REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1)(b) OF THE
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)
OF THE PUBLIC PROTECTOR ACT, 1994

PUBLIC PROTECTOR
SOUTH AFRICA

"Allegations of maladministration in the failure by the Department allocate RDP
houses to Mr Msibi and Mr Mahlangu"

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REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE
DEPARTMENT OF HUMAN SETTLEMENTS TO_ALLOCATE RDP HOUSES TO THE
COMPLAINANTS
TABLE OF CONTENTS

Executive Summary 3

1. INTRODUCTION 9

2. THE COMPLAINT 10

3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR 11

4. THE INVESTIGATION 14

5. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS 19

6. FINDINGS 28

7. REMEDIAL ACTION 30

8. MONITORING 30
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, and published in terms section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

(ii) The report communicates my findings and appropriate remedial action taken in terms of section 182(1)(c) of the Constitution following an investigation into allegations of failure by the Department of Human Settlement (the Department) to allocate RDP houses to both Complainants who are the rightful beneficiaries.

(iii) In 2016, my office received complaints from Mr Thomas Msibi and Ms T Mahlangu (the Complainants) who are beneficiaries of RDP houses but were not allocated RDP houses that were specifically built for them after their applications were approved. They alleged that:

(aa) They submitted their respective applications for RDP houses at the Govan Mbeki Municipality and they were approved for the Green Field Housing Project that was implemented between 1999/2000 and 2001/2002 financial years.

(bb) They further submitted that there was a Green Field Housing Development project at Ext. 23 Emzinoni, Bethal, where their approved RDP houses were built. However, some illegal occupants took occupation of such houses before the Complainants could occupy them;

(iv) Below are the particulars of the RDP applicants who approached my office:

(aa) Mr T Msibi lodged his complaint with my provincial office in Mpumalanga on 2 November 2016. He resides at stand number 4253 Ext. 23 Emzinoni in Bethal. The Complainant alleged that he submitted his application for an
RDP house to the Govan Mbeki Municipality which was approved in 1999 at stand number 3776 Ext 23 Emzinoni, Bethal. He further reported that an RDP house was built for him on the same stand or address, but someone else was allocated the house before he could occupy it. At the time of approaching my office Mr Msibi had not received any assistance from neither the Municipality nor the Department.

(bb) Ms T Mahlangu also lodged her complaint with my office in Mpumalanga on 31 August 2016. The complaint was on behalf of her late sister Ms Annah Nomthandazo Mahlangu who applied for a housing subsidy and her application was approved for Erf 4174, Ext. 23 Emzinoni, Bethal. The Complainant further reported that an RDP house was built for her sister on the above mentioned site. However, it was later discovered that there was an unknown individual residing in her sister's RDP house. The illegal occupants claimed that they were given the house by the Municipality. When the Complainant enquired from the Municipality, she was not given a clear explanation but she was told that she will be allocated a stand at a new residential area. At the time of approaching my office she had not received any assistance from neither the Municipality nor the Department.

(cc) The Complainants later approached the Public Protector alleging that as a result of the Department's failure to allocated RDP houses to them, they suffered prejudice.

(v) On analysis of the complaint, the following issues were identified and investigated:

(a) Whether the Department unduly failed to allocate RDP houses that were specifically built for the Complainants after their applications were approved; and
(b) Whether the Complainants suffered improper prejudice as a result of the conduct of the Department under the circumstances.

(vi) The investigation process included an exchange of correspondence and conducting meetings and interviews with relevant officials of the Department as well as analysis of relevant documents and application of all relevant laws, policies and related prescripts.

(vii) Key laws and policies taken into account to determine if there had been maladministration and/or improper conduct by the Department and prejudice caused to the Complainants were principally those imposing administrative standards and procedures that should have been complied with when the Department handled the allocation of RDP houses for the Green Field Housing Project. Those are the following:

(aa) Section 195(1)(a) to (f) of the Constitution regulates good governance in the public service.

(bb) Section 26(1) of the Constitution relates to the right to have access to adequate housing.

