
PUBLIC PROTECTOR
SOUTH AFRICA

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"Investigation into alleged acts or omissions by certain organs of state which resulted in unlawful or improper prejudice to the residents of Glebelands Hostel"

REPORT ON AN INTERVENTION BY THE PUBLIC PROTECTOR TO ENSURE ACCOUNTABILITY BY THE RELEVANT STATE INSTITUTIONS FOR THEIR ROLES IN REDRESSING THE SITUATION AT THE GLEBELANDS HOSTEL IN KWAZULU-NATAL PROVINCE UNDER THE ETHEKWINI METROPOLITAN MUNICIPALITY
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Executive Summary

(i) This is a report of 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 No. 23 of 1994 (the Public Protector Act).

(ii) The report relates to an intervention by the Public Protector to ensure accountability by relevant state organs for their roles in redressing the situation at the Glebelands Hostel.

(iii) The intervention followed a complaint lodged by Professor Mcquoid-Mason, the President of the Commonwealth Legal Education Association in which he complained about frequent and unabated killings that were taking place at the Glebelands Hostel in Umlazi, Durban and the unlawful eviction and displacement of hundreds of hostel residents from rooms that had been allocated to them. He stated that the murders and unlawful evictions were a flagrant violation of the right to life, the right to personal security and the right of access to housing as enshrined in the 1996 Constitution and Bill of Rights.

(iv) On analysis of the complaint, the following issues were considered and investigated:

(a) Did the Ethekwini Municipality administer the Glebelands Hostel in accordance with the law and the applicable policies and prescripts and if not, whether such failure amounted to maladministration?
(b) Did the handling of the security situation at the Glebelands Hostel by the Security Cluster accord with the duties imposed on it by the Constitution and the law, and if not, whether such amounted to maladministration?

(c) Did the Department of Social Development fulfil its mandate in relation to the victims and survivors of the Glebelands Hostel violence and if not, whether such failure amounted to maladministration?

(v) The investigation was conducted in terms of section 182 of the Constitution which gives the Public Protector the power to investigate alleged or suspected improper or prejudicial conduct in state affairs, to report on that conduct and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, 1994, which regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.

(vi) The investigation process included the perusal of documents that were furnished by Professor Mcquoid-Mason and his associates, meetings that were held with representatives of the hostel residents, meetings that were held with officials of the relevant organs of state and reports that they submitted to the office of the Public Protector, in loco inspections and direct observations that were made at the hostel and consideration of applicable legislation and other prescripts.

(vii) Key laws and policies taken into account to determine if there had been maladministration by the relevant organs of state or its officials were principally those imposing administrative standards that should have been complied with by the Department or its officials when processing this complaint. Those are the following:
(aa) Section 152 of the Constitution provides that the objects of local government are-
   (b) To ensure the provision of services to communities in a sustainable manner;
   (d) To promote a safe and healthy environment.

(bb) Section 4 (2) of the Local Government Municipal Systems Act no 32 of 2000 provides that a Municipal Council has a duty to-

   (d) Strive to ensure that municipal services are provided to the local community in a financially sustainable manner.

   (f) Give members of the local community equitable access to the municipal services to which they are entitled.

   (i) promote a safe and healthy environment in the municipality.

(cc) The Ethekwini Municipality Hostel Policy provides for, among other things, the implementation of an effective access control, the signing of lease agreements, the regularisation of occupancy, and payment of rent and the control of trading within the hostels.

(dd) Section 12 (1) of the Constitution provides that everyone has the right to freedom and security of the person which includes the right-

   (c) To be free from all forms of violence from either public or private sources
   (d) Not to be tortured in any way.
(ee) Section 205(3) of the Constitution provides that the objects of the police are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to uphold and enforce the law.

(ff) Section 206 of the Constitution bestows certain powers to Provinces and Provincial Executives responsible for policing functions to perform certain functions in relation to policing in their areas.

(gg) Section 64E of the South African Police Service Act no 68 of 1995 provides that the functions of the Municipal Police Service are-

(b) The policing of municipal by-laws and regulations which are the responsibility of the municipality in question;

(c) The prevention of crime

(hh) Section 27(1)(c) of the Constitution provides that everyone has a right to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

(ii) Section 13 of the Social Assistance Act, 2004 provides that the Minister may provide social relief of distress to a person who qualifies for such relief as may be prescribed.

(jj) The purpose of the Policy on Social Relief of Distress approved by the KwaZulu-Natal Department of Social Development in June 2014 is to provide standardised processes when rendering the programme of social relief of distress so as to ensure uniform and standard social relief of distress application, accountabilities, responsibilities and controls at all levels within the Department.
(viii) Having considered the evidence uncovered during the course of the intervention against the relevant regulatory framework, the Public Protector makes the following findings:

(a) Whether the ETHEKWINI MUNICIPALITY administered the GLEBELANDS HOSTEL in accordance with the law and the applicable policies and prescripts and if not whether such failure amounted to maladministration, the finding is that:

(aa) The ETHEKWINI MUNICIPALITY failed to promote a safe and healthy environment within the GLEBELANDS HOSTEL as required by section 152(1)(d) of the Constitution and envisioned in its own HOSTEL POLICY approved in 1998.

(bb) The ETHEKWINI MUNICIPALITY failed to give members of the local community equitable access to the municipal services to which they are entitled as envisaged in section 4(2)(f) of the Local Government Municipal Systems Act.

(cc) The ETHEKWINI MUNICIPALITY failed to provide services to the GLEBELANDS HOSTEL community in a financially and environmentally sustainable manner as required by section 152(1)(b) of the Constitution and Section 4(2)(d) of the Local Government Municipal Systems Act.

(dd) The failure by the ETHEKWINI MUNICIPALITY as outlined above 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.
Whether the handling of the security situation at the Glebelands Hostel by the Security Cluster accorded with the duties imposed on it by the Constitution and the law and if not whether such amounted to maladministration, the finding is that:

(aa) The South African Police Service (SAPS) failed to live up to the object to prevent, combat and investigate crime, to maintain public order, to protect and secure the residents of the Glebelands Hostel and their property and to uphold and enforce the law as required by section 205(3) of the Constitution.

(bb) The SAPS failed to uphold the rights of the Glebelands residents to be free from all forms of violence as enshrined in section 12(1)(c) of the Constitution.

(cc) The failure by the SAPS as outlined above 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.

(dd) The Ethekwini Metropolitan Police Service failed in its role to prevent crime at the hostel as required by section 64E of the South African Police Service Act, 1995 and such failure 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) Whether the Department of Social Development fulfilled its mandate in relation to the victims and survivors of the Glebelands Hostel violence and if not, whether such failure amounted to maladministration, the finding is that:

(aa) The Department of Social Development (DSD) failed to fulfil its responsibility to the victims of the Glebelands Hostel violence as required by section 27(1)(c) of the Constitution and is contrary to its Policy on Social Relief of Distress.
(bb) The failure by the DSD as outlined above constitutes improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

(ix) The appropriate remedial action the Public Protector is taking in pursuit of section 182(1)(c) of the Constitution, with the view of placing the victims as close as possible to where they would have been had the improper conduct or maladministration not occurred, while addressing administrative deficiencies in the relevant organs of the state, is the following:

(a) The Municipal Manager of Ethekwini Municipality must take appropriate measures to promote a safe and healthy environment at the Giebelands Hostel and in this regard ensure that:

(aa) A database of the evicted and displaced people is compiled and that in the event that these people cannot be returned to their allocated rooms, that suitable alternative accommodation is provided to them;

(bb) Access control is implemented as provided for in the Hostel Policy; and

(cc) The regularisation of residency is implemented as provided for in the Hostel Policy.
(b) The Municipal Manager of Ethekwini Municipality is to ensure that the community of the Glebelands Hostel is allowed equitable access to the municipal services to which it is entitled and in this regard must ensure:

(aa) That refuse is collected and removed at regular intervals;

(bb) That damaged infrastructure, like water and sewage pipes, is repaired timeously and, where necessary, replaced;

(cc) That the hostel grounds are adequately maintained with grass verges and fields are trimmed on a regular basis; and

(dd) That lighting both inside and outside the blocks is improved.

