SYSTEMIC INVESTIGATION INTO ALLEGATIONS OF INADEQUATE AND/OR LACK OF PROVISION OF ESSENTIAL SERVICES AND BASIC INFRASTRUCTURE BY VARIOUS ORGANS OF STATE IN CERTAIN VILLAGES WITHIN THE PROVINCE OF EASTERN CAPE
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# LIST OF ACRONYMS AND ABBREVIATIONS

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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, which empowers the Public Protector to report on any conduct in state affairs that is suspected to be improper or to result in any impropriety or prejudice and section 8(1) of the Public Protector Act, which provides that the Public Protector may make known the findings, point of view or recommendation of any matter investigated by her.

(ii) The report relates to a Systemic Investigation in connection with allegations of inadequate and/or lack of essential services and basic infrastructure by various organs of state in certain villages within the province of Eastern Cape (EC).

(iii) The complaints were lodged by Ms Eunice Tsese (Ms Tsese) and sixty five (65) other members of the public, in terms of the Public Protector Act (the Complainants).

(iv) On 09 February 2021, the Deputy Public Protector, Advocate Kholeka Gcaleka (the DPP), held a radio interview on Umhlobo Wenene FM, a public broadcaster falling under the South African Broadcasting Corporation (SABC). During her interview, the DPP interacted with various listeners or community members in the EC province. In the course of her interaction with the listeners, the DPP was informed of numerous service delivery complaints in the province of the EC.

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1 Eastern Cape is a province of South Africa, which is spread over an area of 168,966 square kilometres and constitutes 13.8% of South Africa’s land area. The 2011-2021 Census data showed that the Eastern Cape Province has a population of about 6 676 590. The largest proportions of the population are concentrated at OR Tambo and Nelson Mandela Municipal Districts with 20.8% and 17.6% of the total population respectively. Joe Gqabi District has the smallest population constituting 5.3%. Approximately 61.1% of the population is younger than 30 years and 11.7% of these are under the age of 5 years.
(v) As a direct result of the said radio interview and interaction between the DPP and the community members, the Eastern Cape Provincial Office of the Public Protector South Africa (Public Protector), immediately received an influx of complaints from across the EC province. The Public Protector consolidated all the complaints received into one file with Reference Number 7/2-001841/21, with a view to conduct a systemic investigation, as it became clear from the assessment of all the complaints that they arise from similar issues of service delivery. The Complainants were all notified of this arrangement.

(vi) Based on the analysis of the complaint, the following issues were considered and investigated:

**EC Provincial Departments**

(a) Whether the provision of access to housing by the Eastern Cape Department of Human Settlements in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

(b) Whether the provision of policing services by the South African Police Service in certain villages in the province are delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;
(c) Whether the provision of social services by the Eastern Cape Department of Social Development in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

(d) Whether the provision of basic education by the Eastern Cape Department of Education in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

(e) Whether the provision of basic health care services by the Eastern Cape Department of Health in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

(f) Whether the provision of road infrastructure by the Eastern Cape Department of Roads and Transport in certain villages in the province is delivered in a progressive and effective manner as contemplated in the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

(g) Whether the provision, management and/or the maintenance of the government immovable property by the Eastern Cape Department of Public Works and Infrastructure in certain villages in the province is
rendered in a progressive and effective manner as contemplated in the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act; and

(h) Whether the provision of the financial support by the Eastern Cape Provincial Treasury in the province is rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

**EC Municipalities**

(i) Whether the municipal services by the Alfred Nzo District Municipality, Matatiele LM, Umzimvubu LM, Ntabankulu LM and Winnie Madikizela-Mandela LM in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

(j) Whether the municipal services by the Amathole District Municipality in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

(k) Whether the municipal services by the Buffalo City Metropolitan Municipality in certain villages within its jurisdiction are rendered in a
progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

(l) Whether the municipal services by the Sarah Baartman District Municipality and Ndlambe LM in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

(m) Whether the municipal services by the Joe Gqabi District Municipality in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act; and

(n) Whether the municipal services by the Chris Hani District Municipality in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(vii) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included site inspections with the help of Complainants, interviews with functionaries of affected organs of state, exchange of correspondence, analysis of all
the relevant documents, application of relevant laws, case law and relevant prescripts.

(viii) On 05 June to 18 July 2023, Notices in terms of section 7(9)(a) of the Public Protector Act, read with Rule 42(1) and 41(1) of the Public Protector Rules (the Notices), were issued to all the implicated and/or affected parties to provide them with an opportunity to respond to the proposed findings and remedial action. Written responses to the Notices were received from the implicated and affected parties.

(ix) Between 18 July 2023 and 03 August 2023, the Public Protector further convened meetings with Respondents who required further consultation to discuss the provisional findings and the proposed remedial action as set out in the Notice.

(x) Having regard to the evidence and regulatory framework determining the standard that should have been complied with by various organs of state in the EC province, the Public Protector makes the following findings:

**EC Provincial Departments**

*Department of Human Settlements*

(a) Whether the provision of access to housing by the Eastern Cape Department of Human Settlements in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the

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2 Which enjoins the Public Protector, during the course of an investigation, to afford any person being implicated and/or affected in the matter under investigation, and where such implication may be to the detriment and/or interest of that person or where an adverse finding and/or remedial action pertaining to that person may result, an opportunity to respond in connection thereto.
Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

(aa) The allegation that the provision of access to housing by the ECDHS is not delivered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

(bb) The ECDHS has acknowledged during the course of the investigation and in response to the Notice, the rising need to construct housing units for the deserving beneficiaries and further indicated its commitment to continuously conduct social facilitation about housing subsidy programmes, application for funding processes and awareness in relation to opportunities related to the housing sector with different stakeholders and potential beneficiaries. In this regard, the application for seven hundred (700) units for Mphetshwa has been included in the ECDHS’ business plan for the 2024/2025 financial year and Ndakeni is under procurement to appoint a contractor to build thirty six (36) housing units, whilst in Moyeni location one hundred and sixty (160) houses will go out on tender during September 2023.

(cc) Notwithstanding the above commitment and plans by ECDHS, the investigation has revealed that whilst there are efforts by ECDHS to deliver housing subsidy programmes to people in need, the provision of government subsidised houses remains inadequate and to a large extent marred by administrative lapses such as the termination of contracts of contractors already appointed and financial constraints.

(dd) Site inspections conducted by the Investigation Team in Ramohlakoane village at Matatiele on 18 May 2021, revealed the existence of incomplete RDP housing structures built by ECDHS, with only foundation slabs or wall plates, whilst other houses were constructed only up to the walls and
left without a roof since 2012. The ECDHS had appointed Cort and Fred/Sivivawe consults for Maritseng one thousand five hundred (1500) units in 2012, whereby only one thousand (1000) units were completed and handed over to beneficiaries by ECDHS. The remaining five hundred (500) units were left incomplete in 2015, when the project ceased with houses on various stages of construction, whilst fully under the administration of ECDHS and at the time of this report, the project remains incomplete. The evidence at the disposal of the Public Protector indicates that the request to Provincial Treasury for a variation order to complete the said project by the appointed contractor was rejected;

(ee) The Public Protector acknowledges the ECDHS’ planning and continuous efforts to respond to housing needs in respect of other villages visited by the Investigation Team, such as Mphetshwa in Mbizana, Hofisi and Moyeni in Mount Frere, Ndakeni in Ntabankulu, Cebe and Rabula Administrative areas, as well as Tyutyu Village in King Williams Town that do not have RDP or government subsidised houses;

(ff) The residents in the above mentioned villages have constantly applied for government housing subsidy schemes many years ago, however, they have not yet been assisted and they remain without proper housing and no feedback was provided by the relevant authorities. Natural disasters such as floods have exacerbated the conditions of some residents in these mentioned areas, as their houses were destroyed by natural disasters, thereby making it more necessary for government assist them with housing schemes;

(gg) Departmental budget constraints were advanced by the ECDHS as another factor impeding on its ability to adequately deliver on all the housing needs for the residents in the province and contributing to the
backlog. The ECDHS remains the authority with the direct mandate for delivery of housing related needs in the EC province. The backlogs and deficiencies on the service delivery for housing in the EC province is a joint reflection of improper intergovernmental relations in all affected spheres of government. The delivery of housing needs requires a buy-in of other affected organs of state, such as municipalities and a mutual recognition of the pressing need to address the housing needs in the EC province, as contemplated in section 41(1) of the Constitution.

(hh) Despite continuous efforts and planning by ECDHS, a current backlog of approximately six hundred thousand (600 000) in housing projects exist in the EC province, which suggests that the ECDHS has not placed adequate measures to provide deserving beneficiaries with government subsidised housing units or any other alternative structures, appropriate for human habitation.

(ii) Due to the existence of poor, destitute and qualifying beneficiaries, who remain without government subsidised houses in the EC province, ECDHS has not been able to minimise prejudice to affected people and to ensure effective delivery of its obligations in terms of section 26 of the Constitution and sections 2 and 7 of the Housing Act.

(jj) The conduct of the ECDHS accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xi) Having regard to the evidence, the regulatory framework determining the standard that ECDHS should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:
The Head of the ECDHS through the MEC

(aa) Within **thirty (30) calendar days** from the date of this report and in line with the ECDHS’s statutory obligations imposed by section 26(2) of the Constitution and section 7 of the Housing Act as amended, commence with an audit relating to housing needs to identify qualifying and preferential beneficiaries in Alfred Nzo District, Amathole District, Sarah Baartman District, Joe Gqabi District, Chris Hani District and Tyutyu village under the Buffalo City Metropolitan Council and provide quarterly progress reports to the Public Protector;

(bb) Within **sixty (60) calendar days** from the date of this report and in line with the ECDHS’s statutory obligations set out in section 26(2) of the Constitution and section 7 of the Housing Act as amended, submit to the Public Protector a detailed Project Implementation Plan, with a risk matrix, relating to housing needs identified in this report in Alfred Nzo District, Amathole District, Sarah Baartman District, Joe Gqabi District, Chris Hani District and Tyutyu village under the Buffalo City Metropolitan Council;

The MEC responsible for Housing and Human Settlements in the EC

(cc) Within **ninety (90) calendar days** from the date of this report, ensure executive oversight by way of monitoring compliance with the statutory obligations contemplated in terms of Section 26(2) of the Constitution, and Section 7 of the Housing Act as amended by the ECDHS and further provide the Public Protector with a copy of the Multi-Year Plan in respect of the execution of the provincial housing programmes for the province; and
The Minister responsible for Housing and Human Settlements

(dd) Within **ninety (90) calendar days** from the date of this report take steps to monitor, in cooperation with the MEC, the performance of the ECDHS in relation to housing delivery goals and budgetary goals as well as assist the province to develop the administrative capacity required for the effective performance of its duties in respect of housing development as contemplated in section 3(2) of the Housing Act.

(b) Whether the provision of policing services by the South African Police Service in certain villages in the Eastern Cape Province are delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

(aa) The allegations that the provision of policing services by the South African Police Service in certain villages in the EC province are not delivered in a progressive and effective manner as contemplated in the Constitution and the law, **is substantiated.**

(bb) In terms of the submission of the EC SAPS, in response to various complaints raised by residents, the following challenges facing the police in the EC province, were noted:

(a) The shortage of human resources remains a challenge for most police stations due to early retirements, deaths through Covid-19 and resignations as well as a moratorium on recruitment from 2019.
This resulted in no new recruits being enlisted by SAPS for the past three (03) years;

(b) SAPS in the EC province is also faced with challenges related to poor building infrastructure with the conditions of certain police station buildings being dilapidated due to non-repair. Most of the police stations in the province operate from heritage houses and are in need of an overhaul, repair, upgrade and refurbishment;

(c) Some of the police stations in the EC province are either overcrowded and/or built only as Park-Homes such as Cofimvaba, Madeira, Chatty, Zwide, Hlababomvu, Ngqamakhwe, Msobomvu, Ngangelizwe, Nqeleni, Thornhill, Bizana, Mount Fletcher and others;

(d) Some of the police stations in the EC province were not connected to Eskom electricity and those include Afsondering, Lukholweni, Katkop, Mbizeni and Zamuxolo police stations;

(e) The EC province is largely rural which hampers delivery of police services in the province since there are no street numbers and the police use landmarks for directions to crime scenes. As a result, police response is often delayed or takes long;

(f) Access roads are often in poor condition and are impassable when police is called to attend to crime scenes and this also affects police response time;

(g) Other resources such as allocation of vehicles to certain police stations is also not equitable and this results in a shortage of
vehicles in some police stations, whilst there is a surplus at other police stations; and

(h) It was also observed by the Public Protector that a significant number of contracts have been terminated due to alleged poor performance by the contractors, thereby contributing to the delay in finalising renovations and repairs at certain police stations.

(cc) However, the Public Protector subsequently noticed major improvements by the SAPS in terms of vehicle allocation, infrastructure upgrade and installation of electricity to certain police stations, such as Maluti, Centane, Willowvale, Afsondering, Zamuxolo and Chatty that were previously affected. These improvements were recorded by the SAPS in its response to the Notice, which was submitted by General Dladla on 22 June 2023.

(dd) Notwithstanding improvements made by SAPS at the police stations indicated above, there are still police stations in the EC province that remain affected by poor infrastructure and insufficient resources as shown in the updated conversion tables in evidence.

(ee) The remaining backlog on the improvement of poor infrastructure in certain police stations as well as inadequate resources are likely to present a crippling effect on the efficient delivery of police services in the EC province. The infrastructural and resource deficits within the SAPS in the province remain a challenge and an impediment to the proper delivery of policing services as envisaged by the statutory obligations imposed on SAPS by the Constitution and the SAPS Act.

(ff) It is unlikely that the SAPS in the EC province can be adequately effective in discharging its statutory duties to prevent and investigate crime, uphold
the law and secure all the inhabitants of the EC province against crime, whilst faced with challenges of poor infrastructure and insufficient resources. Until these challenges are addressed, residents in the affected villages shall continue to be prejudiced.

(gg) Due to the current and existing poor infrastructure and inadequate resources within certain police stations in the EC province, SAPS has accordingly not placed sufficient measures to ensure effective, equitable and reliable delivery of its obligations contemplated in terms of section 205(3) of the Constitution and section 13 of the South African Police Service Act.

(hh) The conduct of the SAPS in EC province accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xii) Having regard to the evidence, the regulatory framework determining the standard that the SAPS should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

**The National Commissioner of the SAPS**

(aa) Within **sixty (60) calendar days** of the date of this report and in line with the SAPS’ statutory obligations in terms of section 205(3) of the Constitution and powers of the National Commissioner in terms of section 207(2) of the Constitution as well as in line with obligations imposed by section 13 of the South African Police Service Act, submit to the Public Protector a detailed SAPS Project Plan for the province of the EC with clear dates, turn around periods, targets and deliverables indicating how the upgrading and building of infrastructure within police stations such as
Cofimvaba, Madeira, Chatty, Zwide, Hlabomvu, Ngqamakhwe, Msobomvu, Ngangelizwe, Nqeleni, Thornhill, Bizana, Mount Fletcher, Afsondering, Lukholweni, Katkop, Mbizeni, Zamuxolo and others in need of refurbishment would be undertaken;

(bb) Within **sixty (60) calendar days** of the date of the final report and in line with the SAPS’ statutory obligations in terms of section 205(3) of the Constitution and powers of the National Commissioner in terms of section 207(2) of the Constitution as well as in line with obligations imposed by section 13 of the South African Police Service Act, submit to the Public Protector a detailed SAPS’ Project Plan for the province of the EC with clear dates, turn around periods, targets and deliverables indicating how the shortage of human resources in the EC SAPS shall be addressed; and

(cc) Within **sixty (60) calendar days** of the date of the final report and in line with the SAPS’ statutory obligations in terms of section 205(3) of the Constitution and powers of the National Commissioner and in terms of section 207(2) of the Constitution, submit to the Public Protector the medium to long term Infrastructure Plan for all SAPS’ needs in the EC indicating how improvements will be made.

(c) **Whether the provision of social services by the Eastern Cape Department of Social Development in certain villages in the Eastern Cape Province are delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act**
(aa) The allegation that the provision of social services by the EC Department of Social Development in certain villages in the EC province are not delivered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

(bb) Whilst the investigation has found a demonstrable amount of evidence that the ECDSD strives within its available resources to meet the demands for social services in the EC province, it is manifest that some residents or areas such as Matatiele are still not yet able to enjoy social services in a sustainable and effective manner as envisaged by the Constitution and the law.

(cc) Information placed before the Public Protector, reveals that many poor and destitute people in Matatiele and other areas like Mphetshwa, Hofisi, Ndakeni and Tyutyu village, constantly require social relief distress in the form of food parcels, counselling, housing referrals and other forms of mobilisation to access social welfare protection and services, due to various reasons, including natural disasters, poverty, victims of GBV and other social ills such as youth affected by drugs.

(dd) The evidence presented to the Public Protector by the ECDSD revealed that, it does not have a public local treatment centre such as a Drug Rehabilitation Centre for areas under Alfred Nzo District. These areas depend on ad hoc referrals to outside districts and neighbouring provinces such as KwaZulu-Natal for this important service, since the Ernest Malgas Treatment Centre in Nelson Mandela Metro at Gqeberha is too far for people living in areas under the former Transkei homelands. Due to the vastness of the province, the Ernest Malgas Treatment Centre is not centrally positioned to allow easy access to most of the population in the EC, especially the communities in the Alfred Nzo district.
(ee) The ECDSD submitted that whilst the Ernest Malgas Treatment Centre is the only public centre, built in compliance with section 17(1) of the Prevention of and Treatment for Substance Abuse Act, 2008, to cater for all eight (08) districts of the EC province, there are nine (09) additional treatment centres that are available in the non-profit and private sector. They are registered for admission of adults (male and female) and they are used to ensure access to drug rehabilitation services for people living in areas far from the Nelson Mandela Metro at Gqeberha.

(ff) Budgetary cuts were advanced by ECDSD, as adversely impacting on infrastructure projects implementation, which resulted in the ECDSD having to place projects on hold during the financial year, 2015/16.

(gg) Although the ECDSD presented all its efforts or mechanisms that are currently in place to render social services, evidence at the disposal of the Public Protector indicates some dissatisfaction with the delivery of social services such as counselling, food parcels and housing referrals for people affected by social ills, in areas such as Matatiele, Mphetshwa, Hofisi, Ndakeni and Tyutyu villages.

