
PUBLIC PROTECTOR SOUTH AFRICA

Report No: 29 of 2019/20

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION BY THE ERSTWHILE DEPARTMENT OF RURAL DEVELOPMENT & LAND REFORM CURRENTLY THE DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT TO ALLOCATE APPROVED FUNDS FOR THE RECAPITALISATION AND DEVELOPMENT OF PORTION 1 OF THE FARM KROKODILSPRUIT 290 JR.
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EXECUTIVE SUMMARY

(i) This is my report issued in terms of section 182(1) (b) of the Constitution of the Republic of South Africa, 1996 and section 8(1) of the Public Protector Act, 23 of 1994 (the Public Protector Act).

(ii) This report communicates my findings and appropriate remedial action I am taking in terms of section 182(1) (c) of the Constitution, following an investigation into a complaint lodged by Ms. BC Mahlangu (the Complainant) on 9 May 2016.

(iii) In the main, the complaint was that the erstwhile Department of Rural Development and Land Reform, currently the Department of Agriculture, Land Reform and Rural Development (the Department) unduly delayed to allocate approved funds for recapitalisation and development for portion 1 of the farm Krokodilspruit 290 JR (the Farm).

(iv) Based on an analysis of the allegations, the following issues were identified to inform and focus the investigation:

(aa) Whether the Department unduly delayed to allocate the approved funds for recapitalisation and development for Portion 1 of the Farm Krokodilspruit, 290 JR, and whether this constitutes maladministration; and

(bb) Whether the Complainant was improperly prejudiced by the conduct of the officials of the Department in the circumstances.

(v) In dealing with the matter, some issues were mediated upon in line with section 6(4) (b) of the Public Protector Act. However, the main investigation was conducted through correspondence, meetings and interviews with the Complainant and the Department.
(vi) Key laws and policies taken into account to help me determine if there had been maladministration by the Department were principally those imposing administrative standards that should have been upheld by the Department and/or its officials.

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

(a) Regarding whether the Department unduly delayed to allocate approved funds for recapitalisation and development for Portion 1 of the Farm Krokodilspruit, 290 JR, and whether this constitutes maladministration.

(aa) The allegation that the Department unduly delayed to allocate the approved funds for recapitalisation and development of the Farm Krokodilspruit, 290 JR, is substantiated.

(bb) The Department did not allocate the approved funds for recapitalisation and development for the Farm for a period of two (2) years and eleven (11) months after a memorandum was approved for funding.

(cc) Further, the Department did not place the funds for the recapitalisation and development for the farm in the demand management plan, to enable its Supply Chain Management to allocate the approved funds for the farm after the memorandum for funding for the farm was approved.

(dd) In view of the above, the failure of Department to allocate the approved funds for the recapitalisation and development for the Farm contravened section 10(b) (I) (ii) of the Provision of Land and Assistance Act, 126 of
1993, paragraph D, sub-paragraph A, paragraph E of the Policy for the Recapitalisation and Development Programme and paragraph 3, sub-paragraph 3.2 and 3.3 of the National Treasury guidelines on the Implementation of Demand Management.

(ee) Therefore, the conduct of the Department amounts to improper conduct as envisaged in section 182(1) (a) of the Constitution and maladministration as envisaged in section 6(4) (a) (l) of the Public Protector Act.

(b) Regarding whether the Complainant was improperly prejudiced by the conduct of the Department in the circumstances.

(aa) The allegations that the Complainant was improperly prejudiced by the conduct of the Department, is substantiated.

(bb) The Department did not prioritise the Complainant, who was from a previously disadvantaged background, and did not allocate the approved funds for the farm in terms of the Provision of Land and Assistance Act, 126 of 1993.

(cc) Further, the Department did not embrace the objectives of the Provision of Land and Assistance Act, 126 of 1993, which provides for the acquisition, maintenance, planning, development, improvement and disposal of property and the provision of financial assistance for land reform purposes as described in its preamble.

(dd) The Complainant did not have access to water and electricity and she has not been able to utilise the farm for the purpose for which it was allocated.

(ee) The failure of the Department to allocate the approved funds for the farm caused the Complainant frustration, inconvenience and distress.
(ff) Therefore, the conduct of the Department resulted in improper prejudice to the Complainant as envisaged in section 6(4) (a) (v) of the Public Protector Act.

(v) Remedial Action

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

The Acting Director- General of the Department of Agriculture, Land Reform and Rural Development to:

(a) Issue a written apology to the Complainant, apologising for the Department’s delay to allocate the approved funds for recapitalisation and development for portion 1 of the farm Krokdilspruit, 290 JR within fourteen (14) working days from date of this report.