(c) The Municipal Manager of Ethekwini Municipality is to ensure that services to the hostel are provided in a financially and environmentally sustainable manner and in this regard ensure that:

(aa) The collection of rental is implemented as provided for in the Hostel Policy; and

(bb) Trading within the hostel premises is controlled as per Hostel Policy.

(d) The Provincial Commissioner of the South African Police Service is to ensure that the SAPS meet its object to prevent, combat and investigate crime, to maintain public order, to protect and secure the residents of the Glebelands Hostel and their property and in this regard must:

(aa) Consider the establishment of a satellite police station within the hostel premises;
(bb) Ensure that sufficient numbers of police officers are deployed to do
duty inside the hostel whenever the threat of violence is
reported;

(cc) Ensure that all reported incidents of police brutality that were
reported some of which are outlined in this report are referred to the
Independent Police Investigative Directorate (IPID) and all other
cases of police misconduct are thoroughly investigated.

(dd) Ensure that all serious crimes like murder and illegal evictions are
investigated by police detectives from outside the Umlazi Police
Station in order to address perceptions of partiality.

(e) The SAPS must take all necessary measures to uphold the rights of the
Glebelands community to be free from all forms of violence and in that regard:

(aa) Ensure that perpetrators of violence are arrested and brought to
book.

(bb) Take all measures necessary to improve the relationship between
the local police station and the residents of the hostel.

(f) The Member of the Executive Council (MEC) responsible for Social
Development in KwaZulu-Natal is to ensure that:

(aa) The Department implements the action plan referred to in
paragraphs 1.5.18.3 and 4.4.8.2.4 of this report and indicates how it
intends to assist the victims, survivors and their families that may
have relocated outside the Province of KwaZulu-Natal.
(bb) That the MEC establishes the reasons why the Department failed to act timeously and come to the assistance of the victims of the Glebelands Hostel and take appropriate action against the officials found to have been responsible for the inaction.

(g) The Provincial Head of the I PID must note that the Public Protector will monitor the investigation of the allegations of police torture and killing of Glebelands Hostel residents and in that regard should provide the Public Protector with a copy of the I PID’s final report.
REPORT ON AN INTERVENTION BY THE PUBLIC PROTECTOR TO ENSURE ACCOUNTABILITY BY THE RELEVANT STATE INSTITUTIONS FOR THEIR ROLES IN REDRESSING THE SITUATION AT THE GLEBELANDS HOSTEL

1. INTRODUCTION

1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) read with section 8(1) of the Public Protector Act No. 23 of 1994 (the Public Protector Act).

1.2 The report is submitted in terms of Section 8(1) of the Public Protector Act to:

1.2.1 The Mayor of the Ethekwini Municipality, Councillor Z. Gumede;

1.2.2 The Acting Provincial Police Commissioner, KwaZulu-Natal, Major General P. B. Langa;

1.2.3 The MEC for Social Development, KwaZulu Natal, Mrs W. G. Thusi; and

1.2.4 The Provincial Head of the Independent Police Investigative Directorate, KwaZulu-Natal, Mrs P. Maharaj.

1.3 Copies of the report are circulated in terms of section 8(3) of the Public Protector Act to the following to take cognisance thereof:

1.3.1 The Premier of KwaZulu-Natal Province, Mr T. W. Mchunu;

1.3.2 The MEC Transport, Community Safety and Liaison, KwaZulu Natal, Mr M. T. Kaunda;

1.3.3 Professor Mcquoid-Mason; and

1.3.4 Representatives of the Glebelands Hostel residents.
1.4 The report relates to the intervention by the Public Protector to ensure accountability by the relevant state institutions for their role in redressing the situation at the Glebelands Hostel.

1.5 BACKGROUND

1.5.1 The intervention by the Public Protector to ensure accountability by the relevant state institutions for their roles in redressing the situation at the Glebelands Hostel was as a result of a complaint that was received by the Public Protector from Professor Mcquoid-Mason in December 2015.

1.5.2 The intervention commenced with a round table meeting that was held with officials of the relevant state institutions, including those from the Ethekwini Municipality (Municipality), the South African Police Service (SAPS) and the Department of Social Development (DSD) and the Independent Police Investigative Directorate (IPID) on 22 December 2015 following an in loco inspection at the Glebelands Hostel by the Public Protector and her team on 21 December 2015.

1.5.3 The intervention involved the perusal and consideration of documents that were furnished by the complainant and his associates, meetings with representatives of the warring factions, observations made during the Public Protector’s visits to the hostel, reports received from state institutions, legislation and other prescripts.

1.5.4 The perspective of the Municipality regarding the situation that prevailed at the Glebelands Hostel in the months before the intervention by the Public Protector is elucidated in a court application that was lodged by the Municipality in the KwaZulu-Natal Local Division of the High Court during December 2015. The application was for an order, inter alia, interdicting and restraining certain persons who were cited as being in charge of or in control of or associated with groups responsible for certain blocks at the Glebelands
Hostel from allocating accommodation within the hostel and from forcefully evicting, harassing, threatening or in any way interfering with the municipality's legal tenants at the hostel. In the founding affidavit filed in support of the application, the Municipal Manager of the Ethekwini Municipality stated, among other things, that:

1.5.4.1 In or about 1996, the Ethekwini Municipality (the Municipality) assumed control of all hostels which were located within the jurisdiction of the Municipality from the KwaZulu-Natal Provincial Government and the Ningimu Council. At that time, the hostels had no administration and the situation within each hostel could be described as lawless as persons could be allocated accommodation or summarily forcibly removed and or killed based on political and/or other affiliations.

1.5.4.2 Block Committees whose role was to be a liaison between the Municipality, as the landlord and administrator, and the residents as tenants, began a systematic process of illegally and forcibly evicting the Municipality's legal tenants and replacing them with their friends and associates or other persons who paid them a "protection fee".

1.5.4.3 During August 2014 the Municipality and the MEC in charge of housing in the Province received a memorandum from certain aggrieved tenants of Glebelands Hostel which informed them, inter alia, of the following:

(a) That the residents of the Hostel have not been paying the rental due to the Municipality as they have been prevented by their so-called leaders, the Block Committees.

(b) That the Block Committees have sold beds (space) and have had tenants of the hostel brutally evicted.

(c) That the Block Committees have been responsible for the death of, and injury to, many of the residents.
(d) That since the process of registration had begun, the Block Committees began to kill people and blood was spilled.

(e) That the Block Committees are not afraid as they killed a policeman who was resident at the hostel on 17 July 2014. Thereafter a certain Chico Mbewana was gunned down near the Shembe Church in Block Z.

(f) That the residents did not want the so-called leaders to remain at the hostel.

1.5.4.4 It was clear from the above that the leaders and members of the Block Committees have been acting as “warlords” and have systematically waged war on their detractors and rivals.

1.5.4.5 As a result of the unlawful and criminal conduct of the Block Committees, the Premier of the KwaZulu-Natal Province and the MEC in charge of Community Safety and Liaison sought to intervene and assist.

1.5.4.6 Consequently in or about September 2014 the Premier and the MEC for Community Safety held a meeting with the residents of the hostel and officials of the Municipality. Arising from the meeting, the Premier disbanded the Block Committees.

1.5.4.7 Despite their disbandment, the Block Committees continued to exist. From September 2014 the rival factions have continued to forcibly evict the Municipality’s legal tenants and replace them with persons chosen by them either in return for monetary payment or the provision of arms and ammunition and or other forceful means.

1.5.4.8 As a result of the violence at the hostel members of the SAPS are regularly patrolling the vicinity of the hostel. Notwithstanding these patrols by the SAPS, the illegal and unlawful activity by members of the rival factions has
continued as the Municipality’s legal tenants have been forcibly evicted from the hostel.

1.5.4.9 After the numerous deaths that were recorded at the hostel, it would appear that since October 2015, members of the rival groups have begun a systematic process of revenge killings of each other’s leaders. There was a concerted and systematic drive by members of the rival factions to take over as the “warlord” of the hostel and in doing so be the ones responsible for allocations, removals, receipt of bribes and other illicit benefits.