(hh) The conduct of the ECDSD accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xiii) Having regard to the evidence, the regulatory framework determining the standard that ECDSD should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:
The Head of the ECDSD

(aa) Within **sixty (60) calendar days** of the date of this report and in line with the ECDSD’s statutory obligations in terms of section 27 of the Constitution, section 17 of the Prevention of and Treatment for Substance Abuse Act, submit to the Public Protector a detailed Infrastructure Implementation Plan for Alfred Nzo District with clear dates, turn around periods, targets and deliverables indicating how services related to Drug Rehabilitation Treatment and necessary social services will be made accessible to people within Alfred Nzo District.

(e) Whether the provision of basic education by the Eastern Cape Department of Education in certain villages in the Province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

(aa) The allegation that the provision of basic education by the EC Department of Education in certain villages in the EC province is not delivered in a progressive and effective manner as contemplated in the Constitution and the law, **is substantiated.**

(bb) The investigation revealed that the provision of basic education by the ECDOE is at risk of being compromised by the lack of proper school infrastructure or facilities, which manifest itself in the following challenges within certain schools such as Loyiso Senior Secondary and Cancele Primary Schools:

(a) Overcrowding conditions at Loyiso Senior Secondary School;
(b) The school has been ruined or dilapidated by time and ordinary usage and it can no longer deal with the rising number of learners;

(c) Loyiso Senior Secondary School only has ten classes to cater for over six hundred (600) learners at the time of site inspection by the Investigation Team in 2021;

(d) The risk of the spread of the COVID-19 virus was high considering the overcrowding in the classrooms of Loyiso Senior Secondary School, due to non-adherence to safety protocols;

(e) At the time of the visit to the Loyiso Senior Secondary School in 2021, Grade 8 had one hundred and twenty one (121) learners crammed into one classroom, Grade 9 had one hundred and sixteen (116) learners, Grade 10 had one hundred and sixty four (164) learners in one classroom respectively;

(f) Loyiso Senior Secondary School has no administration block, library, laboratory for science components and no hall to accommodate learners during examinations. About seventeen (17), educators share one staff room, which is also used as a kitchen and photocopying room;

(g) The staff room at Loyiso Senior Secondary School has visible cracked walls, leaking ceilings and a broken door;

(h) The performance of the learners is alleged to have decreased due to overcrowding of learners in classes at Loyiso Senior Secondary School;
(i) The network connection is totally absent and has resulted in poor performance as the 2020 academic year was characterised by learners having to use gadgets due to the outbreak of the Covid-19 pandemic. Internet connectivity is a basic need in schools and if they cannot access the internet, educators and learners are unable to log onto a digital network to access information;

(j) The conditions of pit latrine toilets at Cancele Primary School are appalling and there were only four (04) toilets for the entire school at the time of inspection;

(k) The perimeter fencing of Cancele Primary School was not in a good condition and the community members had to erect it on their own at some stage; and

(l) School infrastructure such as a library; laboratories for science, technology, mathematics and life sciences; electronic connectivity at a school; are either absent or inadequate at Loyiso Senior Secondary school.

(cc) The poor condition of the schools concerned pose a serious risk to the well-being and lives of the learners and educators alike. Furthermore, the overcrowding has a negative impact on the quality of teaching and learning as it might be a challenge for the educators to give every learner the attention required.

(dd) However, on 25 July 2023, Dr Nuku confirmed to the Public Protector that Loyiso Senior Secondary School was successfully provided with security fencing and five prefabricated classrooms as previously undertaken by Mr Qwase. With regard to Cancele Junior Secondary School, Dr Nuku confirmed that the contractor for the construction of ablution facilities was
handed over on 12 July 2023 for construction of ablution facilities, this is a four (04) month project implemented under the SAFE Programme.

(ee) Notwithstanding the significant strides and commendable improvements made by the ECDoE at Loyiso Senior Secondary School, Cancele Primary school and in other schools in the province, it is evident that basic and essential infrastructure such as ablution and sanitation facilities are still lacking in a number of schools within the EC province. According to evidence by Dr Nuku, out of one hundred and ninety six (196) schools which lack sanitation flush toilets, only thirty (30) schools are already embarking on a sanitation flush programme and the tender for this project closed on 12 July 2023. Dr Nuku indicated that there are one hundred and sixty six (166) schools remaining that are still under planning and assessment stage.

(ff) The ECDoE has not put sufficient measures in place to ensure that the obligation to deliver education as required in terms of section 29(1)(a) and (b) of the Constitution, section 3(3) and section 5A of South African Schools Act, takes place under safe and proper conditions conducive to teaching and learning.

(gg) The conduct of the ECDoE accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xiv) Having regard to the evidence, the regulatory framework determining the standard that ECDoE should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:
The Head of Department of ECDoe

(aa) Within **sixty (60) calendar days** of the date of this report and in line with the ECDoe’s statutory obligations in terms of section 29(1)(a) and (b) of the Constitution and section 3(3) and 5A of South African Schools Act, to submit to the Public Protector a detailed ECDoe’s Refurbishment Project Plan for Loyiso Senior Secondary School and Canele Primary School under Alfred Nzo District with clear dates, turn around periods, targets, budgets and deliverables indicating how the upgrading and development of these schools’ infrastructure would be re-prioritised as undertaken by ECDoe; and

(bb) Within **sixty (60) calendar days** of the date of this report and in line with the ECDoe’s statutory obligations in terms of section 29(1)(a) and (b) of the Constitution and section 3(3) and 5A of South African Schools Act, conduct an audit and develop a medium to long term plan in order to address school challenges related to basic infrastructure in the EC province.

(f) Whether the provision of basic health care services by the Eastern Cape Department of Health in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

(aa) The allegations that the provision of basic health care services by the ECDoeH in certain villages in the EC province is not delivered in a
progressive and effective manner as contemplated in the Constitution and the law, **is substantiated.**

(bb) The Public Protector acknowledges the significant strides that have been made by ECDoH in renovating, upgrading, developing and future planning for healthcare related infrastructure and facilities in the EC province, as indicated in the updated submission handed in by Dr Wagner in response to a Notice on 17 August 2023. However, the current backlog in the development of new infrastructure, repair of structural defects on old facilities and upgrading of existing infrastructure such as the buildings, within certain health facilities in the EC province, hinders proper delivery of healthcare services.

(cc) The Public Protector has further noted with concern from the spreadsheet submitted by Dr Wagner, in response to the Notice that a total of 30 contracts were terminated by ECDOH between 2015 and 2021 alone. These terminations and contract management challenges has a potential to contribute to delays in finalising certain infrastructure projects, which are meant for the benefit of the healthcare users in the EC province.

(dd) Evidence further shows that the shortage of critical staff is another common feature in most health establishments that the Investigation Team visited and inspected. These inadequacies may negatively affect a progressive delivery of quality healthcare services in the EC province, as contemplated in the Constitution.

(ee) The investigation has disclosed that Tayler Bequest Hospital in Matatiele is servicing all locations around the area, as a result there is overcrowding and patients with serious medical conditions are transferred to Mthatha General Hospital, as well as Nelson Mandela Academic Hospital. The ambulances transporting patients from Tayler Bequest Hospital to other
hospitals leave around 02:00 in the morning. The HoD for ECDOH, Dr Wagner, confirmed that the hospital does not have a proper waiting area for patients awaiting to be transported to other hospitals, but use the visitors waiting area to sleep while waiting.

(ff) The investigation further revealed that Zulu Clinic services six (6) locations, but the existing structure is an old small house given or donated to the community. The waiting area is too small and the overflow of the patients extends to the outside, even during inclement weather conditions. There is no kitchen and the guardroom is used as kitchen. Male and female patients are sharing the two available toilets. There is no stove, no microwave, no kettle, no heater, and a very old fridge. No working tools such as grass cutter, wheelbarrow and spade. No cleaning equipment such as brooms and mops. The road to the clinic is in bad condition, as a result cars and ambulances are unable to enter the clinic to deliver medication or to take patients freely.

(gg) The investigation revealed that Ndofela clinic is about thirty kilometres (30km), away from the town of Sterkspruit and was built in 1964 by members of the community and it is a four-roomed structure, it is small and cannot meet the medical needs or demands of the community.

(hh) St Michael's Clinic, which is situated 13km away from the town of Sterkspruit en route to Tele Bridge a border between EC and Lesotho. The St Michael's clinic management and staff indicated that they have the following challenges relating to infrastructure, which was also observed or noted by the Investigation Team:

(a) Walls and floors have cracks caused by roots of the trees inside the yard;

(b) The ceiling is falling apart and is barely covering the structure or the
roofing;

(c) Doors are falling and do not have handles;

(d) There are no ramps and rails for physically challenged patients;

(e) Sluice and archived files are in the same place; and

(f) The clinic is well fenced but the yard is untidy with many trees.

(ii) St Michael’s clinic has one consulting room, as the other consulting room is subdivided into five compartments accommodating the Dispensary, Emergency Room, Manager’s office, Counselling, and Testing room. St Michael's clinic is still using pit latrines toilets with no windows, broken doors and with no handles.

(jj) Rabula clinic is operating from an old four roomed house built by the community with an extension of one room donated by a Non-Governmental Organisation (NGO) and is used for counselling. There is also another four roomed house used as a Nurses Home with a kitchen and is used by both the nurses and the clinic. There are structural defects on the Rabula clinic such as the waiting area being very small with cracked walls and floor, staff members, and clients/patients use pit latrine toilets and are not in good condition.

(kk) Tyutyu Village Clinic is characterised by overcrowding as it serves +/- 14 locations and patients wait longer before being assisted. The Investigation Team made the following physical observations during the site inspection at the Tyutyu Village Clinic:
(a) The roof has visible signs of water leaks;

(b) There is a shortage of staff;

(c) Windows in some rooms are broken;

(d) Most doors have no handles and locks, making the whole building vulnerable to robberies and/or theft;

(e) Shortage of water supply, this challenge is exacerbated by damaged pipes as a result of a rat infestation;

(f) The staff is sharing toilets with patients and pit latrines are still used;

(g) There is no guardroom, instead, the waiting area is used for such purposes; and

(h) Information kept at the data capturer’s room and working apparatus like computers, printers, etc are at risk of being destroyed because of the leaking roof.

(II) Notwithstanding the commendable long and short term plans, contingency measures and some steps indicated by Dr Wagner in her response to the Notice, which the ECDoH has taken in an effort to address infrastructural deficiencies and ease service pressures, these challenges remain in place and shall continue to prejudice the healthcare users in the EC province until they are addressed and eliminated.

(mm) The ECDoH has not placed sufficient and adequate measures in place to enable itself to meet its obligations in terms of section 27 of the Constitution, section 3, 21, 21(5), 25(1), 25(2), 77-79 of the National
Health Act, 2003, the National Health Act Norms and Standards Regulations issued as per Government Gazette 67 No. 41419, dated 02 February 2018.

(nn) The conduct of the ECDoH accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xv) Having regard to the evidence, the regulatory framework determining the standard that ECDoH should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Head of Department of ECDoH

(aa) Within sixty (60) calendar days of the date of this report and in line with the ECDoH’s statutory obligations in terms of section 27 of the Constitution; section 3, 21, 21(5), 25(1), 25(2), 77-79 of the National Health Act, 2003; the National Health Act Norms and Standards Regulations issued as per Government Gazette 67 No. 41419 dated 02 February 2018, submit to the Public Protector a detailed ECDoH’s Refurbishment/ Project Plan for Zulu Clinic, Tyutyu Village Clinic, Ndofela Clinic, Rabula Clinic and St Michael’s Clinic with clear dates, turn around periods, targets and deliverables indicating how the building or upgrading of the infrastructure in these health facilities will be undertaken; and

(bb) Within sixty (60) calendar days of the date of this report and in line with the ECDoH’s statutory obligations in terms of section 27 of the Constitution; section 3, 21, 21(5), 25(1), 25(2), 77-79 of the National Health Act, 2003; the National Health Act Norms and Standards
Regulations issued as per Government Gazette 67 No. 41419 dated 02 February 2018, submit to the Public Protector a detailed ECDoH’s report/plan, which includes timelines, indicating how the critical shortage of human resources within the health facilities will be addressed.

(g) Whether the provision of road infrastructure by the Eastern Cape Department of Roads and Transport within certain villages in the Eastern Cape Province is delivered in a progressive and effective manner as contemplated by the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

(aa) The allegation that the provision of road infrastructure by the EC Department of Roads and Transport, within certain villages in the EC province is not delivered in a progressive and effective manner as contemplated by the law, is substantiated.

(bb) The evidence placed before the Public Protector reveals that most of the provincial major roads and some bridges in particular those under Alfred Nzo District such as the stretch of R61 along Mbizana, and the R405 between Matatiele and Mount Frere are dilapidated and desirous of urgent intervention or repair as extrapolated from evidence.

(cc) The investigation by the Public Protector has revealed a pattern of incomplete or partial road upgrading and maintenance, notably for roads such as R61, R405 and DR08569 at Emalahleni, where service level agreements were in place and budgets already allocated. This may be attributed to lack of proper planning and management of contracts on the part of the ECDoT.
(dd) Investigation has further revealed that conditions of the roads in former homelands areas such as those under Alfred Nzo District compare relatively poor to areas like BCMM and NMBMM as adumbrated in evidence.

(ee) The ECDoT acknowledged the backlog in the provision of road infrastructure but indicated that funding constraints and the current funding trends and model do not assist the ECDoT in reducing the historical backlog of upgrading and maintenance of the roads in the EC province. The HOD for ECDoT, Mr Mafani submitted that the ECDoT is currently receiving about one billion, five hundred million rand (R1 500 000 000), inclusive of EPWP to maintain its road network and that the ECDoT requires a minimum of three billion, eight hundred and fifty million rand (R3 850 000 000), annually to maintain its road network.

(ff) Investigation has also determined that the ECDoT faces the following challenges with regard to Roads Maintenance in the EC province:

(a) Community demands when ECDoT is implementing a project e.g. compensation for borrow pits;

(b) Project stoppages by Small, Medium and Micro Enterprises (SMME's), usually demanding “beneficiation”;

(c) Demands for roads to be surfaced with tar (though a gravel road may be in a good/reasonable condition); and

(d) Extension of scope on awarded project, e.g. request to work on access roads or other culverts.
(gg) Given the persistent backlog in the provision of road infrastructure and incomplete or partial road upgrading and maintenance, for roads such as R61, R405 and DR08569, the ECDoT has not been able to effectively put in place sufficient road infrastructure to meet its obligations in terms of Schedule 5 Part A of the Constitution and section 3 and 4(1) of the Eastern Cape Roads Act.

(hh) The conduct of the ECDoT accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xvi) Having regard to the evidence, the regulatory framework determining the standard that ECDoT should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

**The Head of Department of ECDoT**

(aa) Within **sixty (60) calendar days** from the date of this report and in line with the ECDoT’s statutory obligations in terms of Schedule 5 Part A of the Constitution and section 3 and 4(1) of the Eastern Cape Roads Act, submit to the Public Protector a detailed ECDoT’s Infrastructure Implementation Plan for the provincial and districts roads, bridges and culverts under Alfred Nzo District with clear dates, turn around periods, targets and deliverables indicating how the upgrading and the maintenance of road infrastructure will be undertaken.
(h) Whether the management and/or the maintenance of the
government immovable property by the Eastern Cape Department
of Public Works and Infrastructure within certain villages in the
Eastern Cape Province is rendered in a progressive and effective
manner as contemplated in the law, if not, whether such constitutes
improper conduct as envisaged in section 182(1)(a) of the
Constitution as well as improper prejudice in terms of section
6(4)(a)(v) of the Public Protector Act

(aa) The allegation that the management and/or the maintenance of the
government immovable property by the ECDPWI within certain villages in
the EC province is not rendered in a progressive and effective manner as
contemplated in the law, is **substantiated**.

(bb) In terms of the evidence before the Public Protector, it was determined
that Client Departments must first give a mandate to ECDPWI in terms of
the SDA which set out the obligations for ECDPWI and those of a client
department. The Public Protector has noted backlogs on the completion
of certain infrastructure and capital projects in which ECDPWI is an
implementing agent, especially those related to health facilities such as
Lady Grey Hospital Improvement Project, Frontier Hospital, Lilitha
College Professional Accommodation Project and Butterworth Hospital
Improvement Project. The delays in connection with these projects were
stated by ECDoH’s HoD, Dr Wagner in a letter addressed to ECDPWI’s
HoD, Mr Manda dated 22 February 2022.

(cc) The Public Protector could not find evidence to indicate that ECDPWI is
conducting a periodical assessment of the conditions of the immovable
assets, at least every fifth year as contemplated in section 13(1) of
GIAMA.
(dd) The budget constraints were advanced by the ECDPWI as the biggest contributor to delays and backlogs, since the client departments get allocated far less funds than the challenges they face as far as infrastructure is concerned. ECDPWI submitted that there is a study which can attest to the issue of underfunding and indicate how much money should be allocated to each department as opposed to the current actual allocation.

(ee) The backlogs in the area of construction, maintenance and upgrading of public facilities is inadequate and present a risk to a sustainable, progressive and reliable delivery of public services in the EC province.

(ff) The ECDPWI has accordingly not put sufficient measures in place as envisaged in sections 4(2) and 13(1) of GIAMA in order to ensure effective management of government immovable asset that is held or used by a provincial department(s); to ensure the co-ordination of the use of an immovable assets with the service delivery objectives of provincial department(s).

(gg) The conduct of the ECDPWI therefore constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xvii) Having regard to the evidence, the regulatory framework determining the standard that ECDPWI should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:
The Head of Department of ECDPWI

(aa) Within **sixty (60) calendar days** of the date of this report and in line with the ECDPWI’s statutory obligations in terms of section 4(2) and 13(1) of GIAMA submit to the Public Protector a detailed ECDPWI’s medium to long term Infrastructure Plan with clear dates, turn around periods, targets and deliverables indicating how the backlogs on the infrastructure projects as reflected on IPMP in which ECDPWI is appointed as an implementing agent, in particular those related to public health, schools and police stations facilities would be addressed.

(i) Whether the provision of the financial support by the Eastern Cape Provincial Treasury is rendered in an effective, efficient and economical manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as well as improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act

(aa) The allegation that the provision of the financial support by the ECPT in not effective is **substantiated**, however the ECPT relies on National Treasury for additional funding.

(bb) In terms of the evidence before the Public Protector, the amount of infrastructure backlogs in municipalities and provincial departments are relatively high in the EC province.

(cc) From the information at the Public Protector’s disposal, the *Grants Allocation* is not enough to cover all backlogs at once. The budget and fund allocation contributes to delays and infrastructure backlogs since
departments and municipalities get allocated far less funds than the challenges they face as far as infrastructure is concerned.

