to allocate the Complainant
another house or an alternative accommodation:

(aa) The allegation that the CoT unduly delayed to allocate the Complainant another
house or alternative accommodation is substantiated.

(bb) The CoT does not dispute the delay in allocating the Complainant another house
or alternative accommodation. However, it stated that part of the problem was
that the houses were illegally invaded by residents from the old hostels and others
from the community and that the CoT does not have capacity to provide
alternative accommodation for any of the beneficiaries including the Complainant.

(cc) The CoT failed to meet the standards required by section 195 of the Constitution,
which makes provision that the public administration must be governed by the
democratic values and principles enshrined in the Constitution including that a
high standard of professional ethics must be promoted and maintained and that
public administration must be accountable.
(dd) The CoT could not provide reasons for not enforcing its by-laws and other related legal prescripts regulate the illegal invasion of its property.

(ee) The conduct of the CoT is in violation of section 195(1) (a) and (f) of the Constitution. It also failed to enforce its by-laws and other related applicable legal prescripts such as section 4 of the PIE Act, regulating illegal invasion of its property in this matter.

(ff) The CoT's conduct in this regard constitutes improper conduct as envisaged in section 182(1) (a) of the Constitution and maladministration as envisaged in section 6(4) (a) (i) of the Public Protector Act.

(c) Regarding whether the conduct of the CoT improperly prejudiced the Complainant and if so, what it would take to place Complainant as close as possible to where he could have been had the CoT acted properly:

(aa) The allegation that the conduct of the CoT improperly prejudiced the Complainant and if so, what it would take to place Complainant as close as possible to where he could have been had the CoT acted properly is substantiated.

(bb) The CoT improperly failed to provide the Complainant with another house or alternative accommodation after it had improperly prevented him from occupying a house that was allocated to him.

(cc) The conduct herein by the CoT resulted in prejudice to the Complainant in that he is still without a house, which entitlement the CoT confirmed to, after his application had been approved and he was allocated a house in 2012.

(xx) The appropriate remedial action that I am taking in terms of section 182(1) (c) of the Constitution, with a view to remedying the improper prejudice and maladministration referred to in this report, is the following:
The City Manager must:

(a) Ensure that, within fourteen (14) working days of the date of this Report, a written apology is sent to the Complainant for the improper prejudice caused to him over the years;

(b) Take steps to investigate the cause of these illegal invasion by residents from the old hostels and others from the community;

(c) Take steps to investigate the cause of delay to deal with this matter and take appropriate action against any implicated Municipal officials; and

(d) Take steps to ensure that the Complainant is allocated a housing unit or provided with alternative permanent accommodation, within three (3) months from the date of this Report.
REPORT ON INVESTIGATION INTO ALLEGED UNDUE DELAY BY THE CITY OF TSHWANE METROPOLITAN MUNICIPALITY TO ALLOCATE A LOW COST HOUSE TO MR ME MPHACLELE APPROVED IN 2012

1. INTRODUCTION

1.1 This is my report, as the Public Protector, issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 8 of the Public Protector Act to the following people to note the outcome of my investigation and implement the remedial action:

1.2.1 The Member of Executive Council for Cooperative Governance, Traditional Affairs and Human Settlements, Mr Li Maile; and

1.2.2 The City of Tshwane Administrator, Mr Nawa;

1.2.3 The Acting City Manager, Ms M Mutlaneng; and

1.2.4 The Complainant, Mr ME Mphahlele.

1.3 This report relates to an investigation into allegations of an undue delay by the CoT to allocate a low cost house to Mr ME Mphahlele approved in 2012.

2. THE COMPLAINT

2.1 The complaint was lodged with my office by Mr ME Mphahlele (the Complainant) on 10 April 2017, who alleged that:
2.1.1 He applied for a low cost housing and in 2012, when the houses were built and completed, he was allocated a house by the CoT. These houses were initially built for people who used to stay in a hostel in Mamelodi, and he was one of the beneficiaries as he used to stay in the hostel;

2.1.2 After he was allocated a house, he was given a letter by a CoT official which stated that subsequent to the allocation that took place on 26 March 2012, he was requested not to occupy the unit allocated to him until further notice;

2.1.3 Two (2) years after he was prevented from moving into the house, he was told by the CoT that he could not move into the house as other people had already moved in. He was never given reasons why he could not move into the house which was initially allocated to him. He was only told that this matter was allocated to a senior official to deal with and since then he was promised to be allocated another house, but he had not received one at the date of this Report; and

2.1.4 Each time when he called the CoT offices, he was always promised alternative accommodation. He went to the CoT offices several times and nothing had been done by the CoT at the date of this Report.