1.5.4.10 Should the actions of the rival factions not be stopped, the Municipality’s legal tenants will pay the price with their lives. The perpetrators of the violence are aware that members of the SAPS and even the Metropolitan Police are engaged in law enforcement duties in the vicinity of the hostel. However these law enforcement officers will not be patrolling inside the hostel and the safety of the Municipality’s legal tenants and even the remaining members of the rival factions is not guaranteed at all. The members of the SAPS have refused to assist the Municipality’s legal tenants and have referred them to the Municipality for assistance. The Municipality cannot assist its legal tenants and or other occupiers of the hostel in circumstances that warrant the enforcement of the law. The Municipality’s Metropolitan Police Service is not equipped to deal with the nature of law enforcement required at the hostel.

1.5.5 In the status update reports that were submitted to the office the Public Protector, the Municipality stated the following:

1.5.5.1 “The conflict at Glebelands Hostel started in 2011 as a result of a dispute regarding the selection of candidates for ward 76. This led to several protest marches led by Ubunye Bamahostela, SANCO and the SACP indicating dissatisfaction with the nomination of the Councillor candidate.
1.5.5.2 Further marches continued after the candidate was elected, demanding his removal and the disbandment of the Ward Committee. On 30 October 2011, the office of the Ward Councillor was burnt down.

1.5.5.3 During May 2014, another group emerged at Glebelands Hostel supporting the Ward Councillor and the Ward Committee. The group also staged protest marches and submitted memoranda calling for the following:

(a) To be regularised as tenants on the municipal database;

(b) The disbandment of the Block Chairpersons Committees; and

(c) The eviction of certain individuals from the hostel.

1.5.5.4 The instability that has existed mainly in Glebelands and KwaMashu Community Residential Units (hostels) has been a concern to the provincial government and the Municipality. This resulted in the establishment of an inter-governmental and multi-disciplinary task team in 2014."

1.5.5.5 The following challenges were being encountered:

(a) "The rival factions were still intent on removing all remnants of each faction including Block Chairs and Committee members.

(b) The unlawful collection of monies is on-going on both sides. The money is demanded for protection, hiring attorneys, sustaining associates in prison, buying illegal firearms and hiring hitmen.

(c) Meetings take place in the kitchens and among blocks but these have been reduced due to police monitoring. The placing of eviction letters, sending of SMS and the firing of shots into the windows of rooms in which the occupants are targeted for eviction has subsided.

(d) The arrival of strangers/unknown persons and the movement of illegal firearms inside the hostel and to other hostels is being monitored.
(e) Intra-group conflict rears its head from time to time including competition over business interests."

1.5.5.6 The following initiatives have been concluded:

(a) "11 380 tenants have been registered on the database;

(b) Lighting has been upgraded but much still needs to be done;

(c) Phase 1 of installation of CCTV cameras has been completed, phase 2 to be completed in December 2016;

(d) Numerous shacks/containers obstructing the view and creating unsafe conditions are receiving attention. Some have already been demolished;

(e) The erection of a perimeter fencing will be concluded at the end of July 2016; and

(f) Consultation with the Ward Councillor and Ward Committee on the Rules regulating the establishment and operation of the Community Residential Unit Committee is on-going and will be finalised by the new Ward Councillor and Ward Committee that will be elected after the August 2016 local government elections."

1.5.7 From observations made during the on-site visits that the Public Protector and her team undertook to the hostel on 21 December 2015 and on 25 February 2016, the following was evident:

1.5.7.1 Most of the older blocks were dilapidated and were poorly maintained with broken windows, doors and walls that were cracking;

1.5.7.2 The grounds were not well kept and the grass and other vegetation was not cut and there was rubbish that was strewn around the premises;
1.5.7.3 Poor lighting both outside and inside the blocks;

1.5.7.4 Uncollected refuse, blocked drains, water leakages and leaking sewer pipes;
   and

1.5.7.5 Informal structures like shacks that are reportedly used as business premises.
1.5.8 The observations recorded in paragraph 1.5.7 above were bolstered by photographs that the office of the Public Protector received from one of Professor Mcquoid-Mason's associates which depict the parlous conditions that the residents had to endure. Some of these photographs are shown below.
1.5.9 The perspective of the security cluster is contained in a report dated 18 January 2016 which was submitted by the KwaZulu-Natal Deputy Provincial Commissioner: Crime Detection, Major General Naidoo following the round table meeting held with different stakeholders on 22 December 2015. In the report, the police stated as follows:

1.5.9.1 "During May 2015, incidents of violence at Glebelands Hostel escalated. The hostel currently has 19 000 occupants as opposed to its capacity of 13 000, leading to overcrowding and competition for beds.

1.5.9.2 Elements within the hostel saw this as an opportunity to enrich themselves by collecting rental from occupants. This has increased the tension and contributed to the current cycle of violence. In addition to the overcrowding, the situation is exacerbated by poor lighting in and around the hostel and lack of access control. The number of unhygienic and dilapidated shacks and containers used to operate informal business add to the tension.

1.5.9.3 The SAPS followed a multi-disciplinary approach to solve the problem and commenced with operations aimed at stabilizing the hostel and deal with the perpetrators. The multi-disciplinary team consisted of various units from the SAPS, the Metro Police, private security and the Ethekwini Metro.

1.5.9.4 Since May 2015 the multi-disciplinary contingent consisting of 35 members from various units of SAPS, Metro Police and private security were permanently deployed to address the violence on a daily shift basis. From 1 May 2014 up to 18 January 2016, there were 32 murder cases and 47 attempted murder cases reported. A specially selected Crime Intelligence and Detective team was responsible for more than 40 arrests being effected in 19 cases. A further 56 arrests were made for various other types of crime at the hostel.
1.5.9.5 To adequately address the current challenges, the following three pronged strategy was being followed:

(a) Law enforcement by the SAPS and Metro Police;

(b) Crime prevention through environmental design; and

(c) Community values and education by political office bearers.

1.5.9.6 The integrated approach has drawn role players from the province, the Metro Council, SAPS, Metro Police and private security. This is a joint initiative aimed at addressing not only the security problem but also issues related to poor infrastructure. A team from the Department of Community Safety and Liaison and the Community Policing Forum is also involved in engaging the community to seek a solution to this problem.

1.5.9.7 The statistics of murder cases in the Glebelands Hostel were given as follows:

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<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Total Number</td>
<td>44</td>
</tr>
<tr>
<td>Arrests</td>
<td>16</td>
</tr>
<tr>
<td>Under Investigation</td>
<td>32</td>
</tr>
<tr>
<td>Court Going</td>
<td>4</td>
</tr>
<tr>
<td>Undetected</td>
<td>5</td>
</tr>
<tr>
<td>Filed</td>
<td>3</td>
</tr>
<tr>
<td>Convictions</td>
<td>0</td>
</tr>
</tbody>
</table>
1.5.10 An updated report dated 6 July 2016 submitted by the Acting Provincial Commissioner: Major General P. B Langa provided the following information:

1.5.10.1 "The current deployment at the hostel consisted of a total of 78 (39 per shift) of various units viz. Umlazi Visible Policing, Public Order Police, Tactical Response Team, Metro Police and private security.

1.5.10.2 Three (3) members from Crime Intelligence were solely assigned to deal with Glebelands Hostel cases.

1.5.10.3 In addition to the abovementioned deployment, a further 32 members consisting National Intervention Unit and Public Order Police members were performing detached duties at Glebelands Hostel. They are rotated on a monthly basis and their tour of duty was scheduled to end on 31 July 2016.

1.5.10.4 From the period between January 2016 to June 2016 no incidents of illegal eviction at the hostel were reported to the police.