(dd) The EC province remains the poorest province in terms of Gross Domestic Product \textit{per capita}. Due to its economic situation, the EC province finds itself in worse situation than most other provinces due to historical underdevelopment. As a result, the delivery of essential services to the residents of EC remains constantly at risk due to budgetary limitations facing the EC province.

(ee) The ECPT has indicated that the EC province’s infrastructure backlog is costed or calculated at an amount of one hundred and fifty one billion and one hundred million rand (R151 100 000 000), for eight (8) of the fourteen (14) provincial departments that are responsible for infrastructure in the province. The costs were calculated from the time of democracy in 1994 and the costs accumulated up the 2014/15 financial year.

(ff) The ECPT confirmed that the Audited Expenditure Summary for each Department for 2018/19, 2019/20, 2020/21 and 2021/22 financial years as elaborated in a table furnished to the Public Protector is in line with the Audited Financial Statements for each year.

(gg) Evidence before the Public Protector further indicates that the ECPT has already taken measures to write to National Treasury and to Financial and Fiscal Commission (FFC) in 2016 to source additional funding for the EC provincial government, in order to enable departments to fulfill their Constitutional obligations in various areas of service delivery. The request to National Treasury was done in terms of section 6(2)(d) of Public Finance Management Act, 1999, read with section 214 (2)(d), (e) and (g) of the Constitution.
(hh) The issue of budget constraints and underfunding contribute to delays in service delivery and infrastructure backlog, since departments and municipalities get allocated far less funds than the challenges they face as far as infrastructure is concerned.

(ii) While budgetary constraints and underfunding contribute to backlogs in the completion of government capital projects and prejudice to the EC communities, this is not attributable to ECPT. Accordingly, it cannot be held in this regard that the conduct of the ECPT constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.

(xviii) Having regard to the evidence, the regulatory framework determining the standard that ECPT should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

**The Head of ECPT**

(aa) Within **sixty (60) calendar days** of the date of this report and in line with the ECPT’s statutory obligations envisaged in section 214, 195(1)(b) of the Constitution, section 18(2)(e)(f) and 6(2)(d) of the PFMA, submit to the Public Protector a detailed ECPT’s Project Plan with clear dates, grant allocations and deliverables indicating how the ECPT shall prioritise and maximise its financial support in order to address the EC provincial and local government’s infrastructure backlogs and to assist in accelerating the delivery of basic service;

(bb) Within **sixty (60) calendar days** of the date of this report, provide the Public Protector with an indication of oversight measures to be put in place to ensure proper procurement processes within organs of state, to avoid
or minimise cancellation of contracts mid-stream, to prevent wasteful and fruitless expenditure and to ensure efficient use of available financial resources as envisaged in terms of section 195(1)(b) of the Constitution and section 18(1)(c) of the PFMA; and

(c) Within **sixty (60) calendar days** of the date of this report provide a plan indicating measures to be taken in order to source or motivate for additional funding from National Treasury in terms of section 18(2)(i) of the PFMA.

**EC Municipalities**

(j) Whether municipal services by the Alfred Nzo District Municipality, Matatiele Local Municipality, Umzimvubu Local Municipality, Ntabankulu Local Municipality and Winnie Madikizela-Mandela Local Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

(aa) The allegation that municipal services by the Alfred Nzo District Municipality, Matatiele Local Municipality, Umzimvubu Local Municipality, Ntabankulu Local Municipality and Winnie Madikizela-Mandela Local Municipality within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is **substantiated**.
(bb) Evidence at the disposal of the Public Protector revealed that the ANDM together with its local municipalities are striving to the extent permitted by their financial means to address service delivery issues in its area of jurisdiction. This is evidenced by amongst other things, the construction of the Ludeke Dam for the Winnie Madikizela Mandela Local Municipality which services most of the rural villages in Mbizana and the town and is functioning well.

(cc) However, the investigation has equally found that there is still a lack of supply of basic essential services as well as infrastructural backlog within certain villages falling under ANDM, which impact negatively on the community or residents. Areas of concern relate to lack of access to clean and reliable water supply, which include villages such as Ndakeni in Ntabankulu, Mphetshwa location in Mbizana. Residents in these areas were witnessed by the Investigation Team during site inspection fetching unhygienic water from the nearby rivers/streams for domestic use, thereby being exposed to waterborne diseases and other associated health hazards. Furthermore, it was noted in some instances that taps were installed, however, there is no running water and the taps are dry in areas like Mphetshwa and Ramohlakoane locations.

(dd) Information gathered during the investigation also revealed a lack of or poor maintenance of access roads within villages under Umzimvubu Local Municipality such as Hofisi as well as lack of pedestrian bridges to enable the community members to cross a raging Mzintlava River in villages such as EmaXesibeni at Mount Ayliff and along Ntabankulu Local Municipality.

(ee) The investigation further revealed that there is a failure and/or undue delay to provide toilets to ensure proper sanitation in some villages such as Mphetshwa location under Winnie Madikizela Mandela Local
Municipality, which has adverse health implications on the community and further infringes on their right to human dignity.

(ff) The ANDM estimated that its current water and sanitation backlogs are at 49% and 37% respectively. In terms of the Water Services Master Plan that was developed in 2017, the ANDM requires an estimate amount of twenty billion, nine hundred million rand (R20 9000 000 000), to eradicate its backlogs.

(gg) The ANDM submitted that the current allocation for Municipal Infrastructure Grant is less than four hundred million rand (R400 000 000), per financial year. ANDM estimated that with the current stream of funding ANDM is getting, it will take the district not less than twenty (20) years to eradicate the infrastructure backlogs within the district unless there can be additional capital funding injection to the ANDM.

(hh) The inadequate delivery of essential municipal services such as water, access roads, pedestrian bridges, toilets on the part of ANDM and its affected local municipalities poses a threat to community within the district. These deficiencies in municipal service delivery are incompatible with Schedule 4, Part B and Schedule 5 Part B of the Constitution, section 27(1)(b) of the Constitution, section 237 of the Constitution, section 152 and 153 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, section 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.

(ii) Accordingly, the conduct of the ANDM and its LMs’ constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice as contemplated in terms of section 6(4)(a)(v) of the Public Protector Act.
Having regard to the evidence, the regulatory framework determining the standard that ANDM, Matatiele LM, Winnie Madikizela Mandela LM; Umzimvubu LM and Ntabankulu LM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Municipal Managers for ANDM, Matatiele LM, Winnie Madikizela Mandela LM; Umzimvubu LM and Ntabankulu LM respectively

(aa) Within **ninety (90) calendar days**, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal service requirements in all affected areas within ANDM, Matatiele LM, Winnie Madikizela Mandela LM; Umzimvubu LM and Ntabankulu LM respectively, such as water and sanitation, access roads, bridges, toilets and other essential services;

(bb) Within **ninety (90) calendar days** to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the ADM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

The Executive Mayors for ANDM, Matatiele LM, Winnie Madikizela Mandela LM; Umzimvubu LM and Ntabankulu LM respectively

(cc) Within **sixty (60) calendar days** of the date of the final report, table a copy thereof before their respective Municipal Councils for discussion in
line with the powers and functions of the Executive Mayors in terms of section 56 of the Municipal Structures Act. The Municipal Councils for ANDM, Matatiele LM, Winnie Madikizela Mandela LM; Umzimvubu LM and Ntabankulu LM respectively, are to thereafter consider the Implementation Plan developed by their respective Municipal Managers, setting out steps/measures to be taken to address shortcomings on municipal services related to the provision of water and sanitation, access roads, bridges, toilets and other essential services identified in this report, in line with the obligations of municipalities contemplated in section 152(1)(b) of the Constitution; and

(dd) Within **thirty (30) calendar days** of the submission of the Implementation Plan by their respective Municipal Managers, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address all the service delivery concerns of the communities within their respective areas of jurisdiction, as identified in this report.

(k) **Whether municipal services by the Amathole District Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act**

(aa) The allegation that municipal services by the Amathole District Municipality within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is **substantiated**.
Evidence at the disposal of the Public Protector has revealed that ADM is striving to the extent permitted by its financial means to address water services in its area of jurisdiction. This was evidenced by the recent construction of borehole facilities and the construction of pipeline projects in various areas such as Mbashe and Ngqushwa within the district.

However, the investigation has revealed that there is still inadequate provision of water services and related infrastructure, specifically in areas reported to the Public Protector, namely, the Cebe Administrative area, Qeqe village, Msobomvu Township, Upper Gwadu location, and Rabula Administrative Area. It was noted during the site inspection that, Cebe Administrative Area in particular is without taps and the community drink unhealthy and dirty water, which they share it with animals. The residents rely on the nearby rivers and streams as a source of water for domestic consumption.

It was further conceded in a response to the Notice received from the Municipal Manager of ADM, Dr Mthembu on 21 July 2023, that the district is still experiencing water problems due to ongoing challenges such as vandalism, illegal connections, load shedding, climate change, financial constraints, historical backlogs and old infrastructure, which all hamper the ability of ADM to provide some of the communities with a consistent supply of water. However, there are short term interventions noted by the Public Protector, which ADM is embarking on to minimise the impact of these water challenges such as carting water in trucks whilst looking for other alternatives and long term solutions.

It is the legislative and constitutional responsibility of the ADM to ensure that the water needs of the people within its district are responded to by providing reliable and clean water to the community in a progressive and
sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

(ff) The inadequate delivery of water supply and related infrastructure on the part of ADM poses a health risk to the communities within its district. This service deficit also remains incompatible with sections 27(1)(b), 152(1), 153 and 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.

(gg) The conduct of the ADM accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xx) Having regard to the evidence, the regulatory framework determining the standard that ADM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

**The Municipal Manager for ADM**

(aa) Within **ninety (90) calendar days** of the date of this report, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the requirements for provision of clean and potable water services for domestic use in all affected areas within ADM;

(bb) Within **ninety (90) calendar days** to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the
measures to be undertaken in addressing the service delivery challenges identified in this report, within the ADM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

The Executive Mayor for ADM

(cc) Within **sixty (60) calendar days** of the date of this report, table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Executive Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council is to thereafter consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by ADM to address shortcomings on municipal services related to provision of water within the district, in line with the obligations of the municipality contemplated in section 152(1)(b) of the Constitution;

(dd) Within **thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address the water service delivery concerns of the communities within ADM, as identified in this report.

(l) Whether municipal services by the Buffalo City Metropolitan Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act
(aa) The allegation that municipal services by the Buffalo City Metropolitan Municipality within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

(bb) Evidence at the disposal of the Public Protector reveals that BCMM is striving to the extent permitted by its financial means to address service delivery issues in its area of jurisdiction. In this regard, it was observed by the Investigation Team that there were communal taps and electricity within Tyutyu village. However, complaints regarding the inadequacy of basic services, especially on issues relating to lack or poor maintenance of access roads and lack of support for provisioning of housing to poor families within Tyutyu village were reported to the Public Protector against BCMM.

(cc) As at the time of site inspections by the Investigation Team, the Public Protector confirmed the following:

(a) Tyutyu village has water challenges since 2018, certain sections of the village do not have water, taps ran dry and some taps were vandalised;

(b) Tyutyu village has no proper storm water drainage system and this causes damage to access roads and houses;

(c) Lack and/or poor maintenance of some access roads in Tyutyu village, which were allegedly last maintained in 2012;

(d) Failure to keep proper records relating to applications for RDP houses and lack of feedback to people in the village;
(e) Non provision of temporary structures for flood related disaster victims;

(f) Cemetery is not fenced and the tombstones get vandalised by animals;

(g) Tyutyu village has no secure children’s park;

(h) No high mast lights in Eluxolweni Village; and

(i) No electricity in Eluxolweni Village.

(dd) The existence of the above service delivery complaints indicates that some work and better planning still needs to be done, to allow the communities to enjoy municipal essential services. It is the legislative and constitutional responsibility of the BCMM to ensure the basic municipal services to the people within its jurisdiction are responded to by providing same to the community in a progressive and sustainable manner, as envisaged by the Constitution and Local Government Municipal Systems Act.

(ee) The current inadequate delivery of municipal services, the necessary infrastructure and public facilities on the part of BCMM prejudices the citizens within its district and remains incompatible with Schedule 4, Part B and Schedule 5 Part B, sections 27(1)(b), 152(1), 153, and 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2 (2) and 3 (1) of the National Water Act, as well as section 11(1) of the Water Services Act.
The conduct of the BCMM accordingly constitutes improper conduct as envisaged in section 182(1) (a) of the Constitution as well prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

Having regard to the evidence, the regulatory framework determining the standard that BCMM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

**The Municipal Manager for BCMM**

(aa) Within **ninety (90) calendar days**, of the date of this report in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal service requirements in all affected areas within BCMM, such as water and sanitation, access roads and other municipal services;

(bb) Within **ninety (90) calendar days** to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the BCMM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

**The Executive Mayor for BCMM**

(cc) Within **sixty (60) calendar days** of the date of the final report, table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Executive Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council is to thereafter consider
the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by BCMM to address shortcomings on municipal services within its area of jurisdiction, in line with the obligations of the municipality contemplated in section 152(1)(b) of the Constitution; and

(dd) Within **thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address the municipal service delivery concerns of the communities within BCMM, as identified in this report.

(m) Whether municipal services by the Sarah Baartman District Municipality and Ndlambe Local Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

(aa) The allegation that municipal services by the Sarah Baartman District Municipality and Ndlambe Local Municipality within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is **substantiated**.

(bb) Evidence at the disposal of the Public Protector indicates that SBDM is not a WSA on its own, however its local municipalities, including NLM are WSA and are striving to the extent permitted by their financial means to address water and other service delivery issues within the district.
In terms of the facts before the Public Protector there are identifiable service delivery challenges in Alexandria, which is under NLM, such as the following:

(a) Water supply deficiencies and the ageing water infrastructure, which pose a health hazard as the community depend primarily on rain water;

(b) Lack or poor maintenance of access roads in villages within NLM and SBDM, which has the potential to affect economic activity in the area; and

(c) Poor conditions of RDP houses within the district under NLM that were poorly built and require renovations as the walls have cracks and the roofs are leaking, in this regard the conditions of the houses have the potential to collapse and result in injuries or loss of lives.

It was also conceded in the responses to a Notice received from the Municipal Manager of SBDM, Ms Daniels on 24 July 2023 that the district is still experiencing water problems and they are aware that the local municipalities have been voicing their dissatisfaction regarding the non-performance of Amatola Water Board and has requested the DWS to consider local municipalities as implementing agents for the RBIG.

The Public Protector further noted from the response of Municipal Manager for NLM, Adv. Dumezweni on 11 July 2023 that the DWS has handed over contract 14 & 15 pipeline projects from Amatola Water Board to NLM in May 2023. The NLM is currently busy with the design specifications to complete this project. Once the project is completed, it
will enable the NLM to pump the additional 1.0 Ml/day water from the newly constructed Brackish Water RO Plant.

(ff) There are short-term interventions measures noted by the Public Protector, which NLM has undertaken to minimise the impact of water challenges such as the signing of an SLA with a local commercial farmer to drill boreholes to augment water for the Alexandria community. These boreholes have now been commissioned and are now producing an additional 150 kilolitres/day and NLM is planning to equip the boreholes in the next financial year.

(gg) It is the legislative and constitutional responsibility of the SBDM together with its local municipalities, including NLM to ensure that the basic needs of the people within their jurisdiction are responded to, by providing municipal services to the community in a progressive and sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

(hh) The noted lapses and deficiencies in the delivery of municipal services, especially inadequate water supply and the ageing water infrastructure within NLM, which is under SBDM, cause prejudice and health hazards to the community within their district and remains incompatible with, sections 27(1)(b), 152(1) , 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2 (2) and 3 (1) of the National Water Act, as well as section 11(1) of the Water Services Act.

(ii) The conduct of the SBDM and NLM accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.
(xxii) Having regard to the evidence, the regulatory framework determining the standard that SBDM and NLM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Municipal Manager for SBDM and NLM respectively

(aa) Within ninety (90) calendar days, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal services requirements in all affected areas within SBDM and NLM, such as water and sanitation, access roads and bridges;

(bb) Within ninety (90) calendar days to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the SBDM and NLM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

The Executive Mayors for SBDM and NLM respectively

(cc) Within sixty (60) calendar days of the date of the final report, table a copy thereof before their respective Municipal Councils for discussion in line with the powers and functions of the Executive Mayors in terms of section 56 of the Municipal Structures Act. The Municipal Councils for SBDM and NLM are to thereafter consider the Implementation Plan developed by their respective Municipal Managers, setting out steps/measures to be taken to address shortcomings on municipal
services related to provision of water and other essential municipal services within the district, in line with the obligations of the municipality contemplated in Section 152(1)(b) of the Constitution; and

(dd) Within **thirty (30) calendar days** of the submission of the Implementation Plan by their respective Municipal Managers, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address all the service delivery concerns of the communities within the district, as identified in this report.

(n) Whether municipal services by the Joe Gqabi District Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

(aa) The allegation that municipal services by the JGDM within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is **substantiated**.

(bb) The investigation has revealed that strides are being made in the provision of basic municipal services and infrastructure within JGDM, however, there are still service delivery challenges affecting the communities, within the JGDM, which manifest in the following challenges:

(a) Inadequate access to clean reliable supply of water and proper sanitation; and
(b) Failure and/or delay to enforce the by-laws against illegal water connections.

(cc) The JGDM indicated during the course of the investigation that 74% of the communities within the JGDM have access to water, with a backlog of 26% and that 96% of communities have access to sanitation facilities, with a backlog of only 4%.

(dd) JGDM provided the Public Protector with an Integrated Water and Sanitation Master Plan indicating how they intend to tackle the water challenges within the district, including Ndofela. Notwithstanding the existence of this Plan these challenges remain in place and shall continue to prejudice the community within JGDM until the plan is fully executed or implemented.

(ee) It is the legislative and constitutional responsibility of the JGDM to ensure the needs of the people within its district are responded to by providing water to the community in a progressive and sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

(ff) The inadequate provision of water and the necessary infrastructure on the part of JGDM prejudices the community and poses a health hazard. This service deficit also remains incompatible with sections 27(1)(b), 152(1), 153, 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.
(gg) The conduct of the JGDM accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xxiii) Having regard to the evidence, the regulatory framework determining the standard that JGDM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

**The Municipal Manager for JGDM**

(aa) Within **ninety (90) calendar days**, from the date of this report in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal services requirements in all affected areas within JGDM, related to provision of water and sanitation;

(bb) Within **ninety (90) calendar days** to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the JGDM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

**The Executive Mayor for JGDM**

(cc) Within **sixty (60) calendar days** of the date of this report, table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Executive Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council is to thereafter consider
the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by JGDM to address shortcomings on municipal services related to provision of clean and potable water services for domestic use in all affected areas within JGDM, in line with the obligations of the municipality contemplated in section 152(1)(b) of the Constitution; and

(dd) **Within thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address the water service delivery concerns of the communities within JGDM, as identified in this report.