(b) Ensure that the farm allocated to the Complainant (portion 1 of the farm Krokdilspruit, 290 JR) is farmable and can be utilised for the purpose for which it was allocated by taking steps to reconnect water and electricity within thirty (30) working days from the date of this report.

(c) The Department’s Policy on Recapitalisation and Development Programme relating to paragraph D, sub-paragraph A and paragraph E is adhered to, and is in compliance with section 10(b)(i)(ii) of the Provision of Land and Assistance Act, 126 of 1993.
(d) Ensure that the Department develops and implements a risk management plan which should identify and mitigate the risk/s associated with non-adherence to the Department’s Policy on Recapitalisation and Development Programme relating to paragraph D, sub-paragraph A and paragraph E, and section 10(b) (i) (ii) of the Provision of Land and Assistance Act, 126 of 1993 within ninety (90) working days from the date of this report.

(e) All employees of the Department dealing with the Policy on Recapitalisation and Development Programme are to be properly trained to effectively and efficiently perform their functions.
REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION BY THE ERSTWHILE DEPARTMENT OF RURAL DEVELOPMENT & LAND REFORM CURRENTLY THE DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT TO ALLOCATE APPROVED FUNDS FOR THE RECAPITALISATION AND DEVELOPMENT OF PORTION 1 OF THE FARM KROKODILSPRUIT 290 JR

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 section 8(1) of the Public Protector Act, 23 of 1994 (Public Protector Act).

1.2. This report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of this investigation:

1.2.1. Ms A T Didiza, the Minister of the Department of Agriculture, Land Reform and Rural Development;

1.2.2. Ms Rendani Sadiki, the Acting Director-General of the Department of Agriculture, Land Reform and Rural Development; and

1.2.3. The Complainant: Ms Bangswani Charlotte Mahlangu.

1.2.4. This report relates to my investigation into allegations of maladministration by the erstwhile Department of Rural Development and Land Reform, currently the Department of Agriculture, Land Reform and Rural Development (the Department) to allocate approved funds for the recapitalisation and development of portion 1 of the farm Krokodilspruit 290 JR (the Farm).

1.3. A Notice in terms of section 7(9) of the Public Protector Act was issued to the Acting Director-General of the Department of Rural Development and Land Reform on 03 April 2019.
2. THE COMPLAINT

2.1. The complaint was lodged on 9 May 2016 by Ms. BC Mahlangu (the Complainant) who is unemployed and aspires to be a farmer. The Complainant alleged that:

2.1.1. The Department allocated the farm to her on 04 November 2013, but failed to accelerate the development of her business plan to enable her to receive funds for recapitalisation and development.

2.1.2. The Farm does not have water and electricity and she has not been able to utilise the farm for the purpose for which it was allocated.

2.2. In the main, the complaint was that the Department unduly delayed to allocate approved funds for recapitalisation and development for portion 1 of the farm Krokdilispruit 290 JR (the Farm).

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 power as regulated by national legislation –

(a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,

(b) to report on that conduct; and
(c) to take appropriate remedial action.

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

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

3.5 In the 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; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (31 March 2016, the Constitutional Court per Chief Justice Mogoeng stated the following when confirming the powers of the Public Protector:

3.5.1 The remedial action taken by the Public Protector has a binding effect, "When remedial action is binding, compliance is not optional, 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" (para 73);

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

3.5.3 An appropriate remedy must mean an effective remedy, for without effective remedies for breach, the values underlying and the rights entrenched in the Constitution cannot properly be upheld or enhanced (para 67);
3.5.4 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 (para 68);

3.5.5 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 (para 69);

3.5.6 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 (para 70);

3.5.7 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 (para 71);

3.5.8 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 (para 71(c));

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

3.6 In the matter of the President of the Republic of South Africa v Office of the Public Protector and Others, Case no 91139/2016 (13 December 2017), [2017] ZAGPPHC 747; 2018 (2) SA 100 (GP); [2018] 1 all SA 800 (GP); 2018 (5) BCLR 609 (GP) (13 December 2017), the Court held as follows, when confirming the powers of the Public protector:

3.6.1 The constitutional power is curtailed in the circumstances wherein there is conflict with the obligations under the constitution (para 79);

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

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

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

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

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

3.6.7 The primary role of the Public Protector is that of an investigator and not an adjudicator. Her role is not to supplant the role and function of the court (para105).