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

3.1 The Public Protector is an independent constitutional body established under 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 as regulated by national legislation-"
(a) 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;

(b) to report on that conduct; and

(c) to take appropriate remedial action.”

3.3 Section 182(2) directs that the Public Protector has additional powers and functions prescribed by legislation.

3.4 The Public Protector is further mandated by the Public Protector Act to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector is also given power to resolve disputes through conciliation, mediation, negotiation or any other appropriate alternative dispute resolution mechanism.

3.5 In the Constitutional Court, in the matter of *Economic Freedom Fighters v Speaker of the National Assembly and Other; Democratic Alliance v Speaker of the National Assembly and Others* (CCT143/15; CCT/15) [2016] ZACC11; 2016 (5) BCLR 618 (CC); 2016 (3) SA580 (CC) (31 March 2016), Chief Justice Mogoeng stated the following with own emphasis, when confirming the powers of the Public Protector:

3.5.1 The remedial action taken by the Public Protector has a binding effect. "When remedial action is binding, compliance is not optional, whatever the reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences.” (para 73)

3.6 Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (para 65);
3.6.1 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (para 67);

3.6.2 Taking appropriate remedial action is much more significant than making a mere endeavour to address complaints as the most the Public Protector could do in terms of the Interim Constitution. However sensitive, embarrassing and far-reaching the implications of her report and findings, she is constitutionally empowered to take action that has the effect, if it is the best attempt at curing the root cause of the complaint (para 68);

3.6.3 The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard of their nature, context and language, to determine what course to follow (para 69);

3.6.4 Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effects it has on the person, body or institution it addressed to (para 70);

3.6.5 The Public Protector’s power to take remedial action is wide but certainly not unfettered. What remedial action to take in a particular case, will be informed by the subject-matter of investigation and the type of findings made (para 71);

3.6.6 Implicit in the words “take action” is that the Public Protector is herself empowered to decide on and determine the appropriate remedial measures. And “action” presupposes, obviously where appropriate, concrete or meaningful steps. Nothing in the words suggests that she necessarily has to leave the exercise
of the power to take remedial action to other institutions or that it is the power that is by its nature of no consequence (para 71(c));

3.6.7 She has the power to determine the appropriate remedy and prescribe the manner of its implementation (para 71(d)); and

3.6.8 "Appropriate" means nothing less than effective, suitable, proper or fitting to redress or undo the prejudice, impropriety, unlawful enrichment or corruption, in a particular case (paragraph 71(e)).

3.7 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017), the Court held as follows:

3.7.1 The Public Protector has power to take remedial action, which include instructing the Members of the Executive including the President to exercise powers entrusted on them under the constitution where that is required to remedy the harm in question (para 82);

3.7.2 The Public Protector, in appropriate circumstances, have the power to direct the president to appoint a commission of enquiry and to direct the manner of its implementation. Any contrary interpretation will be unconstitutional as it will render the power to take remedial action meaningless or ineffective (para 85 and 152);

3.7.3 There is nothing in the Public Protector Act or Ethics Act that prohibit the Public Protector from instructing another entity to conduct further investigation, as she is empowered by section 6(4)(c)(ii) of the Public Protector Act (para 91 and 92);
3.7.4 Taking remedial action is not contingent upon a finding of impropriety or prejudice. Section 182(1) afford the Public Protector with the following three separate powers (para 100 and 101):

(a) Conduct and investigation;
(b) Report on that conduct; and
(c) To take remedial action.

3.8 The Public Protector is constitutionally empowered to take remedial action on the basis of preliminary findings or prima facie findings (para 104);

3.9 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para 105);

3.10 The fact that there is no firm findings on the wrong doing, this does not prohibit the Public Protector from taking remedial action. The Public Protector’s observations constitute prima facie findings that point to serious misconduct (paras 107 and 108);

3.11 Prima facie evidence which point to serious misconduct is a sufficient and appropriate basis for the Public Protector to take remedial action (para 112).