(o) **Whether municipal services by the Chris Hani District Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act**

(aa) The allegation that municipal services by the CHDM within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is **substantiated**.

(bb) Evidence placed at the disposal of the Public Protector has established that strides have been made for the provision of water services by the CHDM, but there are still some service challenges which manifest in the following inadequacies, as observed by the Investigation Team during site inspections:
(a) Households at KwaFani Village are without access to clean water and the situation is forcing residents to buy water;

(b) Households at Qutubeni Administrative Area have taps but those taps ran dry a while ago, as a result residents fetch water from a stream at the hill of the nearby mountain; and

(c) Qutubeni and Silindini locations experience water challenges due to old water infrastructure.

(cc) The investigation has also revealed that some of the CHDM’s Waste Water Treatment Works are either non-operational or partially functioning, thereby contributing to the water shortages in the following local municipalities:

(a) Sakhisizwe Local Municipality - New Khowa, Old Khowa, and Cala;

(b) Intsika Yethu Local Municipality – Tsomo and Cofimvaba; and

(c) Inxuba Yethemba Local Municipality – Cradock and Middleburg.

(dd) In terms of the evidence submitted by CHDM, it was noted that there is a backlog for water provision of about 18, 8 % and 52, 6 % for sanitation of the communities within the CHDM which has lasted for years. The backlog in terms of water and sanitation service delivery was attributed to funding constraints.

(ee) Notwithstanding the budgetary constraints, CHDM furnished the Public Protector with an implementation plan which showed its Infrastructure
Development Plan (IDP), to eradicate water backlogs with time frames and/or due dates set for all projects. While the IDP has been put in place by CHDM in an effort to address the water related problems in the district, these water challenges remain in place and continue to prejudice the community in the CDHM until the plan is fully executed or implemented.

(ff) It is the legislative and constitutional responsibility of the CHDM to ensure the needs of the people within its district are responded to by providing municipal services to the community in a progressive and sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

(gg) The inadequate provision of municipal services and the lack of necessary infrastructure on the part of CHDM poses a health risk to the community within its district and remains incompatible with sections 27(1)(b), 152(1), 153, 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.

(hh) The conduct of the CHDM accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

(xxiv) Having regard to the evidence, the regulatory framework determining the standard that CHDM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:
The Municipal Manager for CHDM

(aa) Within **ninety (90) calendar days** of the date of this report, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal services requirements in all affected areas within CHDM, related to provision of water supply and sanitation;

(bb) Within **ninety (90) calendar days** to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the CHDM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

The Executive Mayor for CHDM

(cc) Within **sixty (60) calendar days** of the date of this report, table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Executive Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council is to thereafter consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by CHDM to address shortcomings on municipal services related to provision of clean and potable water services for domestic use in all affected areas within CHDM, in line with the obligations of the municipality contemplated in section 152(1)(b) of the Constitution; and

(dd) Within **thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the
Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address the water service delivery concerns of the communities within CHDM, as identified in this report.

Having regard to the evidence, the regulatory framework determining the standard that all implicated and affected parties should have complied with, the Public Protector takes the following further remedial action in terms of section 182(1)(c) of the Constitution:

**The Premier for the EC Province**

- Take note of the findings of the Public Protector as highlighted in this report and further exercise and/or ensure executive oversight, in line with his powers as envisaged in section 125(2) of the Constitution and every six (06) months submit reports to the Public Protector regarding progress in the implementation of the remedial action in respect of affected departments and municipalities; and

- Request, through the Director-General of the EC province that all departments and municipalities identified in this report, which procured services and later cancelled or terminated contracts, to give a detailed account on the following to the Premier:

  - The list of projects wherein contracts were cancelled;
  - What were the values of the contracts;
  - What was delivered in relation to what was supposed to be delivered in terms of the contracts;
  - How much more still needs to be paid in order to finalise the project;
(e) What were the reasons for the cancellation; and

(f) What action was taken against the defaulting service provider(s).
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, 1994 (the Public Protector Act).

1.2 The report is submitted in terms of section 8(1) and 8(3) of the Public Protector Act, which empower the Public Protector to make known the findings of an investigation, to affected parties for such persons to note the outcome of the investigation and to implement the remedial action.

1.3 The report is submitted to the following persons:

1.3.1 Premier of the Eastern Cape, Mr LO Mabuyane;
1.3.2 ECDHS' Acting HoD, Mr E Venn;
1.3.3 MEC for ECDHS, Ms S Mani-Lusithi;
1.3.4 National Commissioner of the SAPS, General FS Masemola;
1.3.5 Eastern Cape Provincial Commissioner of the SAPS, General N L Mene;
1.3.6 Minister of the Police, Mr Bheki Cele;
1.3.7 ECDSD’s HoD, Mr M Machemba;
1.3.8 MEC for ECDSD, Ms B Fanta;
1.3.9 ECDoE’s Acting HoD, Dr S Nuku;
1.3.10 MEC for ECDoE, Mr F D Gade;
1.3.11 ECDoH’s for HoD, Dr R Wagner;
1.3.12 MEC for ECDoH, Ms N Meth;
1.3.13 ECDoT’s HoD, Mr M Mafani;
1.3.14 MEC for ECDoT, Mr X Nqatha;
1.3.15 ECDPWI’s HoD, Mr Manda;
1.3.16 MEC for ECDPWI, Ms N S Nkopane;
1.3.17 ECPT’s HoD, Mr D Majekela;
1.3.18 MEC for the ECPT, Mr M Mvoko;
1.3.19 The Chief Executive Officer for SANRAL, Mr R L Demana;
1.3.20 Minister of Transport, Ms LS Chikunga;
1.3.21 The Acting Chief Executive Officer for Eskom, Mr C Cassim;
1.3.22 Minister of Mineral Resources and Energy, Mr SG Mantashe;
1.3.23 Minister of Defence, Ms T Modise;
1.3.24 Director-General of DWS, Dr S Phillips;
1.3.25 Minister for DWS, Mr S Mchunu;
1.3.26 ECCOGTA’s HoD, Mr Fani;
1.3.27 MEC for ECCOGTA, Mr Z Williams;
1.3.28 Municipal Manager for ADM, Dr BG Mthembu;
1.3.29 Mayor for ADM, Mr A Ntsangani;
1.3.30 Municipal Manager for BCMM, Mr MM Yawa;
1.3.31 Executive Mayor for BCMM, Ms P Faku;
1.3.32 Municipal Manager for JGDM, Mr M Nonjola;
1.3.33 Mayor for JGDM, Ms NP Mposelwa;
1.3.34 Municipal Manager for CHDM, Mr G Mashiyi;
1.3.35 Executive Mayor for CHDM, Mr W Gela;
1.3.36 Municipal Manager for SBDM, Ms U Daniels;
1.3.37 Executive Mayor for SBDM, Mr D De Vos;
1.3.38 Municipal Manager for NLM, Adv Dumezweni;
1.3.39 Mayor for NLM, Ms K Ncamiso;
1.3.40 Municipal Manager for ANDM, Mr Z Sikhundla;
1.3.41 Executive Mayor for ANDM, Mr V Mhlelembana;
1.3.42 Municipal Manager for Matatiele LM, Mr L Matiwane;
1.3.43 Mayor for Matatiele LM, Mr S Mngenela;
1.3.44 Municipal Manager for Umzimvubu LM, Mr T Nota;
1.3.45 Mayor for Umzimvubu LM, Ms Z Ndevu;
1.3.46 Acting Municipal Manager for Ntabankulu LM, Mr M Pinyana;
1.3.47 Mayor for Ntabankulu LM, Ms T Sobuthongo;
1.3.48 Municipal Manager for Winnie Madikizela-Mandela LM, Mr L Mahlaka;
1.3.49 Mayor for Winnie Madikizela-Mandela LM, Ms D Mafumbatha; and
1.3.50 A copy of the report is also provided to Ms Tsese and the other sixty five (65) Complainants (the Complainants).

1.4 The report relates to a Systemic Investigation in connection with allegations of inadequate and/or lack of essential services and basic infrastructure by various organs of state in certain villages of the Eastern Cape (EC) province.

2. THE COMPLAINT

BACKGROUND TO THE SYSTEMIC INVESTIGATION

2.1 On 09 February 2021, the Deputy Public Protector, Advocate Kholeka Gcaleka (the DPP), held a radio interview on Umhlobo Wenene FM, a public broadcaster falling under the South African Broadcasting Corporation (SABC). During her interview, the DPP interacted with various listeners or community members in the EC Province. In the course of her interaction with the listeners, the DPP was informed of numerous service delivery complaints in the province of the EC, relating to the following:

2.1.1 Lack of essential services and basic infrastructure within some rural villages of the EC province;

2.1.2 Lack of water supply in most villages;

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3 Eastern Cape is a province of South Africa, which is spread over an area of 168,966 square kilometres and constitutes 13.8% of South Africa’s land area. The 2011-2021 Census data showed that the Eastern Cape Province has a population of about 6 676 5906. The largest proportions of the population are concentrated at OR Tambo and Nelson Mandela Municipal Districts with 20.8% and 17.6% of the total population respectively. Joe Gqabi District has the smallest population constituting 5.3%. Approximately 61.1% of the population is younger than 30 years and 11.7% of these are under the age of 5 years.
2.1.3 Lack of proper access roads or poor maintenance thereof in most villages;

2.1.4 Poor conditions of national, provincial and district roads;

2.1.5 Lack of pedestrian and motor vehicle bridges in most villages;

2.1.6 Lack of electricity in some villages;

2.1.7 Inadequate, overcrowded, dilapidated and unmaintained schools and clinics;

2.1.8 Lack of access to adequate and proper housing subsidies;

2.1.9 Poor sanitation in schools and clinics due to lack of toilets and water; and

2.1.10 General degradation of infrastructure and poor socio-economic conditions amongst communities.

2.2 As a direct result of the aforesaid radio interview interaction between the DPP and the community members, the Eastern Cape Provincial Office of the Public Protector South Africa (Public Protector), received numerous complaints from people across the EC province, as listed in the table below:

<table>
<thead>
<tr>
<th>NO.</th>
<th>NAME OF COMPLAINANT</th>
<th>DATE RECEIVED</th>
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<tbody>
<tr>
<td>1</td>
<td>Ms E Tsese</td>
<td>11/02/2021</td>
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<td>2</td>
<td>Mr B Ngoma</td>
<td>11/02/2021</td>
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<td>3</td>
<td>Ms N Cebani</td>
<td>10/02/2021</td>
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<td>4</td>
<td>Mr M Cengimbo</td>
<td>10/02/2021</td>
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<td>5</td>
<td>Mr ME Pukayi</td>
<td>11/02/2021</td>
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<td>6</td>
<td>Mr S Tolom</td>
<td>10/02/2021</td>
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<td>7</td>
<td>Mr P Mbomo</td>
<td>10/02/2021</td>
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<td>8</td>
<td>Ms K Xongo</td>
<td>10/02/2021</td>
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<td>9</td>
<td>Mr A Diakavu</td>
<td>10/02/2021</td>
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<td>10</td>
<td>Mr M Bengeza</td>
<td>10/02/2021</td>
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<td>11</td>
<td>Mr L Mtyi</td>
<td>10/02/2021</td>
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<td>12</td>
<td>Mr MP Mqikela</td>
<td>11/02/2021</td>
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<td>13</td>
<td>Ms N Konkwane</td>
<td>11/02/2021</td>
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<td>NO.</td>
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<tr>
<td>14</td>
<td>Mr W Sikrweqe</td>
<td>11/02/2021</td>
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<td>15</td>
<td>Ms N Mahintsho</td>
<td>11/02/2021</td>
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<td>16</td>
<td>Ms NM Mramba</td>
<td>11/02/2021</td>
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<td>17</td>
<td>Mr M Mbawu</td>
<td>11/02/2021</td>
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<td>18</td>
<td>Mr S Mphahleni</td>
<td>11/02/2021</td>
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<td>19</td>
<td>Mr M Bedeshe</td>
<td>11/02/2021</td>
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<td>20</td>
<td>Mr N Gabayi</td>
<td>16/02/2021</td>
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<td>21</td>
<td>Mr S Gweva</td>
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<td>Mr X Isac</td>
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<td>23</td>
<td>Mr Z Lindi</td>
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<td>Mr M Marepula</td>
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<td>Mr M Mdepa</td>
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<td>26</td>
<td>Mr N Qangule</td>
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<td>27</td>
<td>Mr G Tshayingwe</td>
<td>16/02/2021</td>
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<td>28</td>
<td>Ms ZG Makhaba</td>
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<td>29</td>
<td>Ms N Sambudla</td>
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<td>30</td>
<td>Ms Y Simangala</td>
<td>16/02/2021</td>
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<td>31</td>
<td>Mr L Makalima</td>
<td>16/02/2021</td>
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<tr>
<td>32</td>
<td>Citizen of Ward 34: Enoch Mgijima Mun.</td>
<td>16/02/2021</td>
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<tr>
<td>33</td>
<td>Mr K Pangeni</td>
<td>16/02/2021</td>
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<td>34</td>
<td>Ms N Skwati</td>
<td>17/02/2021</td>
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<td>35</td>
<td>Mr L Marula</td>
<td>23/02/2021</td>
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<td>36</td>
<td>Ms B Madulube</td>
<td>23/02/2021</td>
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<td>37</td>
<td>Mr X Mlanjeni</td>
<td>23/02/2021</td>
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<td>38</td>
<td>Y Sogayise</td>
<td>23/02/2021</td>
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<td>39</td>
<td>Mr A Zakhabana</td>
<td>16/02/2021</td>
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<td>40</td>
<td>Mr JN Mtetandaba</td>
<td>16/02/2021</td>
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<td>41</td>
<td>Concerned citizens of ward 25</td>
<td>17/02/2021</td>
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<tr>
<td>42</td>
<td>Mr NL Mgquba</td>
<td>04/03/2021</td>
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<td>43</td>
<td>Ms N Konzaphi</td>
<td>16/02/2021</td>
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<td>44</td>
<td>Mr M Qwenga</td>
<td>16/02/2021</td>
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<td>45</td>
<td>Mr S Manyinyi</td>
<td>17/02/2021</td>
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<td>46</td>
<td>Mr L Mgxwalisa</td>
<td>16/02/2021</td>
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<td>47</td>
<td>Mr S Bongela</td>
<td>16/02/2021</td>
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<td>48</td>
<td>Mrs N Mahlatshana</td>
<td>16/02/2021</td>
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<td>49</td>
<td>Mr P Bota</td>
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<td>50</td>
<td>Mr S Gwavu</td>
<td>16/02/2021</td>
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<td>51</td>
<td>Mr LW Msila</td>
<td>16/02/2021</td>
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<td>52</td>
<td>Mr M Mnguni</td>
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<td>53</td>
<td>Mr JM Gqoboka</td>
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<td>54</td>
<td>Mr FP Hoza</td>
<td>16/02/2021</td>
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<td>55</td>
<td>Mr S Mphahleni</td>
<td>11/02/2021</td>
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<tr>
<td>56</td>
<td>Mr B Tshaka</td>
<td>16/02/2021</td>
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</tbody>
</table>
2.3 For ease of presentation, the complaints received by the Public Protector in this regard were categorised into municipal demarcation zones across the EC province, as set out in the table below:

<table>
<thead>
<tr>
<th>NO.</th>
<th>NAME OF COMPLAINANT</th>
<th>DATE RECEIVED</th>
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<tbody>
<tr>
<td>57</td>
<td>Ms K Pangeni</td>
<td>16/02/2021</td>
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<tr>
<td>58</td>
<td>Mr S Nelson</td>
<td>16/02/2021</td>
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<td>59</td>
<td>Ms Y Vika</td>
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<td>60</td>
<td>Mr J Vayise</td>
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<td>61</td>
<td>Ms P Madolo</td>
<td>18/02/2021</td>
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<td>62</td>
<td>Mr B Denis</td>
<td>11/02/2021</td>
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<tr>
<td>63</td>
<td>Mr E Madwara</td>
<td>03/05/2021</td>
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<td>64</td>
<td>Mr P Ncedo</td>
<td>01/04/2021</td>
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<tr>
<td>65</td>
<td>Mr K Segalo</td>
<td>01/07/2021</td>
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<tr>
<td>66</td>
<td>Mr Z Dlambitshe</td>
<td>03/11/2021</td>
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<table>
<thead>
<tr>
<th>DISTRICT MUNICIPALITIES</th>
<th>LOCAL MUNICIPALITIES</th>
<th>COMPLAINANT</th>
<th>SUMMARY OF ALLEGATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. ALFRED NZO</td>
<td>A. Ntabankulu</td>
<td>Avela Zakhabana</td>
<td>Lack of access to clean water as well as bad roads.</td>
</tr>
<tr>
<td></td>
<td>B. Umzimvubu</td>
<td></td>
<td>i) Mr JN Mttandaba</td>
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<td></td>
<td></td>
<td></td>
<td>No electricity at the following locations: Mxhutha, Skolweni and Sqhingeni.</td>
</tr>
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<td></td>
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<td></td>
<td>NB: Huku High School at Skolweni still without electricity.</td>
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<td></td>
<td></td>
<td></td>
<td>No access to clean water</td>
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<td></td>
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<td></td>
<td>No clinic at Mandileni people walk to other locations for medical assistance.</td>
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<td></td>
<td>No RDP houses.</td>
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<td>ii) Concerned Citizen of Ward 25</td>
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<td></td>
<td></td>
<td>No RDP houses</td>
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<td></td>
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<td></td>
<td>No access to clean water</td>
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<tr>
<td>DISTRICT MUNICIPALITIES</td>
<td>LOCAL MUNICIPALITIES</td>
<td>COMPLAINANT</td>
<td>SUMMARY OF ALLEGATIONS</td>
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<td></td>
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<td>No electricity</td>
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<td></td>
<td>No Community Hall and recreational facilities</td>
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<td></td>
<td></td>
<td>No proper roads</td>
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<td></td>
<td></td>
<td>No access to clean water</td>
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<td></td>
<td></td>
<td>No electricity</td>
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<td></td>
<td></td>
<td>No toilets</td>
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<td></td>
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<td>No roads</td>
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<td></td>
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<td>No roads</td>
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<td></td>
<td></td>
<td>Incomplete road construction since 2010.</td>
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<td></td>
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<td>No electricity and provisioning of toilets</td>
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<td>No roads</td>
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<td>No toilets</td>
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<td></td>
<td>Incomplete RDP houses</td>
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<td></td>
<td></td>
<td>No access to clean water</td>
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<td></td>
<td></td>
<td>No roads</td>
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<td></td>
<td>Alleged refusal by the Municipality to take and respond to a petition for lack of service delivery.</td>
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<td></td>
<td></td>
<td>No access to clean water</td>
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<td></td>
<td></td>
<td>No electricity</td>
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</tbody>
</table>