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

3.6.9 *Prima facie* evidence which point to serious misconduct is a sufficient and appropriate basis for the Public protector to take remedial action ( para 112);

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

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

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

4. THE INVESTIGATION

4.1 Methodology

4.1.1 Some of the issues raised by the Complainant, which included the allegation of improper failure by the Department to allocate the approved funds for recapitalisation and development for Portion 1 of the Farm Krokodiilspruit, 290 JR, (the Farm) was mediated in line with section 6(4)(b) of the Public Protector Act. An Alternative Dispute Resolution (ADR) session was held on 7 February 2017, at which session the Department confirmed that a memo for funding for recapitalization and development for the Farm was approved by Mr B Zulu, Deputy Director General in the Department on 24 January 2017.
4.1.2. The main investigation was conducted in terms of section 182 of the Constitution and sections 6 and 7 of the Public Protector Act.

4.1.3. The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

4.2 Approach to the investigation

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

4.2.1.1 What happened?

4.2.1.2 What should have happened?

4.2.1.3 Is there a discrepancy between what happened and what should have happened and does that deviation amounts to maladministration or improper conduct; and

4.2.1.4 In the event of improper conduct or maladministration what would it take to remedy the wrong or to place the Complainants as close as possible to where she 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. In this particular case, the factual enquiry principally focused on the roles played by the Department when it failed to allocate approved funds for recapitalisation and development of the Farm.
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 officials of the Department.

4.2.4 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of impropriety and/or maladministration. Where the Complainant has suffered prejudice, the idea is to place her as close as possible to where she would have been had the institution concerned complied with the regulatory framework setting the applicable standards for good administration.

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

4.3.1. Whether the Department unduly delayed to allocate the approved funds for recapitalisation and development for Portion 1 of the Farm Krokodilspruit, 290 JR and whether this constitutes maladministration; and

4.3.2. Whether the Complainant was improperly prejudiced by the conduct of the officials of the Department in the circumstances.

4.4 The Key Sources of information

4.4.1 Documents:

4.4.1.1. Complaint form received from the Complainant dated, 9 May 2016;

4.4.1.1 An approved memorandum requesting for urgent intervention for Portion 1 of the Farm Krokodilspruit 290 JR from the Department dated, 24 January 2017; and

4.4.1.2 Agricultural Lease Agreement signed between the Complainant and the Department on 31 May 2016.
4.4.2 Interviews conducted:

4.4.2.1 Interview with the Complainant on 23 August 2016;

4.4.2.2 Meeting held with the Complainant and the Department on 9 November 2016; and

4.4.2.3 ADR hearing held with the Complainant and the Department on 7 February 2017.

4.4.3 Correspondence sent and received

4.4.3.1 Letter to the Department, dated 25 August 2016 from the Public Protector.

4.4.3.2 Letter to the Public Protector, dated 7 October 2016 from the Chief Director: Provincial Shared Service Centre, Gauteng: Ms R Masango.

4.4.3.3 Email to the Public Protector, dated 29 June 2017 from the Director: Mr Phoster Sambo, Provincial Shared Service Centre, and Strategic Land Acquisitions.

4.4.3.4 A notice issued in terms of section 7(9) (a) of the Public Protector Act (Notice) on 4 April 2019, affording the Department an opportunity to respond to the provisional findings.

4.4.3.5 A response to the Notice issued in terms of section 7(9) of the Public Protector Act issued on 3 April 2019 from the Acting Director- General of the Department of Rural Development and Land Reform received on 24 April 2019.

4.4.4 Legislation and other prescripts.

4.4.4.2 The Public Protector Act, 23 of 1994.

4.4.4.3 Provision of Land and Assistance Act, 126 of 1993 (PLAA).

4.4.4.4 Policy for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform, 2013 (PRDP).
4. 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 Department unduly delayed to allocate the approved funds for recapitalisation and development for Portion 1 of the Farm Krokdilispruit, 290 JR and whether this constitutes maladministration.

*Common cause issues:*

5.1.1. It is common cause that the Department allocated the Farm to the Complainant as part of the land reform programme that seeks to provide black emerging farmers with the social and economic infrastructure and basic resources required to run successful agricultural businesses.

5.1.2. The Farm was allocated to the Complainant by the Department on 26 March 2014 and she took occupation thereof on 10 April 2014.

5.1.3. An agricultural agreement of lease was signed between the Complainant and the Department on 31 May 2016. Paragraph 4 of the agricultural lease agreement confirmed that the farm is let to the Lessee for the purpose of conducting agricultural farming activities. Further, the Lessee shall be entitled to use water which is available on the farm strictly in accordance with the rights that the owner has over the property.