3.12 Regarding the exercise of my discretion in terms of section 6(9) of the Public Protector Act to entertain matters which arose more than two (2) years from the occurrence of the incident, and in deciding what constitute ‘special circumstances’, some of the special circumstances that I took into account to exercise my discretion favourably to accept this complaint, includes the nature of the complaint and the seriousness of the allegations; whether the outcome could rectify systemic problems in state administration; whether I would be able to successfully investigate the matter with due consideration to the availability of
evidence and/or records relating to the incident(s); whether there are any
competent alternative remedies available to the Complainants and the overall
impact of the investigation; whether the prejudice suffered by the complainants
persists; whether my refusal to investigate perpetuates the violation of section
195 of Constitution; whether my remedial action will redress the imbalances of
the past. What constitutes as ‘special circumstances’ depends on the merits of
each case.

3.13 The CoT is an organ of state and their conduct amounts to conduct in state affairs,
as a result the complaint falls within the ambit of the Public Protector’s mandate.
Accordingly, the Public Protector has the power and jurisdiction to investigate and
take appropriate remedial action in the matter under investigation.

3.14 The Public Protector’s power and jurisdiction to investigate and take appropriate
remedial action was not disputed by any of the parties.

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The investigation was conducted in terms of section 182 of the Constitution and
sections 6 and 7 of the Public Protector Act.

4.1.2 The Public Protector Act confers on me the sole discretion to determine how to
resolve a dispute of alleged improper conduct or maladministration. Section 6 of
the Public Protector Act gives me the authority to resolve a matter through
Alternative Dispute Resolution (ADR) measures such as conciliation, mediation
and negotiation.

4.1.3 The complaint was initially classified as a matter capable of resolution by way of
a conciliation process or mediation in line with section 6(4) (b) of the Public
Protector Act. However, after several attempts to conciliate the matter, it was escalated into an investigation.

4.2 **Approach to the investigation**

4.2.1 Like every Public Protector investigation, the investigation was approached using an enquiry process that seeks to find out:

4.2.1.1 What happened?
4.2.1.2 What should have happened?
4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amount to improper conduct or maladministration?
4.2.1.4 In the event of improper conduct or maladministration what would it take to remedy the wrong occasioned by the said improper conduct or maladministration?

4.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. In this particular case, the factual enquiry focused on whether and to what extent the CoT unduly delayed to allocate a low cost house to the Complainant, approved in 2012.

4.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the CoT or organ of state to prevent maladministration and prejudice. In this case, key reliance was placed on legislation, prescripts and policies that regulate the standard that should have been met by CoT to ensure that it acted fairly and responsibly to ensure that the Complainant was not improperly prejudiced.
4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of maladministration. Where a Complainant has suffered prejudice, the objective is to place him or her as close as possible to where they would have been had the CoT or organ of state complied with the regulatory framework setting the applicable standards for good administration.

4.3 Based on an analysis of the allegations, I identified the following issues to inform and focus this investigation:

4.3.1 Whether the CoT improperly prevented the Complainant from occupying the house which was allocated to him in Mamelodi in 2012;

4.3.2 Whether the CoT is unduly delaying to allocate the Complainant another house or provide him with alternative accommodation; and

4.3.3 Whether the conduct of the CoT improperly prejudiced the Complainant as envisaged in section 6(4)(a)(v) of the Public Protector Act and if so, what it would take to place Complainant as close as possible to where he could have been had the CoT acted properly.

4.4 The Key Sources of Information

4.4.1 Documents

4.4.1.1 A copy of the Complainant’s complaint form and supporting documentation;

4.4.1.2 A copy of the letter from the CoT received from the Complainant on 02 February 2018 stopping the Complainant from occupying the unit allocated to him; and
4.4.1.3 A copy of the letter from CoT dated, 20 July 2018, providing a response on
this matter.

4.4.2 Interviews and meetings conducted

4.4.2.1 Interview with the Complainant on 01 February 2018, 20 March 2018, 25 May
2018, 19 July 2018, 15 October 2018 and 04 July 2019;

4.4.2.2 A meeting with the CoT officials on 13 November 2017, where they requested
a letter that was sent by CoT dated 04 April 2012 in order for them to follow
up on the response;

4.4.2.3 A meeting held between me and the CoT officials on 16 July 2018; and

4.4.2.4 A meeting held between my investigation team, the CoT and Gauteng
Department of Human Settlements officials on 08 August 2018.