2. AMATHOLE

A. Amahlathi

<table>
<thead>
<tr>
<th>COMPLAINANT</th>
<th>SUMMARY OF ALLEGATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ms N Konzapi</td>
<td>No access to clean water</td>
</tr>
<tr>
<td></td>
<td>No electricity</td>
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<tr>
<td>DISTRICT MUNICIPALITIES</td>
<td>LOCAL MUNICIPALITIES</td>
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</tbody>
</table>
|                         |                      | ii) Ms B Madulube | No access to clean water  
                        |                      |                          | No electricity  
                        |                      |                          | No roads  
|                         |                      | iii) Mr L Mtyi | No roads  
|                         |                      | iv) Mr M Qwenga | Incomplete RDP houses  

**B. Mbhashe**

|                         |                      | i) Ms Y Sogayise | No access to clean water  
                        |                      |                          | No health care facility (clinic) people travel to other locations for health care.  
|                         |                      | ii) Mr S Manyinyi | Unfinished bridge  
|                         |                      | iii) Mr L Mgxwalisa | No proper roads  
                        |                      |                          | No access to clean water  

**C. Mnquma**

|                         |                      | i) Mr S Bongela | Failure to maintain and fix potholes in town  
                        |                      |                          | Lack of service delivery in general leaving the town filthy  
|                         |                      | ii) Mr M Mbawu | No access to clean water-taps ran dry since April 2020  
|                         |                      | iii) Ms K Xongo | No access to clean water  
                        |                      |                          | No proper roads  
|                         |                      | iv) Mr S Tolom | No access to clean water  
                        |                      |                          | No proper roads  
|                         |                      | v) Mrs N Mahlatshana | No access to clean water-taps ran dry since 2016  

**D. Great-Kei**

|                         |                      | Mr S Bekaphi | No electricity  
<p>|</p>
<table>
<thead>
<tr>
<th>DISTRICT MUNICIPALITIES</th>
<th>LOCAL MUNICIPALITIES</th>
<th>COMPLAINANT</th>
<th>SUMMARY OF ALLEGATIONS</th>
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<tbody>
<tr>
<td>E. Ngqushwa</td>
<td></td>
<td>i) Mr S Gwavu</td>
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<td></td>
<td></td>
<td>No proper roads:</td>
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<td></td>
<td></td>
<td>No access to clean water since 2010</td>
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<td></td>
<td></td>
<td>Poor electricity- regular power-cuts</td>
<td></td>
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<td>ii) Mr M Bedeshe</td>
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<td></td>
<td>No access to clean water</td>
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<td>No RDP houses</td>
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<td></td>
<td></td>
<td>No proper roads</td>
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<td></td>
<td></td>
<td>Allegations of corruption on construction of a Provincial road-R345- incomplete but contractor paid in full</td>
<td></td>
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<tr>
<td>F. Raymond Mhlaba</td>
<td>Ms N Konkwane</td>
<td>No access to clean water-taps ran dry</td>
<td></td>
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<tr>
<td>3. OR TAMBO</td>
<td>A. Mhlontlo</td>
<td>i) Mr LW Msila</td>
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<td>Incomplete RDP houses- Contractor MOLORHATI</td>
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<td>ii) Ms N Skwati</td>
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<td>No RDP houses</td>
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<td></td>
<td></td>
<td>No electricity</td>
<td></td>
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<tr>
<td>B. Ingquza Hill</td>
<td>i) Mr B Ngoma</td>
<td>No maintenance of roads since 2003</td>
<td></td>
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<td></td>
<td></td>
<td>No electricity</td>
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<td>No access to clean water</td>
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<td>ii) Ms N Cebani</td>
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<td>No proper roads</td>
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<td></td>
<td>No access to clean water</td>
<td></td>
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<tr>
<td>C. Port St Johns</td>
<td>i) Mr A Dlakavu</td>
<td>No access to clean water</td>
<td></td>
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<tr>
<td>DISTRICT MUNICIPALITIES</td>
<td>LOCAL MUNICIPALITIES</td>
<td>COMPLAINANT</td>
<td>SUMMARY OF ALLEGATIONS</td>
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<td>No health care facility</td>
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<td></td>
<td>No proper roads</td>
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<td></td>
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<td>ii) Mr X Mlanjeni</td>
<td>No RDP houses</td>
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<td></td>
<td></td>
<td></td>
<td>Lack of support from the Municipality after his house was burnt down</td>
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<td></td>
<td></td>
<td>i) Mr P Mbono</td>
<td>No proper roads</td>
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<tr>
<td>D. Nyandeni</td>
<td>ii) Mr M Mnguni</td>
<td></td>
<td>No electricity</td>
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<td>SAPS- failure to finalise investigations on a criminal case opened in 2017 (Murder and/or Robbery)</td>
</tr>
<tr>
<td></td>
<td>i) Ms N Sambudla</td>
<td></td>
<td>No RDP houses- project started in 2019 and only 2 houses built but still not completed</td>
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<td></td>
<td></td>
<td></td>
<td>No proper roads and bridges</td>
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<tr>
<td></td>
<td>ii) Mr N Gabayi</td>
<td></td>
<td>No proper roads and bridges in the area</td>
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<tr>
<td></td>
<td>iii) Ms P. Madolo</td>
<td></td>
<td>Lack of proper access roads with roads last maintained in 1998</td>
</tr>
<tr>
<td>E. King Sabata Dalindyebo</td>
<td>i) Mr ME Pukayi</td>
<td></td>
<td>No proper roads and bridges in the following areas; Khundulu, Xonxa and Tshatshu</td>
</tr>
<tr>
<td></td>
<td>ii) Mr M Mdepa</td>
<td></td>
<td>No proper roads</td>
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<td></td>
<td>iii) Ms Y Simangala</td>
<td></td>
<td>No electricity on old township</td>
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<td></td>
<td>No RDP houses</td>
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<tr>
<td>DISTRICT MUNICIPALITIES</td>
<td>LOCAL MUNICIPALITIES</td>
<td>COMPLAINANT</td>
<td>SUMMARY OF ALLEGATIONS</td>
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<tr>
<td></td>
<td></td>
<td>iv) Citizen of Ward 34</td>
<td>Allegations of nepotism at local municipality</td>
</tr>
</tbody>
</table>
|                         |                      | v) Mr JM Gqoboka          | Failure to provide toilets
No access to clean water-allegations are that there are few boreholes in the area but the Municipality is unwilling to assist the community with these resources
No proper roads despite the area having quarries around
No electricity
|                         |                      | vi) Mr FP Hoza            | Alleged corruption on building of RDP houses-1995 project
Alleged corruption on building of Town-Hall which apparently is still incomplete since 2016
Alleged misuse of funds allocated for construction of roads
Failure to refund community members of Extension 4 who used their own money to buy building material after failure to complete RDP houses |
|                         |                      | B. Intsika Yethu          | i) Mr X Isaac
No proper roads
No access to clean water-taps ran dry
<p>|                         |                      | ii) Mr S Mpahleni         | Incomplete road construction at Marhawuleni                                                                                                                                                                         |</p>
<table>
<thead>
<tr>
<th>DISTRICT MUNICIPALITIES</th>
<th>LOCAL MUNICIPALITIES</th>
<th>COMPLAINANT</th>
<th>SUMMARY OF ALLEGATIONS</th>
</tr>
</thead>
</table>
|                         |                      | iii) Mr B Tshaka | Failure to implement projects approved on IDP for 2018 FY.  
Allegations that the council approved a project for fencing of mealie-fields, shearing sheds and a hall for agricultural purposes. |
|                         |                      | iv) Ms K Pangeni | No access to clean water-taps ran dry.  
No proper roads |
|                         |                      | v) Mr B Denis | Lack of transparency relating to the refurbishment of stadium  
Allegations that an amount of 21 million was received from Department of Sports and Recreation.  
Appointment of CLO questionable demarcation of land without proper consultation with community members |
| C. Engcobo              |                      | i) Mr M Bengeza | No proper roads and bridges |
|                         |                      | ii) Mr MP Mqikela | No proper roads  
No access to clean water-taps ran dry.  
High rate of unemployment amongst the youth leading to high crime rate. |
| 5. SARAH BAARTMAN       | A. Ndlambe          | Mr Z Lindi | Water crisis for seven years.  
Poor quality of RDP houses. |
<table>
<thead>
<tr>
<th>DISTRICT MUNICIPALITIES</th>
<th>LOCAL MUNICIPALITIES</th>
<th>COMPLAINANT</th>
<th>SUMMARY OF ALLEGATIONS</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Bad roads.</td>
</tr>
<tr>
<td>6. BUFFALO CITY METRO</td>
<td>A. King William's Town</td>
<td>Mr L Marula</td>
<td>Allegations of failure to maintain and repair a Provincial Road, that is, R346 between Stutterheim and King William's Town leading to high accidents happening in the area</td>
</tr>
<tr>
<td></td>
<td>B. Gqeberha</td>
<td>i) Ms J Vayise</td>
<td>Incomplete RDP houses built in 2015- most of those having been vandalised already</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ii) Mr E Madwara</td>
<td>Lack of RDP houses, that government a long time ago built on rooms</td>
</tr>
</tbody>
</table>

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

3.1 The Public Protector is an independent constitutional institution established in terms of section 181(1)(a) of the Constitution of the Republic of South Africa, 1996 (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) of the Constitution directs that the Public Protector have the additional powers and functions prescribed by national legislation. The Public Protector’s powers are regulated and amplified by the Public Protector Act, which states, amongst others, that the Public Protector has the powers to investigate and redress maladministration and related improprieties in state affairs.

3.4 Rule 36 of the Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 20184 (the Public Protector Rules as amended), provides that the Public Protector may on own accord or on request in writing by a party to a dispute consolidate one or more complaints and deal with these complaints in the same proceedings.

3.5 After assessing the complaints, the Public Protector deemed it appropriate to consolidate all complaints into one systemic investigation project across the EC in order to deal with the affected areas since the nature of the complaints appeared to be systemic.5 On 16 March 2021, the Public Protector approved the consolidation of complaints and the commencement of a Systemic Investigation Project into this matter.

3.6 Since some matters complained of occurred more than two years prior to the reporting to the Public Protector, section 6(9) of the Public Protector Act was considered. Section 6(9) of the Public Protector Act provides that:

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4 As promulgated under section 7(11) of the Public Protector Act, 23 of 1994.
5 The adjective “systemic” describes or denotes something that exists within or affects the entire system. For example, complaints of a similar nature, point to systemic administrative deficiencies within the organs of state.
“Except where the Public Protector in special circumstances, within his or her discretion, so permits, a complaint or matter referred to the Public Protector shall not be entertained unless it is reported to the Public Protector within two years from the occurrence of the incident or matter concerned.”

3.7 A discretion in terms of section 6(9) of the Public Protector Act was exercised\(^6\) to entertain complaints older than two years, based on the following special circumstances as envisaged in Rule 10(1) of the Public Protector Rules:

3.7.1 The Complainants provided sufficient and compelling information with prima facie evidence of alleged or suspected improper or prejudicial conduct, which was corroborated by memoranda, signed collective petitions and in some instances by media reports;

3.7.2 The nature of the complaints revealed the possibility of un-remedied prejudice or injustice and this remains continuous, as essential services and basic infrastructure in the EC are either inadequate or not existent in some areas;

3.7.3 The Complainants provided reasonable explanations for the delay in reporting the matter to the Public Protector as they have been engaged in continuous efforts such as submissions of petitions to resolve the matter internally with relevant organs of state since they became aware of the lack of services. All the efforts to resolve the issues internally did

\(^6\) In Gordhan and Others v Public Protector and Others (36099/2098) [2020] ZAGPPHC 777 (17 December 2020) at para 46, the High Court in Pretoria held that, it is only where special circumstances exist, that complaints that are older than two years can be entertained, and that, the particulars of the special circumstances must be succinctly set out.
not yield any success, hence the escalation of complaints to Public Protector;

3.7.4 The Public Protector also took cognisance of the number of complaints received at once, which related to similar issues of service delivery and lack of basic infrastructure. Based on that, it was concluded that it would be in the interest of justice to investigate the complaints as it could potentially identify and address systemic deficiencies that affect many citizens in the EC; and

3.7.5 Furthermore, the Public Protector has considered the importance of promoting accountability as envisaged in section 195 of the Constitution as another additional factor, which prompted the necessity to investigate these complaints.

3.8 Accordingly, the Public Protector decided to exercise its discretion in favour of investigating these complaints.

4. ISSUES IDENTIFIED FOR INVESTIGATION

4.1 The central issue for the Public Protector’s determination is whether the delivery of essential services and basic infrastructure by the relevant organs of state in certain villages within the province of EC are delivered in a progressive and effective manner as contemplated in the Constitution and the law. However, in order to allow for a focused discussion of specific issues relating to individual provincial departments and municipalities in the province, the issues for investigation were set out according to the mandate applicable to each organ of state, as follows:
EC Provincial Departments

4.1.1 Whether the provision of the housing subsidies by the Eastern Cape Department of Human Settlements in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

4.1.2 Whether the provision of policing services by the South African Police Service in certain villages in the province are delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

4.1.3 Whether the provision of social services by the Eastern Cape Department of Social Development in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

4.1.4 Whether the provision of basic education by the Eastern Cape Department of Education in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;
4.1.5 Whether the provision of basic health care services by the Eastern Cape Department of Health in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

4.1.6 Whether the provision of road infrastructure by the Eastern Cape Department of Roads and Transport in certain villages in the province is delivered in a progressive and effective manner as contemplated in the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

4.1.7 Whether the provision, management and/or the maintenance of the government immovable property by the Eastern Cape Department of Public Works and Infrastructure in certain villages in the province is rendered in a progressive and effective manner as contemplated in the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

4.1.8 Whether the provision of financial support by the Eastern Cape Provincial Treasury in the province is rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;
EC Municipalities

4.1.9 Whether the municipal services by the Alfred Nzo District Municipality, Matatiele LM, Umzimvubu LM, Ntabankulu LM and Winnie Madikizela-Mandela LM in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

4.1.10 Whether the municipal services by the Amathole District Municipality in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

4.1.11 Whether the municipal services by the Buffalo City Metropolitan Municipality in certain villages within its jurisdiction are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;

4.1.12 Whether the municipal services by the Sarah Baartman District Municipality and Ndlambe LM in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act;
4.1.13 Whether the municipal services by the Joe Gqabi District Municipality in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act; and

4.1.14 Whether the municipal services by the Chris Hani District Municipality in certain villages in the district are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

5. THE INVESTIGATION

5.1 Methodology

5.1.1 The investigation is conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting any investigation with due regard to the circumstances of each case.

5.2 Approach to the investigation

5.2.1 The approach to the investigation included exchange of documents, analysis of the relevant documentation and the consideration and application of the relevant laws, regulatory framework, and prescripts.
5.2.2 The investigation was approached using an enquiry process that seeks to determine:

(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, abuse of power or other improper conduct?

(d) In the event of a violation, what action should be taken?

5.2.3 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 whether the alleged inadequate delivery of essential services, lack and/or poor maintenance of basic public infrastructure by the relevant organs of state in certain villages within province of EC is inconsistent with the applicable prescripts.

5.3 The Investigation Process

5.3.1 The Investigation Team, undertook public consultations as well as site inspections within various villages in the EC. The public consultation process entailed visits to certain affected villages, conducting physical site inspections, face-to-face interactions and interviews with the community members in various villages that were visited by the Investigation Team. The public consultation process was held with the aid of the Complainants, Headmen, Ward Councillors, Ward Committee members, educators, nurses and other residents within the visited areas,
with a view of getting a proper understanding of the challenges experienced by the communities regarding service delivery and infrastructure deficiencies.

5.3.2 The public consultation process and site inspections undertaken by the Investigation Team spanned over the period from May 2021 to January 2022.

5.3.3 From 30 May 2022 to 03 June 2022, the Investigation Team further organised stakeholder engagements, where the affected organs of state were invited, interviewed, and given an opportunity to make oral submissions in response to allegations raised by Complainants in various communities.