5.1.4. Paragraph 5 of the aforesaid agreement of lease provides that the lease would continue for a period of thirty (30) years from the date of commencement. Paragraph 6 of the abovementioned agreement of lease provides that the lease was subject to a probation period of five (5) years after which the Complainant's performance would be evaluated by the Department. In the event that the
Complainant’s performance was unsatisfactory during the probation period, the Department’s National Land Allocation and Recapitalisation Control Committee would extend the probation period for an additional five (5) year period or terminate the lease agreement.

5.1.5. Following my intervention, the Department approved a memorandum for funding in the amount of R369 119.63 on 24 January 2017 for recapitalisation and development for the Farm. In terms of clause 9 of the aforesaid memorandum, it was recommended that the funds be approved and released for the Farm in terms of the Recapitalisation and Development Policy Framework for agricultural purposes and be used for siting, drilling and equipping of a borehole.

5.1.6. The Department acknowledged in the above mentioned memorandum of 24 January 2017 that it was aware at the time of acquisition that the “farm infrastructure was not at its best state and that there is a need for urgent infrastructure upgrade to make it farmable and habitable”.

5.1.7. The correspondence below is an abstract from the memorandum dated 24 January 2017:

The PSSCG identified the above mentioned property as suitable for Ms. Mahlangu based on her category. The office noted during acquisition that the farm infrastructure was not at its best state. There is a need for urgent infrastructure upgrade to make it farmable and habitable.

5.1.8. In terms of the aforesaid memorandum, electricity on the Farm was discontinued by Eskom in May 2014, which was a month after the farm was allocated to the Complainant, due to what the Department acknowledged as outstanding electricity consumption fees.

5.1.9. The hand written note on the memorandum dated 24 January 2017 of the Deputy Director General: Land Redistribution and Development, Mr B Zulu indicated that
"this is an emergency intervention in terms of the Reconstruction and Development Programme (RDP)".

5.1.10. Furthermore, it is common cause that the Department did not allocate the approved funds for recapitalisation and development for the Farm.

*Issues in dispute:*

5.1.11. The main issue for determination was whether the Department unduly delayed to allocate the approved funds for emergency intervention and the recapitalisation and development of the Farm.

5.1.12. The evidence before me revealed that Mr B Zulu, Deputy Director General, Land Redistribution & Development, approved a memorandum on 24 January 2017 for funding in the amount of R369 119.63 for recapitalisation and development for the Farm. In terms of this memorandum, the Complainant moved onto the farm on 10 April 2014 as she was approved for allocation of the Farm on 4 November 2013. The Complainant was classified by the Department’s BSC as a vulnerable group.

5.1.13. The Department submitted on the aforesaid memorandum that there was a borehole on the Farm, however it needed to be equipped since it was dysfunctional and there was no irrigation system.

5.1.14. In its response, dated 24 April 2019 to the Notice issued to the Department, it conceded that it had challenges in procuring services to drill the borehole at the Farm.

5.1.15. The Department highlighted that the challenges were as a result of the exorbitant proposal which it received from the service providers which exceeded the approved budget of R369 119.63.
5.1.16. The Department highlighted further that it took a decision to encourage the Complainant to source a quotation for drilling of a borehole from a service provider, to enable the Department to pay directly to the service provider the amount required for such services.

5.1.17. During a consultation with the Complainant on 11 June 2019, the Complainant refuted the fact that the Department requested her to obtain a quotation for drilling of a borehole from a service provider. The Complainant informed me that the Department never contacted her in relation to the issue of obtaining a quotation.

*Application of the relevant legal framework:*

5.1.18. Section 10(1)(b)(i) of the PLAA which provides that “the Minister may, from money appropriated by Parliament for the purpose of this Act on such conditions as he or she may determine, make available state land administered or controlled by him or her or made available to him or her; maintain, plan, develop or improve property or cause such maintenance, planning, development or improvement to be conducted by a person or body with whom or which he or she has concluded a written agreement for that purpose”.

5.1.19. No time frames were however prescribed by the PLAA for the implementation of funds for recapitalisation and development once it is approved.

5.1.20. Paragraph D, sub-paragraph A of the Policy for the Recapitalisation and Development Programme of the Department of Rural Development and Land Reform (PRDP) provides that “the policy seeks to provide black emerging farmers with the social and economic infrastructure and basic resources required to run successful agricultural business. It is the intention of the policy that black
emerging farmers are deliberately ushered into the agricultural value-chain as quickly as is possible, through this state intervention."