1.5.10.5 The statistics of murder cases in the Glebelands Hostel were given as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number reported since March 2014</td>
<td>44</td>
</tr>
<tr>
<td>Number of killings since January 2016 to 8 July 2016</td>
<td>8</td>
</tr>
<tr>
<td>Number of arrests that were carried out in relation to all murders</td>
<td>11</td>
</tr>
<tr>
<td>Number of suspects that have appeared in court</td>
<td>11</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>----</td>
</tr>
<tr>
<td>Number of convictions</td>
<td>0</td>
</tr>
</tbody>
</table>

1.5.11 In an undated report that was submitted by the Department of Community Safety, it was reported as follows:

1.5.11.1 "One of the key crime prevention programmes of the Department of Community Safety and Liaison is the Communities-in-Dialogue Programme (CIDP). The CIDP is an initiative to facilitate the assumption by communities of the responsibility for peace, stability and creating safer places to live. The essence is to create a platform for dialogue and acceptance of responsibility to resolve inter and intra community conflicts. The methodology followed by the Department in each case would depend on the nature and inherent cause of the conflict.

1.5.11.2 The community of Glebelands Hostel had a march on 15 March 2011 against the Ward Councillor and demanded that he be removed from office. On 30 October 2011, the councillor's office was burnt down. Since then there has been on-going conflict within Glebelands Hostel and this has resulted in numerous memorandums submitted to the Municipality demanding their intervention. The African National Council at provincial and regional levels has made numerous unsuccessful attempts to address this conflict.

1.5.11.3 The Department of Community Safety and Liaison together with Umlazi SAPS has been monitoring the situation at the hostel since March 2011. Numerous meetings have been facilitated with the relevant stake holders including the management of the hostel with a view to address the root causes of the violence.
1.5.11.4 The MEC for Transport, Community Safety and Liaison initiated the CIDP between the two rival groups. Consequently, a 5-a-side Conflict Resolution Committee between the two groups was established.

1.5.11.5 The 5-a-side Conflict Resolution Committee eventually signed an agreement in September 2014 whereby they were committing themselves to cease fire, disband the illegal committees and work with the police in addressing crime within the hostel. The signed agreement required the Department to craft a proper agreement that would be signed by the parties in the presence of their followers.

1.5.11.6 However during September 2014 the Premier, who was the Acting MEC for Transport, Community Safety and Liaison at the time, and the Mayor of Ethekwini Municipality convened a peace rally at Glebelands Hostel in an attempt to bring peace and stability in the area.

1.5.11.7 The peace meeting identified issues that were contributing to the violence and instability. A resolution was taken by leaders of both rival groups to disband the illegal committees in the hostel with immediate effect. Unfortunately this decision affected the 5-a-side Conflict Resolution Committee which was involved in peace dialogue. This decision led to the formal disbandment of the 5-a-side Conflict Resolution Committee on 29 September 2014 and the non-formalisation of the signing of the peace agreement which was prepared by the Department’s Legal Services Unit.

1.5.11.8 Following the re-emergence of the killings at the hostel, the MEC for Transport, Community Safety and Liaison called for the revival of the 5-a-side Conflict Resolution Committee. The revival of the committee was met with resistance from one of the factions which requested instead that an imbizo be called where they could speak about the causes of the violence.
1.5.11.9 Separate meetings were held with leaders of both groups on 19 and 20 October 2015. A request was made by both groups to the political leadership to address the root cause of the on-going violence."

1.5.12 In an update report dated 6 July 2016 the Department reported, among other things that:

1.5.12.1 "The King of the Zulu nation having voiced his concerns about the on-going violence at hostels in Durban, requested the former MEC for Community Safety and Liaison to commission for the Durban hostels the same intervention programme that had been successfully used to end the violence at the Gauteng hostels.

1.5.12.2 The Provincial Peace Committee of Amakhosi has assigned a royal Prince to lead the peace building process on the side of the Amakhosi AseNdlunkulu under the tutelage of iNdlunkulu Yase Matheni. This is a joint venture between Amakhosi Asendlunkulu and the provincial government, represented by the Department of Community Safety and Liaison working with Mr Sbusiso Xulu providing technical support and facilitation expertise.

1.5.12.3 The cornerstone of the peace building process is the community dialogue. All intervention processes are underpinned and supported by peace conversations and engagements led by the Department through Mr Xulu, its expert facilitator.

1.5.12.4 Several meetings have been held with Amakhosi as well as Izinduna representing all hostels within Ethekwini since April 2016 and these are on-going.

1.5.12.5 The cabinet of KwaZulu-Natal has received presentations pointing to inroads made at forging peace in the Glebelands Hostel and the historic milestones achieved such as the dialogue between the warring factions that is at an advanced stage.
1.5.12.6 The former Premier, Hon. E. S. Mchunu had established, through a cabinet resolution, in May 2016 a Cabinet Committee comprising the then MEC for Community Safety and Liaison Hon. T. W. Mchunu (since replaced by Hon. M. T. Kaunda), MEC for Cooperative Governance and Traditional Affairs, Hon N. Dube-Ncube, MEC for Public Works and Human Settlements Hon. R Pillay and MEC for Public Health Hon. Dr S Dhlomo to oversee the implementation of the peace building process and provide political oversight.

1.5.12.7 The Cabinet Committee met with the Glebelands Hostel Peace Committee on 1 June 2016 to solicit feedback on progress made in peace negotiations.

1.5.12.8 With regard to law enforcement, it was reported that:

(a) There were 81 police members including the Metro Police contingent deployed at both the Glebelands and KwaMashu Hostels daily on a 24 hour basis. Static police deployment includes motorized police crews that perform vehicular patrols, stop, search and seizure operations and manning access control as and where required.

(b) A dedicated Provincial Investigative Task Team has been established to probe crimes that occurred in the two hostels. This team has been focussing on high profile crimes executed and alleged murders that are linked to contract killings and the on-going encounter between the rival groupings at the Glebelands Hostel, and the random killings that are taking place in KwaMashu Hostel."

1.5.13 A report that was received from the IPID regarding cases they were handling pertaining to the Glebelands Hostel indicated the following-
1.5.13.1 "In Isipingo CAS 129/03/2014: Zinakile Fica, the docket was sent to the Director of Public Prosecutions on 28 January 2016 and a decision was awaited.

1.5.13.2 In Umlazi CAS 389/03/2014: Xolisa Yena, the docket was sent to the Senior Public Prosecutor on 19 November 2015 and a decision was awaited.

1.5.13.3 In Umlazi CAS 565/07/2015: Richard Nzima, the case was under investigation."

1.5.14 In the meeting that was held at the Glebelands Hostel between representatives of both factions and the Public Protector, allegations of police partiality were made by both sides.

1.5.14.1 "Representatives of the Block R faction stated that four residents aligned to the Block Committees were arrested by the police on 12 March 2014. They allege that they were assaulted by the police and one of them, a former Block Chairman, died allegedly while being tortured in the course of interrogation by the police. They also claimed that the eviction of residents who were considered to be supporting the Block Committees were done by armed groups who were escorted by the police. They also alleged that people belonging to the other faction were arrested with huge amounts of cash even though they were known to be unemployed at the time but the police failed to follow up on this peculiar phenomenon.

1.5.14.2 Representatives of Block 52 stated that complaints regarding intimidation and unlawful evictions were laid against the Block Chairpersons and Block Committees but the police never took any action. They alleged that the police were colluding with the former Chairperson of the Block Chairmen Committee in that they were always ready to do his bidding while ignoring the numerous complaints that were laid against him."
1.5.15 In documentation submitted by Professor Mcquoid-Mason’s associates there are a number of well documented incidents of alleged police brutality against former Block Committees members or those associated with them and incidents where the police allegedly failed to take action against perpetrators of violence. These incidents include the following:

1.5.15.1 “The detention and alleged assault on 12 March 2014 of Mr Fica and Mr Yena both of R, Mr Skosana of Block 52 and Mpiyakhe of Block 50 and the subsequent death in police custody of Mr Fica, a former Block Chairperson. (Medico-Legal Autopsy Report for Mr Fica and Medico-Legal Examination Reports for the other victims furnished).

1.5.15.2 The detention and alleged torture of Ms Sobhuce at Isipingo Police Station on 28 October 2014. (Medico-Legal Clinical Report furnished).

1.5.15.3 The detention and torture of Mr Jali, a former Committee member, by members of the Public Order Police at the Glebelands sports grounds on 1 to 2 October 2014.

1.5.15.4 The detention and torture of Mr Kati, a former Block Committee Chairperson by members of the Public Order Police at the Glebelands Sports grounds on 1 to 2 October 2014. (Photographs and Medico-Legal Report furnished).