(cc) Section 7(1) of the Housing Act, 1997, requires the provincial government to do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy.

(vii) On 29 July 2019, I issued a notices (Notice) in terms of section 7(9) (a) of the Public Protector Act to the Head of the Department of Human Settlement, Mr K Masange and afforded him an opportunity to respond to my intended adverse findings against the Department. However, he failed to respond.
(viii) Having considered the evidence uncovered during the investigation against the relevant regulatory framework determining the standard the Department of Human Settlements should have complied with, I therefore make the following findings:

(a) **Regarding whether the Department unduly failed to allocate RDP houses that were specifically built for the Complainants after their applications were approved.**

(aa) The allegation that the Department unduly failed to allocate RDP houses to the Complainants, that were specifically built for them after their applications were approved is substantiated.

(bb) The Complainants and three hundred and forty seven (347) other beneficiaries, whose application were approved for RDP houses for the Green Field Housing Development project at Ext. 23 Emzinoni in Bethal were never provided with their houses. The Department only managed to construct eight hundred and fifty one (851) of the one thousand two hundred (1200) units which were supposed to have been built, resulting in three hundred and forty nine (349) beneficiaries, including the two Complainants, not benefitting from the project.

(cc) The Department’s failure to provide the Complainants with their approved RDP houses, is a direct violation of section 7(1) of the Housing Act which places an obligation on the Department to provide adequate housing to the beneficiaries. The Department’s failure is also in violation of section 26(1) of the Constitution which further gave the Complainants the right to have access to adequate housing.

(dd) Therefore the conduct of the Department 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.
(b) Regarding whether the conduct of the Department resulted in the Complainants suffering prejudice.

(aa) The allegation that the Complainants suffered improper prejudice as a result of the conduct of the Department is substantiated.

(bb) Failure by the Department to provide the Complainants with RDP houses is in violated of section 10 of the Constitution which grants them an inherent dignity and the right to have their dignity respected and protected as they continue to be deprived of the right to adequate housing.

(cc) The Department’s conduct is in violation of section 195(1)(a) of the Constitution which resulted in the Complainants suffering prejudice in that they continue to live in houses that are inadequate, due to the Department’s failure to uphold, promote and maintain a high standard of professional ethics.

(dd) The Complainants suffered prejudice by virtue of the failure by the Department to comply with legislative prescripts, and as such the Complainants could not be provided with RDP houses and thus unfairly treated. The Complainants were not the only beneficiaries that were prejudiced but three hundred and forty seven (347) other beneficiaries, were also not allocated RDP houses that were due to them. The Department failed to take reasonable steps to evict the illegal occupants from the Complaints allocated houses.

(ee) Therefore, the conduct of the Department constitues 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) In the light of the above, and having taken into account evidence before me, the appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, with a view of placing the Complainant as close as possible to where they would have been had the improper conduct and maladministration not occurred, is the following:

(a) The Head of the Department, Mr K Masange must:

(aa) Within ninety (90) working days of the issuing of this report, commence with the process of providing the Complainants with adequate housing by either evicting the illegal occupants or alternatively source funds, secure sites from the relevant Municipality and construct new RDP Units for the Complainants.

(bb) Within thirty (30) working days from the date of this report, write a letter of apology to the Complainants for the prejudice caused.

(cc) Within sixty (60) days of this report, take disciplinary steps against any official who might have failed in his/her duty to allocate the Complainants with their approved RDP houses.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE
DEPARTMENT OF HUMAN SETTLEMENTS TO ALLOCATE RDP HOUSES TO THE
COMPLAINANTS

1. INTRODUCTION

1.1. 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 published in terms of
section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2. The report is submitted in terms of section 8(3) of the Public Protector Act to the
following people to note the outcome of my investigation and implement remedial
action:

1.2.1. Member of the Executive Council (MEC) for Human Settlement in Mpumalanga
Province, Ms Norah Mahlangu;

1.2.2. The Head of Department of Human Settlement in Mpumalanga Province, Mr K
Masange;

1.3. Copies of the report are also provided to Mr T Msibi and Ms T Mahlangu, the
Complainants, to inform them about the outcome of my investigation.