5.4 Key sources of information

Documents and e-mail correspondence

5.4.1 Written complaint from Ms Tsese, dated 11 February 2021 and other sixty five (65) Complainants;

5.4.2 Allegations letter from the Public Protector to the HoD for EC Department of Human Settlements, Ms T Poswa, dated 10 February 2022;

5.4.3 Allegations letter from the Public Protector to the HoD for EC Department of Provincial Treasury, Mr D Majekke, dated 14 February 2022;

5.4.4 Allegations letter from the Public Protector to the Municipal Manager for Joe Gqabi District Municipality, Mr Z Williams, dated 15 February 2022;
5.4.5 Allegations letter from the Public Protector to the Municipal Manager for Alfred Nzo District Municipality, Mr Z Sikhundla, dated 15 February 2022;

5.4.6 Allegations letter from the Public Protector to the HoD for EC Department of Public Works and Infrastructure, Mr TL Manda, dated 15 February 2022;

5.4.7 Allegations letter from the Public Protector to the HoD for EC Department of Health, Dr R Wagner, dated 15 February 2022;

5.4.8 Allegations letter from the Public Protector to the Municipal Manager for Amathole District Municipality, Dr T Mnyimba, dated 16 February 2022;

5.4.9 Allegations letter from the Public Protector to the Municipal Manager for Matatiele Local Municipality, Mr L Matiwane, dated 18 February 2022;

5.4.10 Allegations letter from the Public Protector to the Municipal Manager for Ndlambe Local Municipality, Adv R Dumezweni, dated 18 February 2022;

5.4.11 Allegations letter from the Public Protector to the HoD for EC Department of Cooperative Governance & Traditional Affairs, Mr AA Fani, dated 18 February 2022;

5.4.12 Allegations letter from the Public Protector to the Secretary of Defence, Ms GS Kudjoe, dated 28 February 2022;

5.4.13 Allegations letter from the Public Protector to the HoD for EC Department of Transport, Mr Mafani, dated 22 March 2022;

5.4.14 Allegations letter from the Public Protector to the HoD for EC Department of Public Works and Infrastructure, Mr TL Manda, dated 23 March 2022;
5.4.15 Allegations letter from the Public Protector to the Municipal Manager, for Alfred Nzo District Municipality, Mr Z Sikhundla, dated 23 March 2022;

5.4.16 Allegations letter from the Public Protector to the Municipal Manager for Ntabankulu Local Municipality, Ms L Nonyongo, dated 24 March 2022;

5.4.17 Allegations letter from the Public Protector to the HoD for EC Department of Social Development, Mr M Machemba, dated 11 April 2022;

5.4.18 Allegations letter from the Public Protector to the Municipal Manager, Umzimvubu Local Municipality, Mr T Nota, dated 28 April 2022;

5.4.19 Allegations letter from the Public Protector to the Municipal Manager for Alfred Nzo District Municipality, Mr Z Sikhundla, dated 28 April 2022;

5.4.20 Allegations letter from the Public Protector to the Municipal Manager, for Chris Hani District Municipality, Mr G Mashiya, dated 28 April 2022;

5.4.21 Allegations letter from the Public Protector to the Municipal Manager for Sarah Baartman District Municipality, Mr T Pillay, dated 28 April 2022;

5.4.22 Allegations letter from the Public Protector to the City Manager for BCMM, Mr A Sihlahla, dated 28 April 2022;

5.4.23 Allegations letter from the Public Protector to the Municipal Manager for Amathole District Municipality, Dr T Mnyimba dated 28 April 2022;

5.4.24 Letter from the Public Protector to the HoD for EC Department of Human Settlements, Ms T Poswa, dated 28 April 2022;

5.4.25 Letter from the Public Protector to the HoD for EC Department of Provincial Treasury, Mr D Majekela dated 28 April 2022;
5.4.26 Supplementary allegations letter from the Public Protector to the Municipal Manager for Amathole District Municipality, Dr T Mnyimba, dated 28 April 2022;

5.4.27 Letter from the Public Protector to the Municipal Manager for Amathole District Municipality, Dr T Mnyimba, dated 17 May 2022;

5.4.28 Response letter from a Deputy Director in the office of the HoD for ECDHS, Mr Masibulele Mbane, dated 02 June 2023;

5.4.29 Response letter from Eastern Cape Supply Chain and Facility Management at SAPS, Brigadier SA Genqese, dated 30 May 2022;

5.4.30 Supplementary response letter from Eastern Cape Supply Chain and Facility Management at SAPS, Brigadier SA Genqese, dated 19 July 2022;

5.4.31 Response letter from the HoD for ECDSD, Mr M Machemba, dated 01 July 2022;

5.4.32 Response letter from the HoD for ECDoH, Dr R Wagner, dated 31 May 2022;

5.4.33 Response letter from the HoD for ECDoT, Mr MC Mafani, dated 29 April 2022;

5.4.34 Response letter from the Acting HoD for ECDoE, Mr M Qwase, dated 01 June 2022;

5.4.35 Response letter from the Secretary of Defence, Ms GS Kudjoe, dated 31 March 2022;

5.4.36 Response letter from the Acting Chief Executive Officer of SANRAL, Mr L Memeza, dated 29 March 2022; and
5.4.37 An affidavit deposed by the Acting HOD for ECDoE, Mr Qwase, dated 29 March 2022.

**Inspections in loco conducted**

5.4.38 Inspections in loco were conducted in the following areas by the Investigation Team:

5.4.38.1 Ramohlakoane Village in Matatiele on 18 May 2021;

5.4.38.2 Mphetshwa village in Mbizana on 19 May 2021;

5.4.38.3 Hofisi Location, including Loyiso Senior Secondary School and Cancele Primary School in Mount Frere on 20 May 2021;

5.4.38.4 Moyeni Location in Mt Frere on 20 May 2021;

5.4.38.5 Ndakeni Location in Ntabankulu on 21 May 2021;

5.4.38.6 Cebe Administrative Area in Centane on 21 July 2021;

5.4.38.7 Cebe Administrative Area in Centane on 29 July 2021;

5.4.38.8 Ndofela Administrative Area in Sterkspruit on 27 August 2021;

5.4.38.9 Tyutyu Village in King Williams Town on 10 October 2021;

5.4.38.10 Tshatshu Location in Lady Frere on 18 January 2022; and

5.4.38.11 Qhokama Location in Engcobo on 19 January 2022.
Virtual Meetings held with respondents

5.4.39 Meetings were held between the Investigation Team and Respondents as follows:

5.4.39.1 Department of Transport on 13 February 2022;

5.4.39.2 Department of Social Development on 31 July 2023;

5.4.39.3 Department of Health on 31 July 2023;

5.4.39.4 Department of Human Settlements on 31 July 2023; and

5.4.39.5 Department of Transport on 03 August 2023.

Interviews held with Respondents for oral presentations

5.4.40 Interviews were conducted by the Investigation Team with Respondents as follows:

5.4.40.1 BCMM’s Delegation on 30 May 2022;

5.4.40.2 DWS’ Delegation on 31 May 2022;

5.4.40.3 ECDoH’s Delegation on 31 May 2022;

5.4.40.4 JGDM’s Delegation on 01 June 2022;

5.4.40.5 Eskom’s Delegation on 01 June 2022;
5.4.40.6 Human Settlements’ Delegation on 02 June 2022;

5.4.40.7 Sarah Baartman District’s Delegation on 02 June 2022;

5.4.40.8 ECDOE’s Delegation on 02 June 2022;

5.4.40.9 ECDPW’s Delegation on 03 June 2022; and

5.4.40.10 CHDM Delegation on 03 June 2022.

Physical meetings held with Respondents to discuss the Notice issued in terms of Section 7(9) of the Public Protector Act

5.4.41 Meetings were held between the Investigation Team and Respondents in order to discuss the contents of the Notices issued in terms of Section 7(9) as follows:

5.4.41.1 Alfred Nzo District Municipality, Matatiele Local Municipality, Umzimvubu Local Municipality, Ntabankulu Local Municipality and Winnie Madikizela-Mandela Local Municipality, on 18 July 2023;

5.4.41.2 Joe Gqabi District Municipality, on 19 July 2023;

5.4.41.3 Chris Hani District Municipality, on 20 July 2023;

5.4.41.4 Amathole District Municipality, on 20 July 2023; and

5.4.41.5 Sarah Baartman District Municipality, on 21 July 2023.
Legislation and other regulatory prescripts

5.4.42 Constitution of the Republic of South Africa, 1996;
5.4.43 Children’s Act, 2005, as amended;
5.4.44 Child Justice Act, 2008;
5.4.45 Division of Revenue Act, 2019;
5.4.46 Domestic Violence Act, 1998;
5.4.47 Eastern Cape Land Disposal Act, 2000;
5.4.48 Eastern Cape Roads Act, 2003;
5.4.49 Government Immovable Assets Management Act, 2007;
5.4.50 Local Government Municipal Systems Act, 2000;
5.4.51 Housing Act, 1997;
5.4.52 Local Government Municipal Structures Act, 1998;
5.4.53 Medicines and Related Substances Act, 1965;
5.4.54 National Health Act, 2003;
5.4.55 National Health Act Norms and Standards Regulations issued as per Government Gazette 67 No. 41419, dated 02 February 2018;
5.4.56 National Housing Code 2009;
5.4.57 National Water Act, 1998;
5.4.58 Occupational Health and Safety Act, 1993;
5.4.59 Older Persons Act, 2006;
5.4.60 Pharmacy Act, 1974;
5.4.61 Public Finance Management Act, 1999;
5.4.62 Public Protector Act, 1994;
5.4.63 Public Service Act, 1994;
5.4.64 Prevention and Combatting of Trafficking in Persons Act, 2013;
5.4.65 Prevention and Treatment of Drug Dependency Act, 2008;
5.4.66 Probation Services Act, 1991;
5.4.67 Probation Services Amendment Act, 2002;
5.4.68 Policy on Disability (undated);
5.4.69 Policy Directive that guides in implementation of the programme National and Provincial Strategic Plan for HIV and AIDS, Sexually Transmitted Infections (STI’s) and Tuberculosis (TB);

5.4.70 Provincial Notice 119 of 2017;

5.4.71 Social Assistance Act, 1992;

5.4.72 Social Service Practitioners Act, 2018;

5.4.73 Social Work Amendment Act, 1998;

5.4.74 South African National Roads Agency Limited and National Roads Act, 1998;

5.4.75 South African Police Service Act, 1995;

5.4.76 South African Schools Act, 1996;

5.4.77 Water Services Act, 1997;

5.4.78 White Paper on Families in South Africa, 2018;

5.4.79 White Paper for Social Welfare (WPSD), which was adopted in August 1997; and

5.4.80 Women Empowerment and Gender Equality Bill, 2012.

**Case Law considered**

5.4.81 *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC);*

5.4.82 Economic *Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others [2016] ZACC 11; and*

5.4.83 Glenister II v *President of the Republic of South Africa and Others [2013] ZACC 20.*
Notices issued in terms of section 7(9)(a) of the Public Protector Act

5.4.84 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 41(1) of the Public Protector Rules was issued to the HOD for Eastern Cape Provincial Treasury, Mr Daluhlanga Majekbe, dated 05 June 2023;

5.4.85 A Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 41(1) of the Public Protector Rules was issued to the MEC for Eastern Cape Provincial Treasury, Mr Mlungisi Mvoko, dated 05 June 2023;

5.4.86 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Eastern Cape Provincial Commissioner of SAPS, General Nomthetheleli Lillian Mene, dated 05 June 2023;

5.4.87 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the HoD of the ECD0H, Dr R Wagner, dated 05 June 2023;

5.4.88 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager for ANDM, Mr Z Sikhundla, dated 05 June 2023;

5.4.89 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Executive Mayor of the ANDM, Mr V Mhlelembana, dated 05 June 2023;

5.4.90 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Director-General for DWS, Dr Sean Phillips, dated 05 June 2023;
5.4.91 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Acting Head of Department for ECDoE, Dr S Nuku dated 05 June 2023;

5.4.92 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager of the CHDM, Mr G Mashiyi, dated 06 June 2023;

5.4.93 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the MEC of the ECDoE, Ms Nomakhosazana Meth, dated 06 June 2023;

5.4.94 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the MEC for ECDPWI, to Ms Ntombovuyo Silberose Nkopane, dated 06 June 2023;

5.4.95 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the MEC of the EC Department of Human Settlements, Ms Siphokazi Mani-Lusithi, dated 06 June 2023;

5.4.96 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Minister of Water and Sanitation, Mr Senzo Mchunu, dated 06 June 2023;

5.4.97 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Acting Municipal Manager for Amathole District Municipality, Mr M Somana, dated 06 June 2023;

5.4.98 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Minister of Mineral Resources, Mr SG Mantashe, dated 06 June 2023;
5.4.99  A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Minister of Transport, Ms LS Chikunga, dated 06 June 2023;

5.4.100  A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the MEC of the Eastern Cape Department of Transport, Mr Xolile Nqatha, dated 06 June 2023;

5.4.101  A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Mayor of the Amathole District Municipality, Mr A Ntsangani, dated 06 June 2023;

5.4.102  A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager for Buffalo City Metropolitan Municipality, Mr M Yawa, dated 06 June 2023;

5.4.103  A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Executive Mayor of the Buffalo City Metropolitan Municipality, Ms P Faku, dated 06 June 2023;

5.4.104  A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Acting Chief Executive Officer of Eskom, Mr Calib Cassim, dated 06 June 2023;

5.4.105  A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Minister of Defence and Military Veterans, Ms Thandi Modise, dated 06 June 2023;

5.4.106  A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager for Joe Gqabi District Municipality, Mr M Nonjola, dated 12 June 2023;
5.4.107 A Notice in terms of section 7(9)(a) of the Public Protector Act to the Municipal Manager of Ndlambe Local Municipality, Adv. R Dumezweni, dated 12 June 2023;

5.4.108 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager for Sarah Baartman District Municipality, Ms U Daniels, dated 12 June 2023;

5.4.109 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager for Umzimvubu Local Municipality, Mr T Nota, dated 12 June 2023;

5.4.110 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager of Matatiele Local Municipality, Mr L Matiwane, dated 12 June 2023;

5.4.111 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Head of the ECPDOT, Mr MC Mafani, dated 12 June 2023;

5.4.112 A Notice in terms of section 7(9)(a) of the Public Protector was issued to the Head for ECDOHS, Ms T Poswa, dated 12 June 2023;

5.4.113 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Premier of the Eastern Cape Province, Mr Lubabalo Oscar Mabuyane, dated 12 June 2023;

5.4.114 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Head of ECDSD, Mr Mzimkhulu Machemba, dated 12 June 2023;
5.4.115 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Head of ECDPWI, Mr TL Manda, dated 12 June 2023;

5.4.116 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Head of ECDCOGTA, Mr AA Fani, dated 12 June 2023;

5.4.117 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager of the Amathole District Municipality, Dr Mthembu, dated 07 July 2023;

5.4.118 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Municipal Manager of the Winnie Madikizela-Mandela Municipality, Mr L Mahlaka, dated 18 July 2023; and

5.4.119 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the Acting Municipal Manager of the Ntabankulu Municipality, Mr Menziwa, dated 18 July 2023.

**Responses to the Notice issued in terms of section 7(9) of the Public Protector Act**

5.4.120 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr Calib Cassim, dated 15 June 2023;

5.4.121 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act read with Rule 42(1) and 41(1) of the Public Protector Rules was received from Mr Daluhlanga Majekhe, dated 16 June 2023;

5.4.122 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr Z. Sikhundla, dated 21 June 2023;
5.4.123 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr Matiwane, dated 22 June 2023;

5.4.124 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Major General Z.M. Dladla, dated 22 June 2023;

5.4.125 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr Nota, dated 27 June 2023;

5.4.126 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr Stonga Zani, dated 05 July 2023;

5.4.127 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr M Zenzile, dated 06 July 2023;

5.4.128 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Adv R Dumezweni, dated 11 July 2023;

5.4.129 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr G. Mashiyi, dated 12 July 2023;

5.4.130 A supplementary response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr Matiwane, dated 18 July 2023;

5.4.131 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Dr Mthembu, dated 21 July 2023;

5.4.132 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr S. Benxa, dated 21 July 2023;
5.4.133 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Dr Nuku, dated 25 July 2023;

5.4.134 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr L Mahlaka, dated 25 July 2023;

5.4.135 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr S Pongoma, dated 26 July 2023;

5.4.136 A supplementary response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr Z. Sikhundla, dated 26 July 2023;

5.4.137 A supplementary response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr G. Mashiyi, dated 28 July 2023;

5.4.138 A supplementary response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr G. Mashiyi, dated 28 July 2023;

5.4.139 A response to the Notice in terms of section 7(9)(a) of the Public Protector Act was received from Mr Machemba, dated 11 August 2023;

5.4.140 Mr Mafani of the ECDOT, provided his comments to the Notice during a virtual meeting held with the Investigation Team on 03 August 2023;

5.4.141 An email dated 14 September 2023, from Mr LP Mpendulo, the Director for Technical Services at Ntabankulu Municipality; and

5.4.142 An intergrated response to the Notice in terms of section 7(9)(a) of the Public Protector Act, read with Rule 42(1) and 41(1) of the Public
Protector Rules was received from Mr Mabuyane, dated 04 October 2023.

6. THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS; FINDINGS AND REMEDIAL ACTIONS

Eastern Cape Department of Human Settlements (ECDHS)

6.1 Whether the provision of the housing subsidies by the Eastern Cape Department of Human Settlements in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

Common cause

6.1.1 The ECDHS is a department of the provincial government established in terms of Schedule 2 to the Public Service Act\(^7\) (PSA). Access to adequate housing is a basic human right. Government has an obligation to ensure the progressive realisation of the right to housing.

6.1.2 The provision of housing is a concurrent function in terms of which national, and provincial governments have an obligation to provide adequate housing and implement projects related to human settlements and housing as per Schedule 4 of the Constitution. The mission of the

\(^7\) Act 103 of 1994.
ECDHS is to facilitate and co-ordinate the provision of quality, integrated and sustainable human settlements that offer EC communities a better living environment.\(^8\)

**Issue in dispute**

6.1.3 The issue for Public Protector’s determination is whether the provision of housing by the ECDHS in certain villages in the EC is delivered in a progressive and effective manner as contemplated in the Constitution and the law.

**Matatiele**

*Ms Tsese’s version*

6.1.4 On 18 May 2021, the Investigation Team held a meeting with the Complainant, Ms Eunice Tsese (Ms Tsese), who indicated that she represents a group of five (5) Matatiele residents, who are concerned about poor and/or lack of basic infrastructure and services around Matatiele.

6.1.5 Ms Tsese raised the following challenges regarding the provision of housing in Matatiele:

6.1.5.1 The Reconstruction and Development Programme (RDP), houses have been built and given to qualifying beneficiaries in some areas, but there are RDP projects that were left incomplete;

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\(^8\) Available at [https://www.ecdhs.gov.za](https://www.ecdhs.gov.za), accessed on 8 April 2022.
6.1.5.2  In Ramohlakoane village, there are many housing structures that were left unfinished by the appointed contractor since 2017. In some instances, only foundation slabs were built, whilst other RDP houses were erected up to the walls and left without a roof and no explanation was given for the non-completion of these RDP houses by the government; and

6.1.5.3  Community members alleged that some RDP houses were allocated to Lesotho nationals.

Mbizana

Version of Mr Mgquba and others

6.1.6  On 19 May 2021, the Investigation Team held a meeting with Mr Nkosinathi Mgquba (Mr Mgquba), the Headman, Mr Mavenge, Ms Z Gcaba (Ms Gcaba) a Ward Committee Member of the Mphetshwa location and other residents of Mphetshwa village in Mbizana, under Winnie Madikizela Mandela Local Municipality. The Complainants raised the following challenges regarding the provision of housing in Mphetshwa village:

6.1.6.1  Mphetshwa location has no single RDP house built since the dawn of democracy, despite the area being dominated by poor and unemployed people; and

6.1.6.2  Ms Gcaza stated that the issue of RDP houses has been a constant feature on the Winnie Madikizela Mandela Local Municipality’s Integrated Development Plan\(^9\) (IDP), but it remains a promise never fulfilled.

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\(^9\) According to Section 26 of the Local Government Municipal Systems Act, 2000, an Integrated Development Plan must indicate:

(a) The municipal council's vision for the long-term development of the municipality with special emphasis on the municipality's most critical development and internal transformation needs;
Mount Frere

The version of Ms Mbanga and others

6.1.7 On 20 May 2021, the Investigation Team held a meeting with Ms Thandiswa Mbanga (Ms Mbanga) and other residents of Hofisi location under Ward 23 of Mzimvubu Local Municipality, who complained about the inadequate provision of RDP houses and stated, *inter alia*, that:

6.1.7.1 Hofisi location has had no RDP houses built since the beginning of democracy, despite qualifying residents having applied around 2009/2010; and

6.1.7.2 They have experienced natural disasters in the area, which left some families without houses, however, there has been no assistance in the form of temporary shelter(s) from the government.