1.5.15.5 Correspondence between Ms De Haas and the Station Commissioner: Montclair and the Cluster Commander: Umlazi SAPS. Email correspondence by Ms De Haas to the Provincial Commissioner, the MEC for Community Safety and the Minister for Safety and Security. “

1.5.16 The extent of the involvement of the Department of Social Development in the Glebelands Hostel matter is reflected in email correspondence sent to Mr Mzolisa, the Senior Manager for Ethekwini South by Ms Hicks: Commissioner for Gender Equality in 2014 in which she alerted the Department to the situation that had arisen at Glebelands Hostel and to
the dire need for trauma counselling and the need for access to a broad range of other social services to the victims of the violence.

1.5.16.1 A document issued by Ms Hicks on 14 October 2014 provides a summary of what had transpired at a meeting that was attended that day by the DSD provincial stakeholders, South-Durban District stakeholders, and Umlazi Service Centre social workers and the convenor of the local war room and local Community Development Worker, Mr Mngadi. Ms Hicks reported that she provided a synthesis of issues that were raised by residents and reported to the Commission for Gender Equality (CGE) which were the following:

(a) "Access to shelters;

(b) Trauma counselling;

(c) Emergency response measures-food vouchers; and

(d) Access to other Department of Social Development (DSD) services.

It was agreed that all people in need, regardless of affiliation with whichever grouping, deserve to have their constitutional rights enforced, and to have access to state services. It was also agreed that a task team be formed consisting of DSD and other stakeholders such as SASSA, Department of Health, Department of Human Settlements, Department of Home Affairs and Department of Education to assess and coordinate the delivery of services to address social needs of the victims of violence at Gleblands Hostel. The following approach was agreed upon to initiate the task team response:

(a) The task team must be initiated and coordinated through the local war room.
(b) The DSD (local, district and provincial representatives) will attend the next war room meeting scheduled for 20 October 2014 at the Glebelands Community Hall and give a presentation.

(c) Provincial DSD colleagues will work with the war room convenor to ensure that all relevant departments send their representatives to attend the meeting.

(d) The meeting is open to the community and anyone with a vested interest in the deliberations.

(e) The war room will launch the task team, elect its convenor and initiate the needs analysis and profiling, to then determine interventions, priority cases, coordination etc.

(f) In the interim residents needing assistance should approach the service office at Umlazi DSD directly for screening and assistance."

1.5.16.2 The Public Protector was furnished with a copy of a letter dated 26 November 2014 addressed to the MEC and the Head of Department (HOD) for the Department of Social Development in which Ms Hicks referred to the agreements that were made at the war room meeting of 4 October 2014 and requested an urgent written response from the HOD regarding progress made in relation to the implementation thereof.

1.5.16.3 At a round table meeting held in Durban on 22 December 2015 with stakeholders, including the Department of Social Development which was represented by Ms Ndaba, Ms Khawula Mr Mkhize, it is on record that the representatives denied that the Department of Social Development had ever been invited to participate in finding a solution to the challenges besetting the Glebelands Hostel.
1.5.17 At a report back meeting that the Deputy Public Protector held with the different stakeholders in Durban on 10 March 2016, a request was made, through Mr Mzolisa, that the Department of Social Development conduct an assessment of the living conditions at the Glebelands Hostel. It was agreed that a report would be submitted to the Office of the Public Protector by 18 May 2016.

1.5.17.1 The Deputy Public Protector wrote a letter to the MEC for Social Development, which was delivered at her office on 28 June 2016, requesting that the report be submitted at least by 18 May 2016. The MEC responded by letter dated 29 July 2016 stating that the Department was currently consolidating work assigned to it and will be submitting a report on 15 September 2016.

1.5.18 The report, which was received on 16 September 2016, states the following:

1.5.18.1 “That overcrowding was found to be a major issue in the hostel. That violence is prevalent and social ills like crime, substance abuse, teenage pregnancy and HIV/AIDS were challenges within ward 76. The Department will intensify awareness programmes within the ward. The Department has, during Child Protection Week, conducted programmes addressing teenage pregnancy, children’s rights and human trafficking at Umlazi Secondary School and Umlazi Commercial School on 1 July 2016. The Department intends to conduct Operation Mbo in collaboration with the SAPS and the Glebelands Hostel Peace Committee. In this regard a meeting was held on 9 September 2016 wherein it was agreed that focus should be put on people who were affected by the conflict. The Department was provided with the names of four Peace Committee members with whom it would work going forward. The Department could not implement any prevention and awareness programmes inside the hostel because of safety concerns for the officials."
1.5.18.2 Following the visit by the Public Protector at the Glebelands Hostel, the Department undertook a project to profile the families of the victims of the Glebelands Hostel violence. The SAPS had provided it with the names of nine individuals who were killed in the violence and the name of another person who had been placed on the Witness Protection Programme. Five other cases were provided by an informant. Out of the fifteen cases that the Department had received it was only able to intervene and provide support in six. In the other cases the family of the victims could not be traced due to insufficient information or because they had relocated from the province.

1.5.18.3 The Department’s plan of action is the following:

(a) To discuss at the second Peace Committee meeting on 14 September 2016 ways and means to trace the families of people who died for assessment and assistance;

(b) To visit the Glebelands Hostel in the company of the Peace Committee, the SAPS and the Municipality to assess other families who were affected by the conflict on a date to be agreed upon with the stakeholders;

(c) To implement an awareness programme on social ills for all residents in the hostel in partnership with the stakeholders during September 2016."

1.5.18.4 The report concludes by stating that the MEC would conduct community dialogues in October 2016 as part of activities for the Social Development Month which seeks to raise awareness of the community to the programme and services of the Department.
2. THE COMPLAINT

2.1 On 2 December 2015 Professor Mcquoid Mason, the President of the Commonwealth Legal Education Association, sent an email to the Deputy Public Protector in which he complained about frequent and unabated killings that were taking place at the Glebelands Hostel in Umlazi, Durban and the unlawful eviction and displacement of hundreds of hostel residents from rooms that had been allocated to them. He stated that the murders and unlawful evictions were a flagrant violation of the right to life, the right to personal security and the right of access to housing enshrined in the 1996 Constitution and Bill of Rights.

2.2 He further stated the police were not taking action even in instances where they were informed of the unlawful evictions and had, in some instances, been complicit with the perpetrators. He stated that nothing had been done despite reports being made to the Durban Metro, the KwaZulu-Natal Human Rights Commission, the Kwa Zulu Natal Public Protector’s office and the Independent Police Investigative Directorate.

2.3 The Complainant advised that he was writing similar letters to the President’s office, the Ministry of Justice and the Chairperson of the South African Human Rights Commission suggesting the involvement of the SANDF in peace keeping at Glebelands Hostel as the prevailing situation was untenable in a democracy based on the rule of law and was a violation of South Africa’s international obligations. He stated that should the killings not stop, he would be obliged to raise this matter with the structures of the Commonwealth so that it could be escalated to the next Commonwealth Heads of Government Meeting.
3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR

3.1 The Public Protector is an independent constitutional institution 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 The Public Protector's powers are regulated and amplified by the Public Protector Act no23 of 1994 which states, among others, that the Public Protector has the power to endeavour, in his or her sole discretion, to resolve any disputes or rectify any act or omission through conciliation, mediation, negotiation or any other means that may be expedient in the circumstances.

3.4 The Act further empowers the Public Protector, on her own initiative or on receipt of a complaint or on the ground of information that has come to her knowledge, to conduct a preliminary investigation for purposes of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.

3.5 The Public Protector has jurisdiction to intervene in this matter as the situation that was prevailing at the Glebeands Hostel was alleged to be the result of an act or omission by persons in the employ of government at
different levels or persons performing a public function which resulted in unlawful or improper prejudice to the Giebelands Hostel community in terms of section 6(4)(a)(v) of the Act.