4.4.3 Correspondence sent and received

4.4.3.1 Copies of the letters from the CoT responding to the enquiries from my
investigation team;

4.4.3.2 Copies of email correspondence between my investigation team, the CoT
officials and Complainant; and

4.4.3.3 A copy of section 7(9) notice dated 09 January 2020 and CoT’s response

4.4.4 Legislation and other prescripts

4.4.4.1 The Constitution;
4.4.4.2 The Housing Act 107 pf 1997;

4.4.4.3 Department of Housing: A New Housing Policy and Strategy for South Africa White Paper, 1994;

4.4.4.4 National Housing Code, 2009;

4.4.4.5 Social Housing Policy for South Africa, 2003;

4.4.4.6 The Public Protector Act;

4.4.4.7 Prevention of Illegal Eviction from and Unlawful Occupation of Land Act 19 of 1998 (PIE Act); and

4.4.4.8 Batho Pele Principles.

4.4.5 Case law

4.4.5.1 The Constitutional Court decision in *Khumalo and Another v Member of the Executive Council for Education: KwaZulu Natal* (CCT 10/13) [2013] ZACC 49; 2014 (3) BCLR 333 (CC); (2014) 35 ILJ 613 (CC); 2014 (5) SA 579 (CC) (18 December 2013).

5 THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

5.1 Regarding whether the CoT improperly/irregularly prevented the Complainant from occupying the house allocated to him in Mamelodi in 2012:
Common cause issues

5.1.1 It is common cause that the Complainant applied for a low cost housing in 2012 and the CoT approved his application and allocated him Family Unit number 4, Block D Mabiltlen, Mamelodi West on 26 March 2012.

5.1.2 The CoT’s Housing Administration Division wrote to the Complainant as per a letter dated 04 April 2012 informing him not to occupy the Family Unit number 4, Block D Mabiltlen in Mamelodi West.

Issues in dispute

5.1.3 The issue for my determination is whether the CoT improperly prevented the Complainant from taking occupation of Family Unit number 4, Block D Mabiltlen, Mamelodi West allocated to him.

5.1.4 The Complainant argued that in 2012, he applied at the CoT for a low cost house in Mamelodi. He claimed that the houses were built for people who used to stay in a hostel in Mamelodi, and he was one of the beneficiaries as he was one of the hostel residents.

5.1.5 According to the Complainant, after construction of the houses in 2012, on 20 April 2012, he received a letter dated 04 April 2012 from Mr Reuben Mashao, an official from the CoT’s Housing and Human Settlements Department, requesting him not to occupy the unit allocated to him.

5.1.6 The letter stated as follows: “Subsequent to allocations that took place on 26 March 2012, you are hereby requested not to occupy the unit allocated to you until further notice from our office. We are currently experiencing logistical challenges hence the above request. Mr Mashao can be contacted on 012 358..."
5529 or Reubenma@tshwane.gov.za for further queries. Sorry for the inconvenience caused”.

5.1.7 He was allegedly told by the CoT that he could not move into the house as other people had already moved in. He claimed that no reasons were provided to him on this action taken by the CoT and he had not been allocated another house at the date of this Report.

5.1.8 My office raised the matter with the CoT as per a letter dated 20 June 2017 addressed to Mr Robert Nguluvhe in the office of the Municipal Manager and at a later stage followed up with Mr Thivhulawi Nyambeni, now Acting Director in the office of the Municipal Manager.

5.1.9 The CoT responded as per a letter dated 20 July 2018 from Mr Billy Sepuru, the CoT’s Acting Regional Executive Director (RED): Region 6. The CoT confirmed the Complainant’s allegations and stated that the Complainant and three (3) other beneficiaries were given letters of allocation by the then Strategic Executive Director (SED) of Housing and Human Settlements, Ms Mapule Phora, at Block D (Mabitieng) on 26 March 2012 and that on 04 April of the same year, another letter was issued by the same SED requesting them not to occupy the units until further notice, and part of the problem was that there were still no occupational certificates issued.