Moyeni Location, Ward 16

The version Mr Makhalima and others

6.1.8 On 20 May 2021, the Investigation Team held a meeting with the Complainant, Mr L Makhalima (Mr Makhalima) and other residents of

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(b) An assessment of the existing level of development in the municipality, which must include an identification of communities that do not have access to basic municipal services;

(c) The council's development priorities and objectives for its elected term, including its local economic development aims and its internal transformation needs;

(d) The council's development strategies must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation etc.
Moyeni Location under Ward 16 of Mzimvubu Local Municipality. Mr Makhalima stated that:

6.1.8.1 There has been no single RDP house built at Moyeni Location since the start of democracy;

6.1.8.2 A number of residents are in desperate need of RDP housing due to their poor socio-economic situation; and

6.1.8.3 A list of RDP houses for the Moyeni Location was compiled around the year 2000, but nothing happened with regard to delivery.

**Ntabankulu: Ndakeni Location, Ward 8**

*The version of Mr Zakhabana and others*

6.1.9 On 21 May 2021, the Investigation Team held a meeting with the Complainant, Mr Avela Zakhabana (Mr Zakhabana) and other residents of Ndakeni location under Ward 8 of Ntabankulu Local Municipality, who complained about the inadequate provision of housing within Ndakeni village. Mr Zakhabana stated that:

6.1.9.1 There are only a few temporary housing structures erected in Ndakeni village and only for those people whose houses were recently destroyed by a tornado or natural disaster;

6.1.9.2 Their area never benefited from any housing project since the dawn of democracy, despite the area having many destitute people; and

6.1.9.3 Ndakeni is the only village that has not benefited from the government housing scheme.
Centane: Cebe Administrative Area

Mr Soga’s version

6.1.10 On 26 July 2021 the Investigation Team held a meeting with Mr Victor Soga (Mr Soga), representing the Complainant, Mr Siphe Tolom (Mr Tolom), who could not make it on the day of the visit to his area due to work commitments.

6.1.11 The Cebe Administrative Area falls under Ward 27 of Centane, and is made up of the following villages namely, Komkhulu, Mateisi, Diko, Mkhunqwana and Fihlani.

6.1.12 Mr Soga submitted that Cebe village does not have RDP houses despite it being one of the poorest areas dominated by pensioners, child-headed families and unemployed youth.

Keiskammahoek: Rabula Administrative Area in Ward 11

Mr Mtyi’s version

6.1.13 On 27 August 2021, the Investigation Team held a meeting with the Complainant, Mr Lamla Mtyi (Mr Mtyi) in Rabula Administrative Area, Keiskammahoek under Amahlathi Local Municipality. Mr Mtyi stated that:

6.1.13.1 The entire Rabula area does not have RDP houses;

6.1.13.2 A list was sent to the relevant authorities for assistance but so far, nothing has been delivered; and
6.1.13.3 A few bungalows were built for some families as temporary structures, whilst waiting for proper houses.

**King William's Town: Tyutyu Village, under Buffalo City Metro Municipality**

*Mr Magqaza's version*

6.1.14 On 10 October 2021, the Investigation Team held a meeting with Mr Simphiwe Magqaza (Mr Magqaza) in Tyutyu village on behalf of Mr Vika (the Complainant), who could not attend the meeting due to work commitments. Mr Magqaza alleged that:

6.1.14.1 When people were moved from Bisho to Tyutyu village in 1987, they were given two-roomed houses and those were the only ones who benefited from government subsidised housing;

6.1.14.2 On 14 August 2013, officials from the ECDHS and the municipal visited Tyutyu village calling upon community members to register for RDP houses. After registering, they were given cards to produce when checking the progress status at the municipal offices. However, when people went to follow up, their names could not be found on the list. Since then, there has been no feedback from these stakeholders;

6.1.14.3 Ward Committee members are in possession of the list of all destitute people in need of houses. However, only two temporary structures were built in the entire village;
6.1.14.4 In 2013, people’s houses were destroyed by a tornado and a list was created, however, only five (05) RDP houses were built. Many people are still waiting for their houses; and

6.1.14.5 There is an urgent need for the government to provide shelter to the needy people in Tyutyu village.

Response by the ECDHS

6.1.15 On 10 February 2022, the Public Protector raised the allegations with the ECDHS to afford them an opportunity to reply. On 02 June 2022, the ECDHS responded through the Deputy Director in the office of the HoD, Mr Masibulele Mbane (Mr Mbane), who stated, *inter alia*, that:

6.1.15.1 There are two housing projects in Matatiele Local Municipality namely, Maritseng 1500 and Mehloloaneng 898;

**Maritseng 1500 Housing Project**

6.1.15.2 In respect of the Maritseng 1500 Housing Project, the ECDHS appointed Cort & Fred Consortium in 2014, for the construction of one thousand five hundred (1500) housing units;

6.1.15.3 The project spread across fourteen (14) villages including, Ramohlakoane village;

6.1.15.4 A total of one thousand (1000) housing units have been completed whilst five hundred (500) are at various stages;

6.1.15.5 The table below reflects the various stages of the incomplete five hundred (500) houses:
6.1.15.6 In 2016, the contractor (Cort & Fred Consortium) submitted a variation order. The National Home Builders Regulation Council (NHBRC) deemed it necessary that the contractor be granted additional funding to remedy a number of technical requirements and subsequently release Final Unit Reports (FUR’s), however, the Provincial Treasury did not approve the variation order, citing poor planning;

6.1.15.7 Consequently, the reduction of scope was approved to curtail contractual standing time. The contractor has since returned to the site with the intention of completing one hundred and thirty one (131) housing units;

6.1.15.8 The remaining three hundred and sixty nine (369) housing units, which are at various stages of completion, were set to be re-advertised for procurement; and

6.1.15.9 Numerous meetings have been held with stakeholders such as beneficiaries, the local municipality and Traditional Leaders, to communicate progress in relation to the status of the project.

### MEHLOLOANENG 898 Housing Project

6.1.15.10 In respect of Mehloloaneng 898, the ECDHS appointed Anix Trading & Construction, to construct 898 housing units in 2014;

6.1.15.11 A total of two hundred and three (203) housing units have been completed, whilst six hundred and ninety five (695) are at various stages of completion as indicated in the table below:

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Report of the Public Protector
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</table>

6.1.15.12 In 2017, the contractor (Anix Trading & Construction) was liquidated, which led to it abandoning the site; and

6.1.15.13 The ECDHS has since decided to pursue procurement of Professional Service Providers (PSP’s) and a contractor within the 2022/23 financial year to finalise the outstanding scope of work.

**MPHETSHWA ADMINISTRATIVE AREA**

6.1.15.14 In respect of Mphetshwa Administrative Area, the ECDHS acknowledges that several communities remain with no housing subsidy programmes, whilst there is a need for same.

6.1.15.15 The ECDHS continuously conducts social facilitation programmes to different stakeholders (including potential beneficiaries), about housing subsidy programmes, application for funding processes and awareness regarding opportunities related to the sector.

**MOUNT FRERE**

6.1.15.16 The MEC for ECDHS, has vested authority to approve applications for project funding. In Mount Frere: Cancele, procurement of thirty (30) housing units has undergone a pre-planning phase and all beneficiaries have been approved for housing subsidy applications.
Construction is anticipated to commence during the 2023/2024 financial year.

6.1.15.17 The ECDHS remains committed to providing temporary structures to disaster affected beneficiaries. The application criteria of the ECDHS adhere to the Housing Code Qualification criteria and the departmental priorities.

6.1.15.18 Whilst the ECDHS acknowledges the rising need to construct housing units, however, housing projects emanate from Housing Charters developed by Municipalities.

**NTABANKULU**

6.1.15.19 In this regard, the MEC for ECDHS, approved project funding applications for thirty six (36) housing units in Ntabankulu, Ndakeni. The project is currently at a pre-planning stage and it is anticipated that a service provider will be appointed to commence with construction in the 2023/24 financial year, due to current departmental budget constraints.

*Site visits by the Acting Public Protector and the Premier of EC*

6.1.16 On 24 October 2022 the Acting Public Protector, Adv Kholeka Gcaleka together with the Premier of EC Province, Mr Oscar Mabuyane (Mr Mabuyane), visited amongst other places Maritseng village in Matatiele to inspect the RDP housing project as part of the Public Protector’s programmes to promote good governance.

6.1.17 During the visit, it was confirmed that the Maritseng 1500 Housing Project was incomplete. Mr Mabuyane acknowledged that some
communities are still marginalised and are without basic services and infrastructure.

**Response to the Notice in terms of section 7(9)(a) of the Public Protector Act**

6.1.18 A notice dated 02 June 2023 was issued to the ECDHS in terms of section 7(9)(a) of the Public Protector Act. On 18 August 2023, Mr Mbane responded to the Notice stating, inter alia, that:

6.1.19 Since 1994 the ECDHS has delivered more than four hundred thousand (400,000) RDP units to qualifying beneficiaries within the available budget allocated to the ECDHS. However, there is a considerable gap between the approved beneficiaries on the system and the number of units the province delivers due to the following reasons:

(a) The available budget is not sufficient to provide housing units and services to all qualifying beneficiaries, therefore, the province has opted to prioritise delivery of services to destitute, disaster-affected beneficiaries, the elderly, child-headed households and the youth;

(b) Unavailability or shortage of suitable and well-located land, which is the responsibility of the municipalities;

(c) Decayed bulk infrastructure or no bulk infrastructure on land earmarked for construction of RDP houses. In terms of the mandate and budget allocations (MIG) is the responsibility of the municipalities;
(d) Capacity challenges within the municipality, department, and the contractors to deliver within the allocated timeframes;

(e) The effect of climate change has affected the performance of the ECDHS since the province is predominantly rural and would present a situation where sites cannot be accessed due to the unavailability of proper access roads;

(f) ECDHS is up-scaling delivery of houses to the most destitute people, the elderly, child-headed households and vulnerable groups;

(g) All projects have a social facilitation element that is continuous throughout the running of the project;

(h) ECDHS provides consumer education to relevant stakeholders which include beneficiaries in relation to the housing programmes, that it seeks to deliver as provided in the Housing Code of 2009;

(i) The ECDHS has a current backlog of a moving target of approximately six hundred thousand (600 000) and it is important to note that due to fiscal constraints, both on the operational and conditional grant budget, the department is targeting to construct approximately thirty thousand (30,000) houses in MTEF period;

(j) The RDP project at Ramohlakoane village in Matatiele was not abandoned, the contractor stopped working due to the variation order related to the additional scope that was required by NHBRC was not approved by Provincial Treasury. During 2022, the
contractor resumed on site on a reduced scope, due to escalation and non-approval of the additional funding. The ECDHS, in its efforts to speed up delivery, appointed Matatiele Local Municipality as the implementing agent on a reduced scope. Procurement processes to appoint a new contractor will be finalised this financial year and a contractor is expected to start construction this financial year as well;

(k) It should be noted that the project application process resides with the municipalities, upon approval of the beneficiary list based on land availability and services, and after approval by the Council, thereafter, the project is submitted to the ECDHS through the IDP process. Therefore, the issues raised by Mphetshwa in Mbizana, Hofisi and Moyeni in Mount Frere, Ndakeni in Ntabankulu, Cebe and Rabula Administrative areas, as well as Tyutyu village in King Williams Town that do not have RDP or government subsidised houses, can only be addressed with the cooperation of the municipalities.

(l) The Municipalities in the Alfred Nzo District have since applied for seven hundred (700) units, where Mphetshwa is included. The project will be included in the departmental business plan for 24/25FY and implementation will take place in the same period;

(m) In respect of Ndakeni in Ntabankulu, the procurement process to appoint a contractor for 36 units is underway;

(n) Moyeni in Mount Frere, a tender for the construction of 160 units will be issued in September 2023. A briefing session will be held on 16 August 2023;
(o) ECDHS works closely with all municipalities; each municipality has a housing committee responsible for all human settlement matters and meetings are held where all these projects are discussed. The ECDHS also makes presentations on municipal strategic planning sessions in the presence of municipal political leadership, ward councillors and municipal officials;

(p) No beneficiaries have been approved for the mentioned areas in Alfred Nzo District;

(q) ECDHS, in collaboration with its national department and Alfred Nzo District Municipality is responding to disaster-affected households. Temporary Residential Units (TRUs) have been erected in all four local municipalities. Currently, a contractor is on site erecting 500 TRUs within the region. The ECDHS is planning to respond through the conversion of TRUs to permanent structures. The following projects are emergency/disaster projects:

i. Alfred Nzo 147 (construction);
ii. Alfred Nzo 45 (construction);
iii. Mbizana 487 (complete);
iv. Mbizana 200 (procurement-BAC) and
v. Tsitsong 200 (contractor recently appointed for top structures).

(r) In terms of DORA framework and guidance by National Treasury, provinces are required to submit a Project Readiness Matrix (PRM) together with a Business Plan. The PRM must clearly indicate the readiness of projects and the National Minister's approval depends on the readiness of the projects; and
(s) Prior to submission of the Business Plan to the National Minister for approval, the entire package is submitted to Provincial and National Treasury for their scrutiny and recommendation.

Applicable law


6.1.20 Section 26(1) and (2) of the Constitution, 1996, provides that:

“(1) everyone has the right to have access to adequate housing.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right”

6.1.21 Section 41(1) of the Constitution is titled “Principles of Co-operative Government and Intergovernmental Relations” and states inter alia:

“(1) All spheres of government and all organs of state within each sphere must—

(a) preserve the peace, national unity and the indivisibility of the Republic;

(b) secure the well-being of the people of the Republic;

(c) provide effective, transparent, accountable and coherent government for the Republic as a whole;

(d) be loyal to the Constitution, the Republic and its people…”

The Housing Act, 1997
6.1.22 Section 2(1)(a) and (b) of the Housing Act, 1997 (the Housing Act), provides inter alia that:

“(1) National, provincial and local spheres of government must-

(a) Give priority to the needs of the poor in respect of housing development; and

(b) Consult meaningfully with individuals and communities affected by housing development.”

6.1.23 Section 7(1) of the Housing Act states that every provincial government must, after consultation with the provincial organisations representing municipalities as contemplated in section 163(a) of the Constitution, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of the national housing policy.

6.1.24 Section 7(2) of the Housing Act states that for the purposes of subsection (1) every provincial government must, through its MEC:

“(a) determine provincial policy in respect of housing development;
(b) promote the adoption of provincial legislation to ensure effective housing delivery;
(c) take all reasonable and necessary steps to support and strengthen the capacity of municipalities to effectively exercise their powers and perform their duties in respect of housing development;
(d) co-ordinate housing development in the province;
(e) take all reasonable and necessary steps to support municipalities in the exercise of their powers and the performance of their duties in respect of housing development;
(f) when a municipality cannot or does not perform a duty imposed by this Act, intervene by taking any appropriate steps in accordance with section 139 of the Constitution to ensure the performance of such duty…”

The National Housing Code, 2009

6.1.25 The National Housing Code 2009 (National Housing Code), introduced in 1994, sets out the underlying policy principles, guidelines, norms and standards that apply to various government housing assistance programmes. The purpose of the National Housing Code is to provide an easy to understand overview of the various housing subsidy instruments available to assist low income households to access adequate housing. A detailed description of the policy principles, guidelines, qualification criteria, norms and standards are available and codified in the National Housing Code.

6.1.26 There are five main role-players within the Housing Programmes, namely the National Department, the Provincial Department, Municipalities, Traditional Councils and the Land Administration Committees. Part C of the Housing Code provides certain generic provisions, which apply to the Housing Programmes that need to be considered when planning housing assistance measures. Furthermore, this part of the National Housing Code includes the Housing Subsidy System (HSS).

Analysis
6.1.27 The effect of section 26 of the Constitution as set out above, is that everyone in the community of the EC has the right to have access to adequate housing and that the ECDHS has a constitutional responsibility to put measures in place to progressively realise this right. The protection and concomitant duty of the state in terms of section 26 of the Constitution is to progressively assist the poor in the EC with access to housing. Firstly, against homelessness and secondly in getting proper shelter, where they can live with dignity.

6.1.28 Principles of co-operative governance and intergovernmental relations envisaged in section 41 of the Constitution entail that the housing projects shall be undertaken on the basis of a partnership of co-operative governance between the relevant municipalities, the Provincial Department, and the National Department.

6.1.29 The ECDHS appointed Cort and Fred/ Sivivane Consultants to construct 1500 units in Maritseng in 2012, including Ramohlakoane village. Only 1000 units were completed and handed over to beneficiaries by ECDHS. The remaining 500 units were left incomplete in 2015 when the project ceased with houses on various stages of construction, while fully under the administration of ECDHS and to date the project remains incomplete.

6.1.30 Site inspections conducted by the Investigation Team in Ramohlakoane village at Matatiele confirmed that the construction of RDP houses was incomplete. The RDP housing structures only had foundation slabs or at wall plate level and were left without roofs since 2012.

6.1.31 Other villages inspected by the Investigation Team such as Mphetshwa in Mbizana, Hofisi and Moyeni in Mount Frere, Ndakeni in
Ntabankulu, Cebe and Rabula Administrative areas as well as Tyutyu Village in King Williams Town do not have RDP or government subsidised housing at all, despite being dominated by poor communities, who qualify for government housing subsidy.

6.1.32 The investigation revealed that residents in the abovementioned stated villages have constantly applied for government housing subsidy schemes several years ago, however, they have not yet been assisted and they remain without proper housing and no feedback was provided by the relevant authorities.

6.1.33 Natural disasters, such as floods, have exacerbated the need for government assistance by some residents in these mentioned areas, as their houses were destroyed by natural disasters.

6.1.34 The ECDHS acknowledged that several communities remain with no housing subsidy even though there is a need for same, however, ECDHS indicated that the available budget is not sufficient to provide units and services to all qualifying beneficiaries.

6.1.35 In the matter of City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another, the Constitutional Court has roundly rejected this kind of defence and stated that “determination of the reasonableness of measures within available resources cannot be restricted by budgetary and other decisions that may well have resulted from a mistaken understanding of constitutional or statutory obligations”. In other words, it is not sufficient for the ECDHS to state
that it has not sufficient budget for something, if it should indeed have planned and budgeted for it in the fulfilment of its obligations.¹⁰

6.1.36 The Public Protector takes note that the application for seven hundred (700) units for Mphetshwa are included in the departmental business plan for 2024/2025FY and that procurement for 36 units in Ndakeni, Ntabankulu is underway to appoint a contractor. It is also noted that a tender for the construction of 160 units in Moyeni location will be advertised in September 2023.