3.6 In the Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others¹ case the Constitutional Court per Mogoeng CJ held that the remedial action taken by the Public Protector has a binding effect. The Constitutional Court further held that "When remedial action is binding, compliance is not optional, whatever 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"

4. THE INVESTIGATION

4.1 Methodology

4.1.1 The intervention was in terms of the Public Protector Act of 1994.

4.1.2 Section 7 (1) (a) of the Act provides, among others, that the Public Protector has the power to conduct a preliminary investigation for the purpose of determining the merits of the complaint, allegation or information and the manner in which the matter concerned should be dealt with.

4.1.2 Section 7(1)(b)(i) of the Act confers on the Public Protector the sole discretion to determine the format and the procedure to be followed in conducting any investigation with due regard to the circumstances of each case.

¹ [2016] ZACC 11
4.2 Approach to the intervention

4.2.1 Like every Public Protector investigation, the intervention 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 maladministration or other improper conduct?
4.2.1.4 In the event of maladministration or improper conduct, what would it take to remedy the wrong or to right the wrong occasioned by the said maladministration or improper conduct?

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. In this particular case, the factual enquiry focused on whether and to what extent the relevant state institutions fulfilled their responsibilities in ensuring that normalcy is restored to the Glebelands Hostel.

4.2.3 The question regarding what should have happened focuses on the law or rules that regulate the standard that should be upheld by the state institutions to prevent maladministration and prejudice.

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 idea is to place him or her as close as possible to where they would have been had the organ of state complied with the regulatory framework setting the applicable standards for good administration.
4.3 On analysis of the complaint, the following issues were considered and investigated:

4.3.1 Whether the Ethekwini Municipality administered the Glebelands Hostel in accordance with the law and the applicable policies and prescripts and if not, whether such failure amounted to maladministration?

4.3.2 Whether the handling of the security situation at the Glebelands Hostel by the Security Cluster accorded with the duties imposed on it by the Constitution and the law and if not, whether such amounted to maladministration?

4.3.3 Whether the Department of Social Development fulfilled its mandate in relation to the victims and survivors of the Glebelands Hostel violence and if not, whether such failure amounted to maladministration?

4.3.4 Whether the community of the Glebelands Hostel was prejudiced by the conduct of any of the relevant state institutions?

4.4 Key sources of information

4.4.1 Documents furnished by the Complainant

4.4.1.1 Reports compiled by Ms Burger and Ms De Haas who are associates of the Complainant;

4.4.1.2 Written statements made by some of the victims;

4.4.1.3 Photographs of the injuries suffered by the victims;
4.4.1.4. Medico-legal Clinical Consultation and Medico-legal Autopsy Reports;

4.4.1.5. Photographs of the hostel grounds depicting dire conditions;

4.4.1.6. Email correspondence from the Complainant to various state institutions; and

4.4.1.7 Correspondence from the Commission for Gender Equality to the Public Protector, the Independent Complaints Directorate and the South African Human Rights Commission.

4.4.2 Interviews with some of the hostel residents

4.4.2.1 Interviews with some of the residents of Block R and Block 52 on 21 December 2015;

4.4.2.2 Meeting with representatives of Block R and Block 52 on 25 February 2016.

4.4.3 Reports from relevant state institutions

4.4.3.1 Reports received from the Ethekwini Municipality;

4.4.3.2 Reports received from the SAPS;

4.4.3.3 Reports received from the Department of Community Safety; and

4.4.3.4. Letter from the MEC for Social Development.

4.4.4 Meetings held with relevant state institutions

4.4.4.1 Round table meeting held on 22 December 2015 with officials from the Municipality, the SAPS, the Department of Community Safety and Liaison,
the Department of Social Development, the Department of Human Settlements and the Independent Police Investigative Directorate.

4.4.4.2 Meeting held with the SAPS and Complainant’s associates on 25 February 2016.

4.4.4.3 Report back meeting held with state institutions on 10 March 2016.

4.4.5 Inspection in loco/Direct observations

4.4.5.1 Observations made during visits to the hostel on 21 December 2015 and 25 February 2016.

4.4.6 Websites consulted/ electronic sources

4.4.6.1 www.kzndepartment of social development.gov.za.

4.4.7 Legislation and other prescripts

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

4.4.7.2 Local Government Municipal Systems Act No 32 of 2000;

4.4.7.3 The South African Police Services Act No. 68 of 1995;

4.4.7.4 The Ethekwini Municipality Hostel Policy that was adopted in 1998;

4.4.7.5 The KwaZulu-Natal Department of Social Development Policy on Social Relief of Distress approved in 2014.
4.4.8 Responses to section 7 (9) notices and discretionary notices received.

4.4.8.1 The Acting Municipal Manager of the eThekwini Municipality and the Acting Provincial Commissioner of the South African Police Service did not respond to the Section 7(9) notices that were sent to their respective institutions by the return date of 10 April 2017.

4.4.8.2 The MEC for Social Development responded to the section 7(9) notice by letter dated 7 Mach 2017 wherein she stated that-

4.4.8.2.1 "She had discussed the contents of the section 7(9) notice with the management of the Department. In the discussions, it became apparent that there were serious deficiencies in the interventions made or services provided to individual victims, survivors and their families.

4.4.8.2.2 The interventions were not in line with what she had directed as indicated in her letter of 16 September 2016 to the Public Protector because, among other things, the implementation plans of action in respect of each individual victim, survivor and their families was largely not carried out.

4.4.8.2.3 She had since directed the HOD to coordinate and monitor the implementation of the action plans in respect of each individual victim, survivor and their families and the provision of services to them. She has been assured by the HOD that she has already started with the task but she needed at least three months to fully complete it."
4.4.8.2.4 The interventions include the following:

4.4.8.2.4.1 "Facilitating, coordinating and maintaining integrated interventions, through local community and leadership structures; to identify other victims and survivors of violence, assess and profile their personal and family circumstances; to design specific and individual intervention plans based on their specific needs and circumstances and link the plans with specific programmes of the Department in order to afford them access to various departmental services;

4.4.8.2.4.2 Auditing and profiling the services currently provided to the entire Glebelands Hostel community by the Department; and

4.4.8.2.4.3 Providing and maintaining psycho-social services at community and family level as part of their healing process.

4.4.8.2.5 The MEC therefore pleads for indulgence in affording the Department a period of three months to implement the plans and interventions mentioned above.

4.4.8.2.6 The process of instituting disciplinary action against relevant managers who are at district and local office level for gross negligence in failing to adequately execute their duties have commenced."

4.4.8.3 Professor Mcquoid-Mason and his associates submitted inputs to the Public Protector's provisional findings and remedial action in which they raised the following issues, among others-

4.4.8.3.1 "They restated an earlier request that the Public Protector conducts a forensic investigation on the tenders that have been awarded by the Ethekwini Municipality in relation to the provision of goods and services to the Glebelands Hostel. They contended that the abuse of funds that
are allocated for hostel management was perceived to be central to the problems at the hostel. It should be noted in this regard that this is a report on the Public Protector's intervention to hold organs of state to account for their roles in redressing the situation at the Glebelands Hostel. It specifically focuses on the service delivery deficiencies that came to light during the course of the intervention. Whether or not any alleged irregularities in the awarding of tenders relating to the Glebelands Hostel will be investigated depends on the information and the evidence that is brought forward and may be the subject of a separate investigation. The possible informants that were previously provided by Complainant's associates in earlier correspondence to the Public Protector were not of much assistance in this regard as they did not avail themselves for interviews with the members of the investigation team."

4.4.8.3.2 They also raised concerns regarding lack of responsiveness by various officials in the Security Cluster to correspondence sent to them some of which sought to alert and forewarn the police to the dangers faced by some individuals who were subsequently killed. They also expressed dissatisfaction with the manner in which the IPID conducted its investigations of specific cases. It should be noted that the handling of specific cases by either the SAPS or the IPID was not the focus of the intervention by the Public Protector and therefore does not influence the findings and the remedial action in any significant way. These issues may be the subject of a separate investigation.