1.4. The report relates to an investigation into allegations of improper conduct,
maladministration and improper prejudice suffered by Mr T Msibi and Ms T
Mahlangu (the Complainants) as a result of the alleged failure by the Department
of Human Settlements (the Department) to allocate RDP houses to both
Complainants who are the rightful beneficiaries.
2. THE COMPLAINT

2.1. In 2016, my office received complaints from Mr Thomas Msibi and Ms T Mahlangu (the Complainants) who are beneficiaries of RDP houses that were constructed but not allocated to them after their applications were approved. They alleged that:

2.1.1. They submitted their respective applications for RDP houses at the Govan Mbeki Municipality and they were approved for the Green Field Housing Development Project that was implemented between 1999/2000 and 2001/2002 financial years.

2.1.2. They further submitted that there was a Green Field Housing Development Project at Ext. 23 Emzinoni, Bethal where their approved RDP houses were built in their respective sites as mentioned in para 2.2 below. However, some illegal occupants took occupation of such houses before the Complainants could occupy them.

2.2. Below are the particulars of the RDP applicants who approached my office:

2.2.1. Mr T Msibi lodged his complaint with my provincial office in Mpumalanga on 2 November 2016. He resides at stand number 4253 Ext. 23 Emzinoni in Bethal. The Complainant alleges that he submitted his application for an RDP house to the Govan Mbeki Municipality which was approved in 1999 at stand number 3776 Ext. 23 Emzinoni, Bethal. He further reports that an RDP house was built for him at stand number 3776, Ext. 23 Emzinoni, Bethal, but someone else was allocated the house before he could take occupation. At the time of approaching my office Mr Msibi had not received any assistance from neither the Municipality nor the Department.
2.2.2. Ms T Mahlangu also lodged her complaint with my office in Mpumalanga on 31 August 2016. The complaint was on behalf of her late sister Ms Annah Nomthandazo Mahlangu who applied for a housing subsidy and her application was approved for Erf 4174, Ext. 23 Emzinoni, Bethal. The Complainant further reported that an RDP house was built for her sister on the above mentioned site. However, it was later discovered that there was an unknown individual residing in her sister’s RDP house. The illegal occupants claimed that they were given the house by the Municipality. When the Complainant enquired from the Municipality, she was not given a clear explanation but was told that she will be allocated a stand at a new residential area. At the time of approaching my office she had not received any assistance from neither the Municipality nor the Department.

2.2.3. The Complainants later approached the Public Protector alleging that as a result of the Department’s failure to allocate them RDP houses, they have suffered prejudice.

3. **POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

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's powers are regulated and amplified by the Public Protector Act, which states, among others, that the Public Protector has the power to investigate and redress maladministration and related improprieties in the conduct of state affairs. The Public Protector Act also confers power to resolve the disputes through conciliation, mediation, negotiation or any other appropriate dispute resolution mechanism as well as subpoena persons and information from any person in the Republic for the purposes of an investigation.

3.5. In the Constitutional Court matter of Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others (CCT 143/15; CCT 171/15) [2016] ZACC 11(5); 2016(5) BCLR 618 (CC); 2016(3) SA 580 (CC) (31 March 2016), Chief Justice Mogoeng stated the following, when confirming the powers of the public protector:

3.5.1. Complaints are lodged with the Public Protector to cure incidents of impropriety, prejudice, unlawful enrichment or corruption in government circles (Para 65);

3.5.2. An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the value underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (paragraph 67);

3.5.3. 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 that effect, if it is the best attempt at curing the root cause of the complaint (paragraph 68);
3.5.4. 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 to their nature, context and language, to determine what course to follow (paragraph 69);

3.5.5. 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 effect it has on the person, body or institution it is addressed to (paragraph 70);

3.5.6. The Public Protector's power to take appropriate 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 (paragraph 71);

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

3.5.8. She has the power to determine the appropriate remedy and prescribe the manner of its implementation (paragraph 71(d))

3.5.9. "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));

3.6. The Constitutional Court further held that the remedial action taken by the Public Protector has a binding effect, "When remedial action is binding, compliance is
not optional, and 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.”