5.1.10 Mr Sepuru stated that the Community Residential Units (CRU), family units, were developed by the Gauteng Provincial Department of Human Settlements as a two-pronged development with 56 and 92 Units. Both developments were not issued with occupational certificates which delayed the allocation to the beneficiaries. This was until the CoT’s Department of Housing and Human Settlements took a decision to utilize the 2014/15 budget allocated for construction of new family units to refurbish the 148 units so that they could be allocated. He also stated that part of the problem was that the houses were
illegally invaded by residents from the old hostels and others from the community. He furthermore indicated that there were still no occupational certificates issued by the Gauteng Provincial Department of Human Settlements and that the affected houses (housing units) remained invaded and that the CoT does not have capacity to provide alternative accommodation for any of the beneficiaries, including the Complainant.

5.1.11 I issued a notice dated 09 January 2020 in terms of section 7(9)(a) of the Public Protector Act to the City Manager advising him of my intended findings and affording him an opportunity to provide me with further evidence, failing which I would issue a report regarding the complaint. A response was received that units (including the one that was allocated to the Complainant) were illegally occupied and the matter handed over to the CoT's Legal Department to secure an eviction order and that the legal process had not been finalised at the date of this report.

Application of the relevant law

5.1.12 Section 26 of the Constitution states that everyone has the right to have access to adequate housing. It further states that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

5.1.13 It was expected of the CoT to ensure that it provides access to housing to everyone in its area of jurisdiction in need of a house. The CoT, in compliance with the section 26 constitutional right, initiated a low cost housing project in Mamelodi in 2012.

5.1.14 Section 195(1) (a), (e), (f) and (g) of the Constitution provides that public administration must be governed by the democratic values and principles enshrined in the Constitution, including that of a high standard of professional ethics must be promoted and maintained, people's needs must be responded,
public administration must be accountable, and transparency must be fostered by providing the public with timely, accessible and accurate information.

5.1.15 It was expected of the CoT to be accountable to the Complainant by providing him with alternative accommodation as he was prevented from occupying the house that was legally allocated to him. Furthermore, the CoT should have also provided the Complainant with reasons for preventing him from occupying the house that was allocated to him and also ensure that he was not prejudiced in the process.

5.1.16 Section 9(1) (a) (i) of the Housing Act 107 of 1997 (the Housing Act) provides that every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis. Section 9(1) (e) further provides that every municipality must, as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to promote the resolution of conflicts arising in the housing development process.

5.1.17 It was expected of the CoT to ensure that it took all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis and to promote the resolution of conflicts arising in the housing development process.

5.1.18 The New Housing Policy and Strategy for South Africa White Paper, 1994 states that the point of departure of all housing policy in South Africa is the sovereignty of the Constitution; housing as a basic human right; the role of the state; people-centred development; freedom of choice; and non-discrimination. It also contains
government's overall approach to ensuring housing delivery in relation to stabilising the housing environment; supporting the housing process; mobilising housing credit and savings; establishing the availability of subsidies; institutional arrangements; land acquisition and redistribution; and co-ordinated development. The fundamental principles of this White Paper are still relevant today and guide all human settlements development policies and implementation mechanisms.

5.1.19 Section 4(1) of the Housing Act provides that the Minister must publish a code to give effect to the Housing Act. Subsection 2 further states that the code must contain national housing policy, and may, after consultation with every MEC and the national organisation representing municipalities as contemplated in section 163(a) of the Constitution, include administrative or procedural guidelines in respect of the effective implementation and application of national housing policy; and, any other matter that is reasonably incidental to national housing policy.

5.1.20 The National Housing Code, 2009 simplifies the implementation of housing projects. It provides clear guidelines, norms and standards for the various housing assistance programmes and is structured in three parts:

"Part A: Introduction to the Simplified Guide to the National Housing Code, 2009; Part B: Overview of the Current National Housing Programmes, including the financial interventions (Incremental; Rural; and Social and Rental). Social and Rental interventions comprises the Social housing programmes, Institutional subsidies and CRU's; and Part C: Technical Provisions and Generic Provisions."

5.1.21 Social Housing Policy for South Africa, 2003 aims to improve the rental housing sector. It expands individual housing subsidies to include subsidising social housing projects for people that rent accommodation and are from the lower and medium income groups. The most important principles of the Social Housing Policy are that housing must:
i) restructure urban inner-city by integrating housing development in existing area;

ii) respond to local housing demand through the establishment of well-managed, quality rental housing options and quality living environments;

iii) deliver housing for income groups ranging from the working poor to emerging middle income groups;

iv) support the economic development of low and medium income communities through the creation of sustainable and workable projects;

v) promote safe, harmonious and socially responsible housing and urban environments; and encourage the involvement of the private sector as much as possible.