5.1.21. Paragraph E of the PRDP provides that the Department identified that many land reform projects were not successful due to lack of adequate and appropriate post-settlement support. The Department also identified that numerous properties acquired through various programmes such as Land Distribution for Agricultural Development were on the verge of being auctioned or had been sold due to the collapse of the project.

5.1.22. Paragraph D of the PRPD provides that in cases where a partnership was not yet formed, intervention is deemed urgent and the amount required is less than, or equal to R500 000, which is the maximum intervention allowed per enterprise, the Department's normal procurement process will be followed, in line with a business or development plan.

5.1.23. The Department's strategic plan for the 2014-2019 period provides for the recapitalisation of farm projects that were challenged as a result of constrained beneficiary and project support.

5.1.24. Paragraph 3, sub-paragraph 3.2 and 3.3 of the National Treasury Guidelines on the Implementation of Demand Management\(^1\) provides that the objective of the demand management is to ensure that the resources required to fulfill the needs identified in the strategic plan of the institution are delivered at the right time. The needs analysis of the institution should be included in the strategic planning process of the institution and should incorporate future needs. This would guide the institution in planning, implementation and control activities.

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\(^1\) Department of National Treasury, Supply Chain Management Guidelines on the Implementation of Demand Management, dated 29 July 2011.
5.1.25. Although Section 10(1)(b)(i) of the PLAA allows the Minister a discretion to make money available appropriated by Parliament for planning and developing state land allocated in terms of PLAA, the Deputy Director General: Land Redistribution and Development, Mr B Zulu, however approved funding of the Farm in a memorandum dated 24 January 2017.

5.1.26. The Department did not offer an explanation why the process contained in its strategic plan for 2014-2019, and section 10(b) (i) (ii) of the PLAA, paragraph D, sub-paragraph A, paragraph E of the PRDP and paragraph 3, sub-paragraph 3.2 and 3.3 of the National Treasury guidelines on the Implementation of Demand Management was not adhered to when it unduly delayed to allocate the approved funds for recapitalisation and development for the Farm.

Conclusion:

5.1.27. The Department unduly delayed to allocate the approved funds for recapitalisation and development for the Farm, two (2) years and eleven (11) months after a memorandum for funding of the Farm was approved.

5.2. Whether the Complainant was improperly prejudiced by the conduct of the officials of the Department in the circumstances.

Common cause issues

5.2.1. It is common cause that the Department allocated the Farm to the Complainant for agricultural business activities on 4 November 2013 and that the Department was aware at the time of allocation of the Farm, that it was not farmable and habitable.
5.2.2. Further, that the Complainant did not have access to water and electricity and she had not been able to utilise the Farm for the purpose for which it was allocated.

5.2.3. It is also common cause that the Complainant was classified as a vulnerable group by the Department’s Beneficiary Selection Committee in its memorandum dated 24 January 2017. Paragraph 6, sub-paragraph 6.2 of the aforesaid memorandum provides that the Complainant was classified as a vulnerable group.

5.2.4. It was not disputed that the Department approved a memorandum for funding in the amount of R369 119.63 on 24 January 2017 for recapitalisation and development for the Farm.

*Issues in dispute*

5.2.5. The main issue for determination is whether the Complainant was improperly prejudiced by the conduct of the officials of the Department.

5.2.6. The Complainant submitted that she did not have access to water and electricity since she took occupation of the Farm on 10 April 2014.

5.2.7. Paragraph 10, sub-paragraph 10.1 of the agricultural lease agreement signed between the Complainant and the Department on 31 May 2016 provides that the rental shall be payable yearly in arrears on or before the 7th day of each month at the Department’s office.

5.2.8. The Complainant has not been able to utilise the farm for the purpose for which it was allocated, while she was required to pay rental as required by the aforesaid lease agreement.
Application of the law

5.2.9. The preamble of the PLAA provides that its purpose is to provide for the acquisition, maintenance, planning, development, improvement and disposal of property and the provision of financial assistance for land reform purposes, and to provide for matters connected therewith.

5.2.10. The definitions of the PRDP provides that previously disadvantaged persons means South African citizens who are racially classified as African, Coloured and Indian.

5.2.11. Paragraph 6, sub-paragraph 6.2 of the Department’s memorandum dated 24 January 2017 provides that the Complainant was classified under vulnerable group.