3.7. 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 (paragraphs 100 and 101);
(a) Conduct an investigation;
(b) Report on that conduct; and
(c) To take remedial action.

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

3.9. The Department is an organ of state and its conduct amounts to conduct in state affairs, as a result the matter falls within the ambit of the Public Protector’s mandate.

3.10. 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 of the complaint was conducted in terms of section 182(1)(a) of the Constitution which gives me the power to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged
or suspected to be improper or to result in any impropriety or prejudice; to report on that conduct; and to take appropriate remedial action; and in terms of section 6(4) of the Public Protector Act, that regulates the manner in which the power conferred by section 182 of the Constitution may be exercised in respect of government at any level.

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 without conducting an investigation and resolve a complaint through Alternative Dispute Resolution (ADR) measures such as conciliation, mediation and negotiation.

4.1.3. The investigation was conducted by way of correspondences, meetings and interviews with the Complainant, the officials from the Department. The process also entailed correspondence with the Department and the Municipality, analysis of the relevant documentation, consideration and application of the relevant laws and regulatory framework.

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:

(a) What happened?
(b) What should have happened?
(c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration?
(d) In the event of maladministration what would it take to remedy the wrong or to place the Complainant as close as possible to where they would have been but for the 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. Evidence was evaluated and a determination made on what happened based on a balance of probabilities. In this particular case, the factual enquiry principally focused on whether or not the Department failed to provide or allocate adequate housing to the approved and qualifying beneficiaries.

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 Department 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 improper conduct and 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 Department or organ of state complied with the regulatory framework setting the applicable standards for good administration.

4.2.5. Section 6(9) of the Public Protector Act grants me discretionary powers to accept complaints which are lodged more than two years after the occurrence of the incident. 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 Complainant and the overall impact of the investigation.
4.3. **On analysis of the complaint, the following issues were considered and investigated:**

4.3.1. Whether the Department unduly failed to allocate RDP houses that were specifically built for the Complainants after their applications were approved; and

4.3.2. Whether the Complainants suffered improper prejudice as a result of the conduct of the Department under the circumstances.

4.4. **The Key Sources of information**

4.4.1. **Documentation**

4.4.1.1. Complaint received from Ms T Mahlangu, the Complainant on 31 August 2016

4.4.1.2. Complaint received from Mr T Msibi, the Complainant on 2 November 2016.

4.4.2. **Correspondence sent and received**

4.4.2.1. A copy of a letter dated 9 September 2016, from my office to Mr M Mahlangu, the Municipal Manager of Govan Mbeki Municipality.

4.4.2.2. A copy of a letter dated 2 February 2017, from my office to Mr K Masange the HOD of the Department of Human Settlement.

4.4.2.3. Copies of letters dated 1 March 2017 and 13 April 2017, respectively from Mr ME Michele, the Acting Municipal Manager of Govan Mbeki Municipality to my office.

4.4.2.4. A copy of a letter dated 21 June 2017, from my office to Mr ME Michele, the Acting Municipal Manager of Govan Mbeki Municipality.

4.4.2.5. A copy of a Notice of Intention to Subpoena in terms of section 7(4) and (5) of the Public Protector Act, 1994, dated 16 November 2017, to Mr ME Michele, the Acting Municipal Manager of Govan Mbeki Municipality.
4.4.2.6. A copy of a letter dated 11 January 2018, from my office to Mr BM Mhlanga, the Acting Municipal Manager of Govan Mbeki Municipality.

4.4.2.7. A copy of a Notice of Intention to Subpoena in terms of section 7(4) and (5) of the Public Protector Act, 1994, dated 12 February 2018 to Mr K Masange the HOD of the Department of Human Settlement.

4.4.2.8. A copy of an invitation letter for a dialogue meeting/workshop dated 8 August 2018 from my office to Mr K Masange, the HOD of the Department of Human Settlement.