5.1.22 In this matter, the Complainant was allocated a housing unit according to the National Housing Code, 2009 (section 7), which deals with the CRU’s Programme. Furthermore, he also conformed to the important principles of the Social Housing Policy. Therefore, it was expected of the CoT to ensure that the Complainant is handed the housing unit that was approved for him.

5.1.23 Batho Pele is a South African political initiative that was first introduced by the late President Nelson Mandela’s administration on October 1, 1997 to stand for the better delivery of goods and services to the public. Principle 7 of the Batho Pele Principles provides that if the promised standard of service is not delivered, citizens should be offered an apology, a full explanation and a speedy and effective remedy, and when complaints are made, citizens should receive a sympathetic, positive response. In this matter, the CoT should have been accountable to the Complainant and offered him an apology, a full explanation (reasons) of stopping him from occupying the house allocated to him. Further on, it was expected of the CoT to have provided the Complainant with an alternative in remedying this action.
5.1.24 The low cost housing project or the CRU (family units) was developed by the Gauteng Provincial Department of Human Settlements as a two-pronged development with 56 and 92 Units. The CRU Programme replaced the National Hostels Redevelopment Programme and the proposed Affordable Rental Housing Programme. The CRU Programme aimed to facilitate the provision of secure, stable rental tenure for lower-income individuals. The programme targeted low-income individuals and households earning between R800 and R3 500 a month, who were unable to enter the formal private rental and social housing market.

5.1.25 The CoT also stated that over the years the Gauteng Provincial Department of Housing and Human Settlements could not commit to rectification of the units to ensure that occupational certificates could be secured and units allocated. This was until the CoT’s Department of Housing and Human Settlements took a decision to utilize the 2014/15 budget allocated for construction of new family units to refurbish the 148 units so that they could be allocated, where individuals qualified by entering into lease dwelling agreements with the CoT represented by Mr Mashao as Hostels Functional Head of the Council.

5.1.26 The CoT did not ensure that the Complainant and the three (3) others occupied the housing units that were allocated to them as per the lease dwelling agreements entered into with them. The CoT, instead, claimed the illegal invasion by residents from the old hostels and others from the community, and that there was still no occupational certificates issued by the Gauteng Provincial Department of Human Settlements to avoid taking responsibility of making sure that the Complainant and others occupied the housing units allocated to them.
Conclusion

5.1.27 Based on the evidence gathered, it can be concluded that the CoT did not adhere to the legal prescripts regulating the allocation and occupation of low cost housing in its area of jurisdiction.

5.2 Regarding whether the CoT is unduly delaying to allocate the Complainant another house or an alternative accommodation:

Common cause issues

5.2.1 It is common cause that the Complainant made the allegations against the CoT of undue delay to resolve this complaint since 04 April 2012. The CoT confirmed the allegations with a response letter dated 20 July 2018.

Issues in dispute

5.2.2 The issue for my determination is whether the CoT unduly delayed to allocate the Complainant another house after he was prevented from taking occupation of Family Unit number 4, Block D Mabitieng, Mamelodi West allocated to him.

5.2.3 The Complainant alleged that two (2) years after he was prevented from moving into the house, he was told by the CoT that he could not move into the house as other people had already moved in and was never given reasons why he could not move into the house which was initially allocated to him. He was only told that this matter was allocated to a senior official to deal with and since then he was promised another house, but at the date of this Report he had not received one. Each time when he called the CoT offices, he was always promised to be allocated an alternative accommodation. He went to the CoT’s offices several times and nothing has been done by the CoT.
5.2.4 The CoT did not dispute the delay in allocating the Complainant another house or alternative accommodation. However, it stated in a letter dated 20 July 2018 from Mr Sepuru that part of the problem was that the houses were illegally invaded by residents from the old hostels and others from the community. Further that there was still no occupational certificates issued by the Department; that the affected houses (housing units) remained invaded and that the CoT did not have the capacity to provide alternative accommodation for any of the beneficiaries, including the Complainant. The CoT failed to explain the steps taken to evict the illegal occupants as they were silent on this aspect and also failed to provide the Complainant with alternative accommodation.