4.4.8.3.3 They further raised concerns regarding the Department of Social Development's commitment in tracing and rendering assistance to the victims, survivors and their families that have resettled outside the province.
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 Whether the Ethekwini Municipality administered the Glebelands Hostel in accordance with the law and the applicable policies and prescripts:

**Common cause issues**

5.1.1 Glebelands Hostel falls under the control of the Ethekwini Municipality.

5.1.2 Ethekwini Municipality was not, at all times, in full control of the allocation of rooms/beds at the hostel.

5.1.2 It is clear from the court application that the Municipality lodged in December 2015 that the situation at the hostels was beyond its control. The testimony given by the warring factions in their meeting with the Public Protector accords with position that the Municipality had lost control of the function to allocate accommodation at the hostel.

5.1.3 It can therefore be deduced that the loss of control over room allocation made it possible for groups competing for scarce resources to usurp this function for their own benefit.

5.1.4 It is further common cause that there was no functional and complete database of all occupants of rooms that would have enabled the Municipality to properly plan and budget for the services it is obliged to provide in law. While the officials of the Municipality reported that 11 380 tenants had been registered on its database, the SAPS stated in its submission that the current
occupancy figure could have been up to 19 000 which the Municipality did not deny.

5.1.5 While the Hostel Policy adopted by the Council in 1998 provides for the registration of all authorised tenants and illegal occupants and the payment of rental by them, the Municipality was not able to provide information relating to the dates that, in terms of the Hostel Policy, Council was required to determine. There is therefore insufficient evidence to show that the milestones provided for in the Hostel Policy were achieved. The completion of the process of regularisation of tenancy as provided for in the policy and even demanded by some of the hostel residents was unduly delayed.

5.1.6 In meetings that the Public Protector had with officials of the Municipality, it was stated that the only way in which the Municipality could take control of the hostel was to fence it off and to implement access control measures. Evidence however points to the Municipality’s tardiness in implementing its Hostel Policy which in Clause 1 makes provision for controlled access to the hostel. It is worth noting that the latest report received from the Municipality stated that the fencing of the perimeter of Glebe lands Hostel would only be finalised at the end of July 2016 which would be just over eighteen years after the Hostel Policy was adopted by Council. While observation by the Public Protector team confirms that the construction of the perimeter fence seems to have been completed access control does not seem to have been implemented as yet.

Application of the relevant law

5.1.7 Section 152 (1) of the Constitution stipulates that among the objects of local government is-
“(b) To ensure the provision of services to communities in a sustainable manner;

(d) To promote a safe and healthy environment”.

5.1.8 Section 4 (2) of the Local Government Municipal Systems Act provides that the council of a municipality, within the municipality's financial and administrative capacity and having regard to practical considerations, has a duty to-

“(d) Strive to ensure that municipal services are provided to the local community in a financially sustainable manner.

(f) Give members of the local community equitable access to the municipal services to which they are entitled.

(i) Promote a safe and healthy environment in the municipality.”

5.1.9 The Ethekwini Municipality's Hostel Policy adopted by the Council on 26 March 1998 states the following as the vision for hostels:

"Hostels should be such that they offer rental accommodation with a clean, healthy and secure environment. The present administration needs to be greatly improved so as to lead to improved security."

5.1.10 Clause 1 of the Hostel Policy provides for controlled access at the hostels which would reduce the number of people within the hostel to a level at which the facilities of service within the hostel can adequately cope. The policy recommends that:

"(a) A proper security system is put in place. The fencing of all perimeters be inspected and improved wherever necessary.

(b) An effective and efficient access control system with the presence of security is implemented."
(c) Once items (a) and (b) have been effected, all the legal tenants and illegal tenants within the hostel must be accounted for and documented.

(d) A moratorium be placed on people entering the hostel for accommodation.

(e) Item (d) remain in place until the number of people within the hostel is reduced to an agreed acceptable level. The system will also be used to obtain control over all informal residents within the hostel.

(f) Provide proper administrative and maintenance functions at the hostel after implementation of the effective Access Control System.

(g) To terminate illegal trading and businesses within the hostels.

(h) To improve the socio-environmental and living conditions at the hostel.

Conclusion

5.1.11 It can be deduced from the available evidence including the court application by the Ethekwini Municipality referred to in paragraph 1.5.4 above that the Municipality failed to promote a safe and healthy environment within the Glebelands Hostel as required by the Constitution and the law and the Municipality's own policy. It is worth noting that some eighteen years after it adopted the Hostel Policy, the Municipality is a long way from realising its vision for hostels "to offer rental accommodation with a clean, healthy and secure environment."

5.1.12 It can also be deduced from observations made during the on-site visits that were undertaken by the Public Protector and her team, recorded in paragraph 1.5.7 above, that the Municipality was failing to give members of the local community equitable access to the municipal services to which they are entitled.

5.1.13 It can further be deduced from the available evidence that the Municipality failed to provide services to the Glebelands Hostel community in a financially
and environmentally sustainable manner as required by the Constitution and the law.

5.2 Whether the Security Cluster handled the Glebelands Hostel crises in accordance with the duties imposed on it by the Constitution and the law:

Common cause issues

5.2.1 It is common cause that the violence at the Glebelands Hostel escalated from 2014 and that many residents were killed and many more displaced from their allocated accommodation.

5.2.2 As at 8 July 2016, there had been no convictions for any of the murders that had taken place at the hostel.

5.2.3 It is in dispute how the violence at the hostel started. The Municipality in its application to court referred to in paragraph 1.5.4 above put the blame at the door step of the Block Committees whom they allege were profiting from the selling of beds. The same position was stated by the faction centred around Block 52. In subsequent reports the Municipality attributed the conflict to a dispute regarding the nomination of candidate councillor for ward 76.

5.2.4 The Complainant and his associates stated that the violence was politically motivated blaming it on the lack of decisive action by the SAPS the Municipality and the local and regional leadership of the African National Congress. The Block R faction agree with the notion that the violence was politically motivated and that the aforementioned institutions failed to take action to end it.
5.2.5 The SAPS blamed the violence on overcrowding and competition for beds which, according to them, was exploited by elements that saw this as an opportunity to enrich themselves by collecting rental from the residents. They also cited poor lighting, lack of access control and shacks and containers which were being used to conduct informal businesses as contributory factors.

5.2.6 It was noted that there was a discrepancy regarding the number of deaths associated with the Giebelands Hostel violence between the figures that were furnished by the SAPS and those furnished by the Complainant and his associates. It should be noted that the disparity in the actual number of people killed does not detract from the fact that the number of arrest and successful prosecution was very low in relation to the reported murders.

5.2.7 The proliferation of informal business within the hostel precincts and the reports by residents regarding the security situation at the hostel bear testimony to the failure of the Municipal Police Service to prevent crime and enforce bylaws. The Public Protector is mindful of the deposition by the Municipal Manager in the affidavit referred to in paragraph 1.5.4 that the Metropolitan Police were not equipped to deal with the nature of law enforcement required at the hostel. However the Public Protector is of the view crime prevention remains the duty of the Metropolitan Police Service.

Application of the relevant law

5.2.7 Section 205(3) of the Constitution provides that the objects of the police are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property and to enforce the law.
5.2.8 Section 12(1)(c) of the Constitution provides that everyone has the right to freedom and security of the person which includes the right to be free from all forms of violence from either public or private sources.

5.2.9 Section 64E(c) of the South African Police Service Act lists the prevention of crime to be among the functions of the Municipal Police Service.

Conclusion

5.2.10 From the evidence obtained, it can be deduced that the SAPS failed to live up to the object to prevent, combat and investigate crime, to maintain public order, to protect and secure the residents of the Glebelands Hostel and their property and to uphold and enforce the law as required by the Constitution.

5.2.11 The SAPS also failed to uphold the right to freedom and security of the residents of the Glebelands Hostel especially the right to be free from violence as envisaged in section 12(1)(c) of the Constitution.

5.2.12 From the available evidence it can be deduced that the eThekwini Metropolitan Police Service failed in its role to prevent crime at the hostel as required by law.

5.3 Whether the Department of Social Development fulfilled its mandate in relation to the victims and survivors of the Glebelands Hostel violence:

Common cause issues

5.3.1 It is common cause that the violence that wrecked the Glebelands Hostel resulted in many victims that required material relief of distress like food parcels and non-material forms of relief like counselling and mobilisation and coordination of resources.
5.3.2 Officials from the DSD ignored correspondence from the CGE requesting the Department’s intervention to assist the victims of the hostel violence.