4.4.2.9. A copy of a letter dated 5 October 2018 from M. K Masange, the HOD of the Department of Human Settlement to my office.

4.4.3. **Meetings held**

4.4.3.1. Meeting between Public Protector and officials from the Department of Human Settlement on 17 November 2016.

4.4.3.2. Meeting between Public Protector and officials from the Department of Human Settlement on 27 September 2018.

4.4.4 **Legislation and other prescripts**


4.4.4.2. The Public Protector Act, 23 of 1994;

4.4.4.3. The Housing Act 107 of 1997.

4.4.5 **Case Law**

4.4.5.1. *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC).
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 Department unduly failed to allocate RDP houses that were specifically built for the Complainants after their applications were approved.

Common cause issues

5.1.1. It is common cause that in the financial years 1999/2000 and 2000/2001, the Mpumalanga Provincial Department of Housing and Land Administration, which is now called the Department of Human Settlements, made available a budget to provide subsidies to implement a Green Field Housing Development project at Ext. 23 Emzinoni in Bethal, and a service provider known as Golden Nest International Group (PTY) Ltd was appointed by the Department to construct 1200 units at the designated area.

5.1.2. It is also common cause that the Complainants’ applications for RDP houses were approved at both stand number 3776, Ext. 23 Emzinoni and stand number 4174 Ext. 23 Emzinoni in Bethal, respectively.

5.1.3. It is not in dispute that after the construction of the Green Field housing development project, a number of challenges were encountered, including:

(a) The service provider, Golden Nest International Group (PTY) Ltd only constructed 851 houses instead of 1200 units in that area.

(b) A substantial number of people jumped the queue by unlawfully taking occupation of houses that were not designated to be allocated to them.
(c) Some people traded their houses to others due to area and stand preference, and this resulted in misallocations.

(d) A number of subsidy application forms were filed/written-up by the service provider while the intended beneficiaries were not aware of their status and as such, they were not approved.

(e) Ms Ephraim Buleleni Sibiya, who currently resides at stand number 3776, which was officially approved for Mr Msibi, was officially allocated stand number 3487, Ext. 22, Emzinoni and his RDP house was approved for that particular stand. He refused to be relocated to the stand which was officially allocated to him.

(f) Ms Thembisile Elda Mavimbela, who currently resides at stand number 4174 Extension 23, Emzinoni which was officially allocated to the late Ms AN Mahlangu was officially allocated stand number 4384 Extension 23 Emzinoni Bethal and her RDP house was approved for that particular stand. She refused to be relocated to the stand which was officially allocated to her.

5.1.4. It is further common cause that to date an outstanding balance of 349 houses of the 1200 houses that were supposed to have been built by the service provide, Golden Nest International Group (PTY) Ltd, have not yet been built and there is no evidence of any action taken by the Department against the service provider. The beneficiaries of such houses have not as yet benefited from such project.

5.1.5. It is also not disputed that the current Municipal Manager of Govan Mbeki Municipality, Mr SF Mndebele forwarded a letter dated 1 November 2018 to your goodself, as the Head of Department requesting for the deletion of the Complainant’s name (Mr T Msibi), from the Housing Subsidy Portal in order for him to qualify to re-apply for another house.
5.1.6. It is common cause that the mix-up of the beneficiary allocation of the properties in Ext. 23, Emzinoni was as a result of allocations that were not done directly by the Municipality but done by the service provider, Golden Nest International (PTY) Ltd, which had a land agreement with the Municipality.

*Issues in dispute*

5.1.7. There were no issues in dispute raised by the Department. However, in its only response to my enquiries on this matter, the Department stated in the letter dated 5 October 2018 in which it referred to the report of the Municipality that Mr Msibi’s issue could not be resolved through the relocation arrangement because his house in Ext. 23 was never constructed but the subsidy was paid to the service provider, which constitute fraud. The Department further stated that, the Municipality will forward a formal response in this regard, which will then enable the Department to recover the subsidy amount from the developer. Further that the Department will then be able to remove the payment against Mr Msibi and submit a request to the National Housing Department, which will enable him to apply for another subsidy.