Application of the relevant law

5.2.5 Section 195 of the Constitution provides that public administration must be governed by the democratic values and principles enshrined in the Constitution, including that of a high standard of professional ethics must be promoted and maintained, give effect to good human resources management practices, provide services as good administration, respond to people’s needs and be accountable.

5.2.6 It was expected of the CoT to be accountable to the Complainant by ensuring that he occupied the house that was legally allocated to him or that he be allocated an alternative accommodation. Furthermore, the CoT should have taken steps or legal action to evict the illegal occupants of the Complainant’s house which they had failed to do.

5.2.7 Section 4 of the Prevention of Illegal Evictions from and Unlawful Occupation of Land Act 19 of 1998 (PIE) provides that an eviction can only be authorised by a court after taking into account the rights of all people involved. Where an unlawful occupier occupies land for more than six months (being a period of unlawful occupation as opposed to the mere occupation) an order for eviction must be “just and equitable” and a court must have regard to all relevant circumstances,
including, the rights and needs of the elderly, children, disabled persons and households headed by women; the duration of occupation; and whether the land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier. Section 6 is relevant where the state applies for an eviction order. In deciding if the eviction is just and equitable a court must have regard of the following:

(a) The circumstance under which the land was occupied and the buildings or structures erected;
(b) The length of the period for which the occupiers resided on the land; and
(c) The availability of suitable, alternative accommodation or land.

5.2.8 In this case, the CoT was expected to approach the court to apply for an eviction order immediately it became aware that there was illegal invasion of the housing units that was allocated to the Complainant(s). Failure to do that, the CoT should have provided the Complainant(s) with alternative accommodation. Therefore, the CoT did not exercise this remedy available to it to avoid the Complainant from being prejudiced by its action.

Conclusion

5.2.9 Based on evidence gathered, it can be concluded that the CoT delayed to provide the Complainant with another house or alternative accommodation as it prevented him from occupying Family Unit number 4, Block D Mabilteng, Mamelodi West that was allocated to him on 04 April 2012 and after eight (8) years, still stated that part of the problem was that the houses were illegally invaded by residents from the old hostels and others from the community. Further, that there was still no occupational certificates issued by the Department, that the affected houses (housing units) remain invaded and that the CoT does
not have capacity to provide alternative accommodation for any of the beneficiaries including the Complainant.

5.3 Regarding whether the conduct of the CoT improperly prejudiced the Complainant and if so, what it would take to place Complainant as close as possible to where he could have been had the CoT acted properly:

Common cause issues

5.3.1 The evidence at hand points to the CoT not communicating with the Complainant in respect of not providing him with another house or alternative accommodation after it had prevented him from occupying a house that was allocated to him.

5.3.2 The CoT confirmed that the Complainant applied for a low cost house which was allocated in 2012. However, the Complainant was prevented from occupying the said property. The Complainant was still without a house at the date of this Report.

5.3.3 The CoT further stated that part of the problem was that the houses were illegally invaded by residents from the old hostels and others from the community. Also that there was still no occupational certificates issued by the Gauteng Provincial Department of Human Settlements, that the affected houses (housing units) remained invaded and that the CoT does not have capacity to provide alternative accommodation for any of the beneficiaries including the Complainant.

Application of the relevant law

5.3.4 The standards demanded of state organs, per section 195 of the Constitution above, apply to the CoT.
Furthermore, section 182(1) (c) of the Constitution gives the Public Protector the power to take appropriate remedial action. The determination of appropriateness is a factual enquiry informed by the impact of the maladministration on the Complainant and the circumstances under which the maladministration (if any) occurred.

Conclusion

Based on the evidence at my disposal, it can be concluded that the Complainant suffered prejudice due to the undue delay by the CoT to provide him with another house or alternative accommodation after it had prevented him from occupying Family Unit number 4, Block D Mabitleng, Mamelodi West that was allocated to him, in that he is still without a house after his application had been approved and allocated a house in 2012.

6. FINDINGS

Having considered the evidence obtained during the investigation as against the relevant regulatory framework, I make the following findings:

6.1 Regarding whether the CoT improperly prevented the Complainant from occupying the house that was allocated to him in Mamelodi in 2012:

6.1.1 The allegation that the CoT improperly prevented the Complainant from occupying the house that was allocated to him in Mamelodi in 2012 is substantiated.