5.3.3 The Public Protector takes cognisance of the Department’s belated action as outlined in the reports from the MEC for Social Development referred to in paragraphs 1.5.18.1-1.5.18.3 and paragraphs 4.4.8.2.1-4.4.8.2.6 above.

**Application of the relevant law**

5.3.4 Section 27(1)(c) of the Constitution stipulates that everyone has a right to have access to social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.

5.3.5 The Policy on Social Relief of Distress states in the introduction clause that “Social Relief of Distress is one of the government’s short term relief programmes addressing socio-economic distress. It provides immediate temporary relief to individuals, families and communities who find themselves in distress. Social Relief of Distress is temporary assistance whilst long term intervention is planned. The assistance can be material or non-material.”

5.3.6 Among the principles guiding the policy is one that provides that “All citizens should have equal access to the services to which they are entitled.”

5.3.7 The website of the KwaZulu-Natal Department of Social Development states in its “Overview” that the “mission of the Department is to promote developmental social welfare services and community development to the people of KwaZulu-Natal in partnership with stakeholders.” It states further that “the Department develops and implements its programmes for the eradication of poverty, social protection and social development among the poorest of the poor, and most vulnerable and marginalised.”
Conclusion

5.3.4 The Department failed to implement any short term relief programmes to address the socio-economic distress suffered by the Glebelands Hostel community. The lack of responsiveness by the Department improperly denied the community of Glebelands Hostel access to services to which they were entitled.

6. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework, the Public Protector makes the following findings:

6.1 Whether the Ethekwini Municipality administered the Glebelands Hostel in accordance with the law and the applicable policies and prescripts and if not, whether such failure amounted to maladministration:

6.1.1 The Municipality failed to promote a safe and healthy environment within the Glebelands Hostel as required by section 152(1)(d) of the Constitution and envisioned in its own Hostel Policy that was approved in 1998.

6.1.2 The Municipality failed to give members of the local community equitable access to the municipal services to which they are entitled as envisaged in section 4(2)(f) of the Local Government Municipal Systems Act.

6.1.3 The Municipality failed to provide services to the Glebelands Hostel community in a financially and environmentally sustainable manner as required by section 152(1)(b) of the Constitution and Section 4(2)(d) of the Local Government: Municipal Systems Act.
6.1.4 The failure by the Municipality as stated in paragraphs 6.1.1, 6.1.2 and 6.1.3 above 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.

6.2 Whether the handling of the security situation at the Glebelands Hostel by the Security Cluster accorded with the duties imposed on it by the Constitution and the law and if not whether such amounted to maladministration:

6.2.1 The South African Police Service failed to live up to the object to prevent, combat and investigate crime, to maintain public order, to protect and secure the residents of the Glebelands Hostel and their property and to uphold and enforce the law as required by section 205(3) of the Constitution.

6.2.2 The South African Police Service failed to uphold the rights of the Glebelands Hostel residents to be free from all forms of violence as envisaged in section 12(1)(c) of the Constitution.

6.2.3 The failure by the SAPS as stated in paragraphs 7.2.1 and 7.2.2 above amounts to improper conduct as envisaged in 182(1)(a) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.

6.2.4 The Ethekwini Metropolitan Police Service failed in its role to prevent crime at the hostel as required by section 64E of the South African Police Service Act and such failure amounts to improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act.
6.3 Whether the Department of Social Development fulfilled its mandate in relation to the victims and survivors of the Glebelands Hostel violence and if not, whether such failure amounted to maladministration:

6.3.1 The Department of Social Development failed to fulfil its responsibility to the victims of the Glebelands Hostel violence as required by section 2 (1) of the Constitution and contrary to its Policy on Social Relief of Distress.

6.3.2 The failure by the Department of Social Development as stated in paragraph 6.3.1 above 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.

7. REMEDIAL ACTION

In the light of the above findings the Public Protector is taking the following remedial action as contemplated in section 182(1)(c) of the Constitution:-

7.1 The Municipal Manager of the Ethekwini Municipality

7.1.1 The Municipal Manager of Ethekwini Municipality must take appropriate measures to promote a safe and healthy environment at the Glebelands Hostel and in this regard ensure that:

7.1.1.1 A database of the evictees and displaced persons is compiled and that in the event that these people cannot be returned to their allocated rooms, that suitable alternative accommodation is provided to them;
7.1.1.2 Access control is implemented as provided for in the Hostel Policy; and

7.1.1.3 The regularisation of residency is implemented as provided for in the Hostel Policy.

7.1.2 The Municipal Manager of ETHEKWINI Municipality to ensure that the community of the Glebelands Hostel is allowed equitable access to the municipal services to which they are entitled and in this regard must ensure that:

7.1.2.1 Refuse is collected and removed at regular intervals;

7.1.2.2 Damaged infrastructure like water and sewage pipes is repaired timeously and where necessary replaced;

7.1.2.3 The hostel grounds are adequately maintained and grass verges and fields are trimmed on a regular basis; and

7.1.2.4 Lighting both inside and outside the blocks is improved.

7.1.3 The Municipal Manager of ETHEKWINI Municipality to ensure that services to the hostel are provided in a financially and environmentally sustainable manner and in this regard ensure that:

7.1.3.1 The collection of rental is implemented as provided for in the Hostel Policy; and

7.1.3.2 Trading within the hostel premises is controlled as per Hostel Policy.
7.2 The Provincial Commissioner of the South African Police Service

7.2.1 Is to ensure that the South African Police Service meet its object to prevent, combat and investigate crime, to maintain public order, to protect and secure the residents of the Glebelands Hostel and their property and in this regard must:

7.2.1.1 Consider the establishment of a satellite police station within the hostel premises;

7.2.1.2 Ensure that sufficient numbers of police officers are deployed to do static duties inside the hostel whenever the threat of violence is reported;

7.2.1.3 Ensure that all reported incidents of police brutality that were reported some of which are as outlined in paragraph 1.5.13 above are referred to the IPID and all other cases of police misconduct are thoroughly investigated.

7.2.1.4 Ensure that all serious crimes like murder and illegal evictions are investigated by police detectives from outside the Umlazi Police Station in order to address perceptions of partiality.

7.2.2 The South African Police Service must take all necessary measures to uphold the rights of the Glebelands community to be free from all forms of violence and in that regard-

7.2.2.1 Ensure that perpetrators of violence are arrested and brought to book.
7.2.2.2 Take all measures necessary to improve the relationship between the local police station and the residents of the hostel.

7.3 The Member of the Executive Council responsible for Social Development in KwaZulu-Natal

7.3.1 Is to ensure-

7.3.1.1 That the Department implements the action plan referred to in paragraphs 1.5.18.3 and 4.4.8.2.4 of this report and indicates how it intends to assist the victims, survivors and their families that may have relocated outside the Province of KwaZulu-Natal.

7.3.1.2 That the Head of Department establishes the reasons why the Department failed to fulfil its responsibilities to the victims of the Glebelands Hostel violence timeously and take appropriate action against the officials found to have been responsible for the omission as reported in paragraph 4.4.8.2.6 above.

7.4 The Provincial Head of the Independent Police Investigative Directorate

7.4.1 Must note that the Public Protector will monitor the investigation of the allegations of police torture and killing of Glebelands Hostel residents and in that regard should provide the Public Protector with a copy of the IPID’s final report.
8. MONITORING

8.1 The Executive Mayor of the ETHEKWINI MUNICIPALITY should provide the Public Protector with an action plan with timelines regarding paragraph 7.1 within 30 days from the date of this report.

8.2 The Provincial Commissioner of the SAPS should provide the Public Protector with an action plan with timelines regarding paragraph 7.2 within 30 days of the issuing of this report.

8.3 The MEC for Social Development should provide a progress report regarding paragraph 7.3 by 30 June 2017.

8.4 The Provincial Head of the Independent Police Investigative Directorate should provide a final report on all cases relating to police torture of Glebelands Hostel residents that have been finalised within 30 days of finalization.

ADV BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 19/06/2017

Assisted by: KwaZulu Natal Office