5.1.8. The Department’s version that RDP houses were not built is contradicted by the letter sent by the Municipal Manager, Mr SF Mndebele dated 1 November 2018 to the Head of Department requesting for the deletion of the Complainant’s name (Mr T Msibi) from the Housing Subsidy Portal in order for him to qualify to re-apply for another house. It is further evident from the letter dated 13 April 2017 from the former acting Municipal Manager, Mr ME Michele in which he confirmed that Complainants’ houses were illegally occupied by individuals who refused to be relocated to their originally allocated houses that were actually built for the Complainants.
5.1.9. The problem with the deletion of the Complainants’ names from the Housing Subsidy Portal in order for them to qualify to re-apply for other houses will perpetuate the prejudice that the Complainants have suffered. It means that they will have to join the queue and wait another five to ten years when they had already been approved and allocated houses. It is improper for the Complainants to continue suffering due to no fault of their own but because of the Department’s failure to comply with the relevant prescripts.

5.1.10. The Govan Mbeki Municipality’s first response dated 13 April 2017, gave background to the project and highlighted the challenges experienced as stated in paragraph 5.1.2 to 5.1.4 above. As planned remedial action, the Municipality indicated that “In an attempt to address the complainant, the municipality will approach the PDoHS with a request to move this beneficiary to another contractor which is currently on site, to build the house for him”. However, Mr Msibi, who is referred to in the response of the Municipality, was never moved to another contractor and no house was built for him.

5.1.11. In their subsequent letter dated 11 January 2018, the Municipality stated that the status of the Complainants was still the same due to the area that the Municipality had identified as an intervention area (known as Ext. 11) having no infrastructure and no budget allocation for the installation of bulk infrastructure. The Municipality added that as soon as installation of the infrastructure has been finalised, they will request the Provincial Department of Human Settlement to transfer both beneficiaries to be catered for on the new Housing Project.

5.1.12. The Municipality stated further in their email of 13 March 2019, that the Department has appointed a consultant to do the assessment of the bulk infrastructure and they will therefore be able to ascertain the cost of installing bulk infrastructure.
5.1.13. On 29 July 2019, I issued a notices (Notice) in terms of section 7(9) (a) of the Public Protector Act to the Head of Department of Human Settlement, Mr K Masange and afforded him an opportunity to respond to my intended adverse findings against the Department. However, he failed to respond.

Application of the relevant legal prescripts

5.1.14. Section 26(1) of the Constitution provides that everyone has the right to have access to adequate housing. Subsection (2) provides that the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.

5.1.15. According to section 7(1) of the Housing Act, 1997, every provincial government must, after consultation with the provincial organisations representing Municipalities as contemplated in section 26(1) of the Constitution, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of national housing policy.

5.1.16. In terms of section 7(1) of the Housing Act, the Department is required to provide the Complainants with adequate housing. The Department was therefore expected to take all reasonable steps to ensure that the Complainants’ constitutional right to adequate housing was complied with by simply safeguarding that all built RDP houses were properly allocated and occupied by the approved and rightful beneficiaries.

5.1.17. This section therefore created a legal and moral obligation on the Department to do everything in its power to promote and facilitate the provision of adequate housing specifically to the approved beneficiaries. By allowing the service provider, Golden Nest International Group (PTY) Ltd, to monitor the implementation of the project, the registration of applicants and allocation of RDP
houses, the Department abdicated its responsibilities under section 26(1) of the Constitution and section 7(1) of the Housing Act.

5.1.18. The Housing Act further provides in terms of Section 9(1) that every Municipality must, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to ensure, amongst other things that the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis; set housing delivery goals in respect of its area of jurisdiction; identify and designate land for housing development; create and maintain a public environment conducive to housing development which is financially and socially viable; promote the resolution of conflicts arising in the housing development process; initiate, co-ordinate, facilitate, promote and enable appropriate housing development in its area of jurisdiction.