6.1.2 My investigation revealed that the CoT properly allocated the Complainant Family Unit number 4, Block D Mabitleng, Mamelodi West on 04 April 2012, but subsequently improperly prevented him from occupying the house. The low cost
housing project was the Gauteng Provincial Department of Human Settlements’ initiative which the CoT took over and included it in its 2014/2015 budget.

6.1.3 Evidence at my disposal revealed that according to the CoT, the problem was that the houses were illegally invaded by residents from the old hostels and others from the community. Furthermore, that there was still no occupational certificates issued by the Gauteng Provincial Department of Human Settlements, that the affected houses (housing units) remain invaded and that the CoT does not have capacity to provide alternative accommodation for any of the beneficiaries, including the Complainant.

6.1.4 The conduct of the CoT was in violation of section 195(1) (a), (e), (f) and (g) of the Constitution, section 9(1) (a) (i) and (e) of the Housing Act and Principle 7 of the Batho Pele Principles.

6.1.5 The CoT’s conduct also amounts to improper conduct as envisaged in section 182(1) (a) of the Constitution and maladministration as envisaged in section 6(4) (a) (i) of the Public Protector Act.

6.2 Regarding whether the CoT is unduly delaying to allocate the Complainant another house or an alternative accommodation:

6.2.1 The allegation that the CoT unduly delayed to allocate the Complainant another house or alternative accommodation is substantiated.

6.2.2 The CoT does not dispute the delay in allocating the Complainant another house or alternative accommodation. However, it stated that part of the problem was that the houses were illegally invaded by residents from the old hostels and others from the community and that the CoT does not have capacity to provide alternative accommodation for any of the beneficiaries including the Complainant.
6.2.3 The CoT failed to meet the standards required by section 195 of the Constitution, which makes provision that the public administration must be governed by the democratic values and principles enshrined in the Constitution including that a high standard of professional ethics must be promoted and maintained and that public administration must be accountable.

6.2.4 The CoT could not provide reasons for not enforcing its by-laws and other related legal prescripts regulating the illegal invasion of its property.

6.2.5 The conduct of the CoT is in violation of section 195(1) (a) and (f) of the Constitution. It also failed to enforce its by-laws and other related applicable legal prescripts such as section 4 of the PIE Act, regulating illegal invasion of its property in this matter.

6.2.6 The CoT's conduct in this regard constitutes improper conduct as envisaged in section 182(1) (a) of the Constitution and maladministration as envisaged in section 6(4) (a) (i) of the Public Protector Act.

6.3 Regarding whether the conduct of the CoT improperly prejudiced the Complainant and if so, what it would take to place Complainant as close as possible to where he could have been had the CoT acted properly:

6.3.1 The allegation that the conduct of the CoT improperly prejudiced the Complainant and if so, what it would take to place Complainant as close as possible to where he could have been had the CoT acted properly is substantiated.

6.3.2 The CoT improperly failed to provide the Complainant with another house or alternative accommodation after it had improperly prevented him from occupying a house that was allocated to him.
6.3.3 The conduct herein by the CoT resulted in prejudice to the Complainant in that he is still without a house, which entitlement the CoT confirmed to, after his application had been approved and he was allocated a house in 2012.

7. REMEDIAL ACTION

The appropriate remedial action that I am taking in terms of section 182(1) (c) of the Constitution, with a view to remedying the improper prejudice and maladministration referred to in this report, is the following:

7.1 The City Manager must:

7.1.1 Ensure that, within fourteen (14) working days of the date of this Report, a written apology is sent to the Complainant for the improper prejudice caused to him over the years;

7.1.2 Take steps to investigate the cause of these illegal invasion by residents from the old hostels and others from the community;

7.1.3 Take steps to investigate the cause of delay to deal with this matter and take appropriate action against any implicated Municipal officials; and

7.1.4 Take steps to ensure that the Complainant is allocated a housing unit or provided with alternative permanent accommodation, within three (3) months from the date of this Report.

8. MONITORING

8.1 The City Manager must, within ten (10) working days from the date of this Report, provide my office with an action plan indicating how the remedial action referred to in paragraph 7 above will be implemented.
8.2 Unless the remedial actions taken by the Public Protector are reviewed and set aside by the Court of law, compliance is not optional and same must be complied with within the stated period.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE REPUBLIC OF SOUTH AFRICA
DATE: 30/09/2020