5.2.12. The Department failed to install water at the Farm as required by the preamble of PLAA and its memorandum dated 24 January 2017.

5.2.13. Further, the Department failed to consider that the Complainant was identified as a vulnerable group as described by paragraph 6, sub-paragraph 6.2 of the Department’s memorandum dated 24 January 2017.

Conclusion:

5.2.14. Based on the information traversed above, the conduct of the officials of the Department amounted to improper prejudice as envisaged in section 6(4) (a) (v) of the Public Protector Act.
6. FINDINGS

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

6.1. Regarding whether the Department unduly delayed to allocate the approved funds for recapitalisation and development for Portion 1 of the Farm Krokodilspruit, 290 JR and whether this constitutes maladministration.

6.1.1. The allegation that the Department unduly delayed to allocate the approved funds for recapitalisation and development of the Farm, is substantiated.

6.1.2. The Department did not allocate the approved funds for recapitalisation and development for the Farm for a period of two (2) years and eleven (11) months after a memorandum was approved for funding.

6.1.3. Further, the Department did not place the funds for the recapitalisation and development for the farm in the demand management plan, to enable its Supply Chain Management to allocate the approved funds for the farm after the memorandum for funding for the farm was approved.

6.1.4. In view of the above, the undue delay by the Department to allocate the approved funds for recapitalisation and development for the Farm contravened section 10(b)(i)(ii) of the PLAA, paragraph D, sub-paragraph A, paragraph E of the PRDP and paragraph 3, sub-paragraph 3.2 and 3.3 of the National Treasury guidelines on the Implementation of Demand Management.
6.1.5. Therefore, the actions of the Department amount to improper conduct in state affairs as envisaged in section 182(1) (a) of the Constitution and constitute maladministration in terms of section 6(4) (a) (i) of the Public Protector Act.

6.2. **Whether the Complainant was improperly prejudiced by the conduct of the officials of the Department in the circumstances.**

6.2.1. The allegation that the Complainant was improperly prejudiced by the conduct of the officials of the Department, is substantiated.

6.2.2. The Department did not prioritise the fact that the Complainant was from a previously disadvantaged background and did not allocate the approved funds for the Farm as required by the PLAA.

6.2.3. Further, the Department did not embrace the objectives of the PLAA, which provides for the acquisition, maintenance, planning, development, improvement and disposal of property and the provision of financial assistance for land reform purposes as required in the preamble.

6.2.4. The Complainant did not have access to water and electricity and she has not been able to utilise the farm for the purpose for which it was allocated.

6.2.5. The failure of the Department to allocate the approved funds for the farm caused the Complainant frustration, inconvenience and distress.

6.2.6. Therefore, the conduct of the Department amounts to improper prejudice as envisaged in section 6(4) (a) (v) of the Public Protector Act.
7. REMEDIAL ACTION

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

The Acting Director-General of the Department of Agriculture, Land Reform and Rural Development to:

7.1 Issue a written apology to the Complainant, apologising for the Department’s delay to allocate the approved funds for recapitalisation and development for portion 1 of the farm Krokodilspruit, 290 JR within fourteen (14) working days from date of this report.

7.2 Ensure that the farm allocated to the Complainant (portion 1 of the farm Krokodilspruit, 290 JR) is farmable and can be utilised for the purpose for which it was allocated by taking steps to reconnect water and electricity within thirty (30) working days from the date of this report.

7.3 The Department’s Policy on Recapitalisation and Development Programme relating to paragraph D, sub-paragraph A and paragraph E is adhered to and is in compliance with section 10(b)(i)(ii) of the Provision of Land and Assistance Act, 126 of 1993.

7.4 Ensure that the Department develops and implements a risk management plan which should identify and mitigate the risk/s associated with non-adherence to the Department’s Policy on Recapitalisation and Development Programme relating to paragraph D, sub-paragraph A and paragraph E, and section 10(b) (i) (ii) of the Provision of Land and Assistance Act, 126 of 1993 within ninety (90) working days from the date of this report.
7.5 All employees of the Department dealing with the Policy on Recapitalisation and Development Programme are to be properly trained to effectively and efficiently perform their functions.

8. MONITORING

8.1 The Director-General of the Department to submit an action plan, within 30 days of date of this report, indicating how the remedial action mentioned above will be implemented.

8.2 Unless the remedial action taken by the Public Protector are reviewed and set aside by the Court of law, compliance is not optional and same must be complied with within the stated period.

ADV. BUSISIWE MKHWEBANE
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA
DATE: 7/06/2019