5.1.19. It is my contention that the Municipality complied with the provisions of section 9(1) of the Housing Act in that it allocated stands to the inhabitants of its area of jurisdiction which included the Complainants. Among other things, the Municipality identified a designated land for housing development on which the Department had to implement a Green Field Housing Development project in the period between 1999 and 2001. The said land was accordingly serviced.

5.1.20. Regarding this project, the Municipality had an agreement with the service provider in terms of which land was provided for the Green Field Housing Development project after the stands were allocated to the needy individuals who were beneficiaries of the housing subsidy project. The Municipality was not involved in the implementation of the project since the Service Level Agreement was entered into between the Department and service provider.

5.1.21. Failure by the Department to involve the Municipality in the implementation of the project resulted in the mix-up of the beneficiary allocation of RDP houses
because the service provider was allowed by the Department to do the allocations. For instance, the Municipality indicated in their letter dated 1 March 2017 that “This unfortunate situation is as a result of the allocations that were not done directly by the Municipality but done by the developer, Golden Nest International (Pty) Ltd, which had a Land agreement with the Municipality”. This is also confirmed by the Municipality in their subsequent letter dated 13 April 2017 that “A number of subsidy application forms were filed/written-up by the contractor while some of the intended beneficiaries were not aware of their status and as such, they were not approved.

Conclusion

5.1.22. Based on the evidence gathered it can be concluded that failure by the Department to ensure that the Complainants were provided with RDP houses that were allocated and specifically built for them after their applications were approved, was improper and in contravention of the constitutional provision relating to the right to access to adequate housing.

5.1.23. It can also be concluded that the conduct of the Department to authorise the service provider to implement the project including the allocation of RDP houses, was not only improper but also irregular and in contravention of the relevant legal prescripts such as section 7(1) of the Housing Act.

5.2. Regarding whether the Complainants suffered improper prejudice as a result of the conduct of the Department under the circumstances.

Common cause issues

5.2.1. It is common cause that the Complainants’ approved RDP houses were illegally occupied after construction was completed.
5.2.2. It is also common cause that the Complainants were prejudiced by the conduct of the Department because it failed to protect the Complainants' constitutional right of access to adequate housing and the right to human dignity as prescribed in section 26 of the Constitution and section which provides that everyone has inherent dignity and the right to have their dignity respected and protected.

5.2.3. It is also common cause that the conduct of the Department prejudiced the Complainants in that they were forced to stay in mud houses and shacks or unpleasant living conditions for more than ten (10) years after their applications for RDP houses were approved. This has had a negative effect on their inherent dignity.

Application of the relevant legal prescripts

5.2.4. The Department is expected to promote and maintain a high standard of professional ethics as provided in section 195(1) (a) of the Constitution. The section states, among others, that "A high standard of professional ethics must be promoted and maintained" by the Department; "services must be provided impartially, fairly, equitably and without bias"; and that "public administration must be accountable".

5.2.5. The section above therefore creates a duty on the Department to conduct itself in an accountable manner. However, this was not the case in dealing with the Complainants' matters. Therefore, the Department's failure to ensure that the Complainants were accordingly provided with their RDP houses as rightful beneficiaries and the failure to take reasonable steps to evict the illegal occupants was not only contrary to the principles espoused in sections 26(1) and 195 of the Constitution but professionally unethical.
5.2.6. The Complainants suffered as a result of the conduct of the Department in that their right to human dignity in terms of section 10 of the Constitution has been violated.

5.2.7. According to section 10 of the Constitution, everyone has inherent dignity and the right to have their dignity respected and protected. However, the Complainants’ dignity continue to be disrespected and unprotected as a result of the Department’s conduct in that they do not have adequate housing.

5.2.8. The Department’s conduct resulted in the Complainants’ continued prejudice and also emotional suffering, knowing that illegal occupants became the beneficiaries of their effort to acquire shelter for themselves and their families.

Conclusion

5.2.9. The Complainants were prejudiced by the Department’s failure to provide them with adequate housing despite the fact that their applications had been approved. The Complainants continue to suffer prejudice in that they are still not provided with RDP houses.

6. FINDINGS

Having considered the evidence uncovered during the investigation against the relevant regulatory framework determining the standard the Department of Human Settlements should have complied with, I therefore make the following findings:

6.1. Regarding whether the Department unduly failed to allocate RDP houses that were specifically built for the Complainants after their applications were approved.
6.1.1. The allegation that the Department unduly failed to allocate RDP houses to the Complainants, that were specifically built for them after their applications were approved is substantiated.

6.1.2. The Complainants and three hundred and forty seven (347) other beneficiaries whose application were approved for RDP houses for the Green Field Housing Development project at Ext. 23 Emzinoni in Bethal were never provided with their houses. The Department only managed to construct eight hundred and fifty one (851) of the one thousand two hundred (1200) units which were supposed to be built resulting in three hundred and forty nine (349) beneficiaries, including the two Complainants, not benefitting from the project.

6.1.3. The Department's failure to provide the Complainants with the RDP houses they applied and were approved for as beneficiaries, is a direct violation of section 7(1) of the Housing Act which placed an obligation on the Department to provide adequate housing to the beneficiaries. The Department's failure is also in violation of section 26(1) of the Constitution which further gave the Complainants the right to have access to adequate housing.

6.1.4. Therefore the conduct of the Department 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.

6.2. Regarding whether the conduct of the Department resulted in the Complainants suffering prejudice.

6.2.1. The allegation that the Complainants suffered improper prejudice as a result of the conduct of the Department is substantiated.

6.2.2. Failure by the Department to provide the Complainants with RDP houses is in violated of section 10 of the Constitution which grants them an inherent dignity
and the right to have their dignity respected and protected as they continue to be deprived of the right adequate housing.

6.2.3. The Department's conduct is in violation of section 195(1)(a) of the Constitution which resulted in the Complainants suffering prejudice in that they continue to live in houses that are inadequate due to the Department's failure to uphold, promote and maintain a high standard of professional ethics.

6.2.4. The Complainants suffered prejudice by virtue of the failure by the Department to comply with legislative prescripts, and as such the Complainants could not be provided with RDP houses and thus unfairly treated. The Complainants were not the only beneficiaries that were prejudiced but the other three hundred and forty seven (347) beneficiaries who were not allocated RDP houses that were due to them and the Department failed to take reasonable steps to evict the illegal occupants.

6.2.5. Therefore, the conduct of the Department 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.

7. REMEDIAL ACTION

In light of the above, and having taken into account evidence before me, the appropriate remedial action that I am taking in terms of section 182(1)(c) of the Constitution, with a view of placing the Complainant as close as possible to where she would have been had the improper conduct and maladministration not occurred, is the following:
7.1. **The Head of Department, Mr K Masange must:**

7.1.1. Within ninety (90) working days of the issuing of this report, commence with the process of providing the Complainants with adequate housing by either evicting the illegal occupants or alternatively source funds, secure sites from the relevant Municipality and construct new RDP Units for the Complainants.

7.1.2. Within thirty (30) working days from the date of this report, write a letter of apology to the Complainants for the prejudice caused to them.

7.1.3. Within 60 working days of this report, take disciplinary steps against any official who might have failed in his/her duty to allocate the Complainants with their approved RDP houses.

8. **MONITORING AND IMPLEMENTATION OF THE REMEDIAL ACTION**

8.1. The Head of Department must, within fifteen (15) working days from the date of the issuing of this report, submit to my office the implementation plan, with timelines, indicating how the remedial action referred to in paragraph 7 above, will be implemented.
8.2. I wish to bring to your attention that in line with the Constitutional Court in the matter of Economic Freedom Fighters v Speaker of the judgement National Assembly and Other; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11, and in order to ensure the effectiveness of the Office of the Public Protector, the remedial actions prescribed in this Report are legally binding on the Municipal Manager of Steve Tshwete Local Municipality, unless they obtain a Court order directing otherwise.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 06/09/2019