Conclusion

6.1.37 Based on the submissions made by various complainants, observations made by the Investigation Team during site inspections and responses received from the ECDHS, it is evident that despite continuous efforts and planning by ECDHS, a current backlog of approximately 600,000 in housing projects exist in the EC province. This implies that the ECDHS has not taken adequate measures to provide deserving beneficiaries with government subsidised housing or any other alternative structures appropriate for human habitation.

6.1.38 This has a direct prejudicial impact on the community's constitutional rights to adequate housing, particularly to the poor people, whose livelihoods and dignity are affected, as they cannot afford to build their own houses.

6.1.39 Therefore, the ECDHS has not been able to eliminate prejudice suffered by people in need by providing them with housing as required by the Constitution and national legislation.

¹⁰ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011) at paragraph 74.*
FINDINGS

6.1.40 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether the provision of the housing subsidies by the Eastern Cape Department of Human Settlements in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law; if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.1.40.1 The allegation that the provision of housing by the ECDHS is not delivered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

6.1.40.2 The ECDHS has acknowledged during the course of the investigation and in response to the Notice, the rising need to construct housing units for the deserving beneficiaries and further indicated its commitment to continuously conduct social facilitation about housing subsidy programmes, application for funding processes and awareness in relation to opportunities related to the housing sector with different stakeholders and potential beneficiaries.

6.1.40.3 In this regard, the application for seven hundred (700) units for Mphetshwa has been included in the ECDHS’ business plan for the 2024/2025 financial year and Ndakeni is under procurement to appoint a contractor to build thirty six (36) housing units, whilst in Moyeni
location one hundred and sixty (160) houses will go out on tender during September 2023.

6.1.40.4 Notwithstanding the above commitment and plans by ECDHS, the investigation has revealed that whilst there are efforts by ECDHS to deliver housing subsidy programmes to people in need, the provision of government subsidised houses remains inadequate and to a large extent marred by administrative lapses such as the termination of contracts of contractors already appointed and financial constraints.

6.1.40.5 Site inspections conducted by the Investigation Team in Ramohlokakoane village at Matatiele on 18 May 2021, revealed the existence of incomplete RDP housing structures built by ECDHS, with only foundation slabs or wall plates, whilst other houses were constructed only up to the walls and left without a roof since 2012. The ECDHS had appointed Cort and Fred/ Sivivane consults for Maritseng one thousand five hundred (1500) units in 2012, whereby only one thousand (1000) units were completed and handed over to beneficiaries by ECDHS.

6.1.40.6 The remaining five hundred (500) units were left incomplete in 2015, when the project ceased with houses on various stages of construction, whilst fully under the administration of ECDHS and at the time of this report, the project remains incomplete. The evidence at the disposal of the Public Protector indicates that the request to Provincial Treasury for a variation order to complete the said project by the appointed contractor was rejected.

6.1.40.7 The Public Protector acknowledges the ECDHS' planning and continuous efforts to respond to housing needs in respect of other villages visited by the Investigation Team, such as Mphetshwa in Mbizana, Hofisi and Moyeni in Mount Frere, Ndakeni in Ntabankulu,
Cebe and Rabula Administrative areas, as well as Tyutyu Village in King Williams Town that do not have RDP or government subsidised houses.

6.1.40.8 The residents in the above-mentioned villages have constantly applied for government housing subsidy schemes many years ago, however, they have not yet been assisted and they remain without proper housing and no feedback was provided by the relevant authorities. Natural disasters such as floods have exacerbated the conditions of some residents in these mentioned areas, as their houses were destroyed by natural disasters, thereby making it more necessary for government assist them with housing schemes.

6.1.40.9 Departmental budget constraints were advanced by the ECDHS as another factor impeding on its ability to adequately deliver on all the housing needs for the residents in the province and contributing to the backlog. The ECDHS remains the authority with the direct mandate for delivery of housing related needs in the EC province. The backlogs and deficiencies on the service delivery for housing in the EC province is a joint reflection of improper intergovernmental relations in all affected spheres of government. The delivery of housing needs requires a buy-in of other affected organs of state, such as municipalities and a mutual recognition of the pressing need to address the housing needs in the EC province, as contemplated in section 41(1) of the Constitution.

6.1.40.10 Despite continuous efforts and planning by ECDHS, a current backlog of approximately six hundred thousand (600 000) in housing projects exist in the EC province, which suggests that the ECDHS has not placed adequate measures to provide deserving beneficiaries with government subsidised housing units or any other alternative structures, appropriate for human habitation.
6.1.40.11 Due to the existence of poor, destitute and qualifying beneficiaries, who remain without government subsidised houses in the EC province, ECDHS has not been able to minimise prejudice to affected people and to ensure effective delivery of its obligations in terms of section 26 of the Constitution and sections 2 and 7 of the Housing Act.

6.1.40.12 The conduct of the ECDHS accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

REMEDIAL ACTION

6.1.41 Having regard to the evidence, the regulatory framework determining the standard that ECDHS should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Head of the ECDHS through the MEC

6.1.41.1 Within thirty (30) calendar days from the date of this report and in line with the ECDHS’s statutory obligations imposed by section 26(2) of the Constitution and section 7 of the Housing Act as amended, commence with an audit relating to housing needs to identify qualifying and preferential beneficiaries in Alfred Nzo District, Amathole District, Sarah Baartman District, Joe Gqabi District, Chris Hani District and Tyutyu village under the Buffalo City Metropolitan Council and provide quarterly progress reports to the Public Protector;

6.1.41.2 Within sixty (60) calendar days from the date of this report and in line with the ECDHS’s statutory obligations set out in section 26(2) of the
Constitution and section 7 of the Housing Act as amended, submit to the Public Protector a detailed Project Implementation Plan, with a risk matrix, relating to housing needs identified in this report in Alfred Nzo District, Amathole District, Sarah Baartman District, Joe Gqabi District, Chris Hani District and Tyutyu village under the Buffalo City Metropolitan Council;

The MEC responsible for Housing and Human Settlements in the EC

6.1.41.3 Within ninety (90) calendar days from the date of this report, ensure executive oversight by way of monitoring compliance with the statutory obligations contemplated in terms of Section 26(2) of the Constitution, and Section 7 of the Housing Act as amended by the ECDHS and further provide the Public Protector with a copy of the Multi-Year Plan in respect of the execution of the provincial housing programmes for the province; and

The Minister responsible for Housing and Human Settlements

6.1.41.4 Within ninety (90) calendar days from the date of this report take steps to monitor, in cooperation with the MEC, the performance of the ECDHS in relation to housing delivery goals and budgetary goals as well as assist the province to develop the administrative capacity required for the effective performance of its duties in respect of housing development as contemplated in section 3(2) of the Housing Act.
6.2 Whether the provision of policing services by the South African Police Service within certain villages in the Eastern Cape Province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

Common cause

6.2.1 SAPS is the national police service of the Republic of South Africa, which is structured and constituted to function at the national, provincial and, where appropriate, local spheres of government.

Issue in Dispute

6.2.2 The issue for the Public Protector’s determination is whether the provision of police services by SAPS within certain villages in the EC province is delivered in a progressive and effective manner as contemplated in the Constitution and the law.

MATATIELE

Ms Tsese’s version

6.2.3 On 18 May 2021, Ms Tsese alleged that law enforcement in Matatiele and Maluti is very poor, as a result, the area is affected by gender-based violence (GBV), murders, housebreaking and theft cases are on the rise. She stated that the detection, arrest and conviction rate is very poor and SAPS often fails to respond to calls by the community, due to an alleged lack of police vehicles. According to Ms Tsese, the Maluti
SAPS always complains about the lack of vehicles to enable them to attend crime scenes.

CENTANE (AMATHOLE REGION)

Mr Soga’s version

6.2.4 On 26 July 2021, Mr Soga alleged there is only one police station servicing all the locations in the whole district of Centane. He stated that police take long to respond to incidents of crime, because of the distance and sometimes due to lack of resources at the police station. He stated for example that, Cebe Administrative Area is approximately 26 kilometres from town and if a crime is committed in the area, police normally take up to six hours to arrive at the crime scene. Sometimes they don’t even arrive due to bad conditions of the road or as a result of a shortage of police vehicles.

WILLOWVALE

Mr Manyinyi’s version

6.2.5 On 27 July 2021, Mr Manyinyi alleged that there is only one police station servicing all the locations in the whole district of Willowvale. He further alleged that the police take longer to respond when called by community members affected by crime. He stated further that the poor condition of the roads also exacerbates the situation and sometimes the community resorts to taking the law into their own hands, because of the delay by police to respond to their calls for police assistance.

NGQELENI (OR TAMBO REGION)
Mr Mnguni's version

6.2.6 The Investigation Team received a complaint from Mr M Mnguni (Mr Mnguni), of Mnyameni location in Ngqeleni with allegations that the Libode SAPS was unduly delaying to investigate a case of murder and robbery, which occurred at Ntlaza location in December 2017. He further alleged that a case of robbery and murder was opened at Libode Police Station under CAS 102/12/2017 and was investigated by Detective Gawulekapa after his cousin went missing on the night of 14 December 2017.

6.2.7 He further alleged that a suspect was questioned by the police after the incident but was later released. Mr Mnguni stated that since then, there has been no feedback and/or update on the status of the investigation and the family is not satisfied. They approached the Station Commander for updates on the matter, however, they did not get satisfactory answers.

Response by the EC SAPS

6.2.8 On 16 March 2022, the Public Protector raised the allegations with the SAPS Eastern Cape Provincial Commissioner: Lieutenant General NL Mene (General Mene), to afford her an opportunity to respond to the allegations. SAPS responded to the allegations as per a letter dated 30 May 2022, signed by Brigadier SA Genqese of Eastern Cape Supply Chain and Facility Management (Brigadier Genqese), and stated inter alia that:

6.2.8.1 According to the SAPS’s records in Matatiele, during April 2021, sixty (60) cases were reported, of which twenty six (26) were taken to court.
This accounts for approximately 45% of the reported cases and out of that, eight cases were withdrawn at court;

6.2.8.2 Fourteen (14) vehicles are allocated to the Matatiele Police Station, but that the actual vehicles at the station are twelve (12), meaning that two vehicles are unaccounted for. This shortage is being investigated and will be addressed with the next batch of vehicles to be allocated, in the next financial year. He further indicated that the roads are gravel, impassable and quite bad, and this at times affects the reaction time by SAPS in terms of responding to complaints;

6.2.8.3 With regard to the increase in GBV related cases, the table below shows the actual incidents of GBV cases reported in the 2021/22 financial year:

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<td>October 2021</td>
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<td>November 2021</td>
<td>8</td>
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<td>December 2021</td>
<td>8</td>
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<tr>
<td>January 2022</td>
<td>4</td>
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<td>February 2022</td>
<td>15</td>
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<tr>
<td>March 2022</td>
<td>9</td>
</tr>
</tbody>
</table>
Imbizo on GBV cases was held on 18 May 2021 and in June 2021 and further quarterly awareness campaigns are planned for Matatiele as indicated in the table below:

| ACTIVITY |
|------------------------|------------------|-----------------|------------------|
| Vulnerable Group and GBVF Awareness | 18 May 2022 | Awareness campaign on GBVF | Modisane SPS |
| Vulnerable Group and GBVF Awareness | 14 June 2022 | Awareness campaign on Human Trafficking | Farms |
| Vulnerable Group and GBVF Awareness | 13 July 2022 | Awareness campaign on GBVF | Sector 1 |
| Vulnerable Group and GBVF Awareness | 17 August 2022 | Awareness campaign on sexual assault | Bokamoso Primary |
| Vulnerable Group and GBVF Awareness | 21 September 2022 | Awareness campaign on GBVF | Sector 3 |
| Vulnerable Group and GBVF Awareness | 19 October 2022 | Awareness campaign on GBVF | Khanya-Naledi Combined School |
| Vulnerable Group and GBVF Awareness | 22 November 2022 | Awareness campaign on GBVF | Matatiele Primary School |

<table>
<thead>
<tr>
<th>FIELD</th>
<th>DATE</th>
<th>OBJECTIVE</th>
<th>VENUE</th>
<th>ROLE PLAYER</th>
<th>TARGET GROUP</th>
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</thead>
<tbody>
<tr>
<td>ACTIVITY</td>
<td>DATE</td>
<td>OBJECTIVE</td>
<td>VENUE</td>
<td>ROLE PLAYER</td>
<td>TARGET GROUP</td>
</tr>
<tr>
<td>Vulnerable Group and GBVF Awareness</td>
<td>18 May 2022</td>
<td>Awareness campaign on GBVF</td>
<td>Modisane SPS</td>
<td>SAPS</td>
<td>Learners</td>
</tr>
<tr>
<td>Vulnerable Group and GBVF Awareness</td>
<td>14 June 2022</td>
<td>Awareness campaign on Human Trafficking</td>
<td>Farms</td>
<td>SAPS</td>
<td>Domestic Workers</td>
</tr>
<tr>
<td>Vulnerable Group and GBVF Awareness</td>
<td>13 July 2022</td>
<td>Awareness campaign on GBVF</td>
<td>Sector 1</td>
<td>SAPS</td>
<td>Community</td>
</tr>
<tr>
<td>Vulnerable Group and GBVF Awareness</td>
<td>17 August 2022</td>
<td>Awareness campaign on sexual assault</td>
<td>Bokamoso Primary</td>
<td>SAPS</td>
<td>Learners</td>
</tr>
<tr>
<td>Vulnerable Group and GBVF Awareness</td>
<td>21 September 2022</td>
<td>Awareness campaign on GBVF</td>
<td>Sector 3</td>
<td>SAPS</td>
<td>Community</td>
</tr>
<tr>
<td>Vulnerable Group and GBVF Awareness</td>
<td>19 October 2022</td>
<td>Awareness campaign on GBVF</td>
<td>Khanya-Naledi Combined School</td>
<td>SAPS</td>
<td>Educators and Learners</td>
</tr>
<tr>
<td>Vulnerable Group and GBVF Awareness</td>
<td>22 November 2022</td>
<td>Awareness campaign on GBVF</td>
<td>Matatiele Primary School</td>
<td>SAPS</td>
<td>Educators and Learners</td>
</tr>
<tr>
<td>ACTIVITY</td>
<td>DATE</td>
<td>OBJECTIVE</td>
<td>VENUE</td>
<td>ROLE PLAYER</td>
<td>TARGET GROUP</td>
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<tr>
<td>Vulnerable Group and GBVF Awareness</td>
<td>06 December 2022</td>
<td>Awareness campaign on sexual assault</td>
<td>Sector 2</td>
<td>SAPS</td>
<td>Community</td>
</tr>
<tr>
<td>Vulnerable Group and GBVF Awareness</td>
<td>24 January 2023</td>
<td>Awareness campaign on GBVF</td>
<td>Farms</td>
<td>SAPS</td>
<td>Domestic Workers</td>
</tr>
</tbody>
</table>

6.2.8.5 The table below indicates the Action Plan for SAPS in the EC province, to address GBV cases in the 2022/23 financial year:

<table>
<thead>
<tr>
<th>PROVINCIAL 365 DAYS ACTION PLAN TO ADDRESS GENDER BASED VIOLENCE AND VULNERABLE GROUPS 2022/2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACTIVITY</td>
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<tr>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>Child Protection Week</td>
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<tr>
<td>GENDER BASED VIOLENCE AND FEMICIDE AWARENESS SS</td>
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<tr>
<td>Capacity Building</td>
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<td>Capacity Building</td>
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<td>Capacity Building</td>
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<tr>
<td>Operation Basadi Women’s Month</td>
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<tr>
<td>Awareness Campaign</td>
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<tr>
<td>Compliance visit</td>
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<td>------------------</td>
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</tbody>
</table>

| 16 Days of Activism | To be confirmed | Launch of 16 days of Activism in fight against GBVF on women and children | To be confirmed | Provincial Commissioner Visible Policing Women’s Network Men For Change JMC District Commissioner | Brig Mgwebi Col Mahlelehlele |

| Closure 16 Days of Activism | To be confirmed | Build up Operations and awareness campaigns towards Closure of 16 Days of Activism | To be confirmed | Provincial Commissioner Visible Policing Women’s Network Men For Change JMC District Commissioner | Brig Mgwebi Col Mahlelehlele |

**Vehicle allocation per police station**

6.2.9 The allocated vehicles at Maluti Police Station are fourteen (14) and the actual vehicles on hand are fifteen (15), thus there is a surplus of one vehicle.

6.2.10 The allocated vehicles at Centane police station are fifteen (15) and the actual vehicles on hand are twenty (20). There is a surplus of five vehicles.

6.2.11 It is easy to see a police vehicle from a distance and due to bad roads, the vehicles take time to arrive at their destination, resulting in the perpetrator fleeing the scene. Qolorha Police Station does not have a shortage of vehicles, but a shortage of workforce. Its policing precinct is also experiencing burglaries at the cottages along the coast, as these cottages are holiday homes and are unoccupied. There was a
satellite police station at Qolorha, but due to a shortage of workforce, the station was closed down.

6.2.12 In Willowvale Police Station, there are twelve (12) allocated vehicles and the actual vehicles on hand are fourteen (14). There is a surplus of two vehicles. The roads are gravel and are quite bad and this, at times, affects the reaction time of responding to complaints. The municipality has to assist in this matter by levelling the main roads in the villages. Willowvale does not have mobile police stations.

6.2.13 Regarding CAS 102/12/2017 which was opened at Ngqeleni Police Station in December 2017. The Detectives of Libode investigated the case, but no information or evidence was found linking anyone to the murder. The case docket was sent to the Public Prosecutor for a decision on whether anyone could be prosecuted. The Public Prosecutor declined to prosecute, as there was no information available regarding who killed the deceased. This development was conveyed to Zukile Mseswa a family member and the case docket was closed on 18 February 2020.

6.2.14 The human resource shortage is a problem for most police stations, due to early retirements, deaths through Covid-19 and resignations. Recruitment has been on hold since 2019 and training of recruits did not take place for three years. There is a significant number of students who have been sent for training and they will return in December 2022. These students will be deployed to different police stations and units in an effort to fill the vacant posts.

*Infrastructure related challenges in Eastern Cape Police Station*

6.2.15 SAPS in the province is also faced with challenges related to infrastructure and the conditions of certain police station buildings
being dilapidated, due to non-repair. Most of the police stations in the province are accommodated in old houses and are in need of major renovations. The EC province is largely rural which hampers the delivery of police services since there are no street numbers and the police use landmarks for directions to crime scenes. Access roads are often in poor condition and are impassable and this affects the response time of the police.

6.2.16 The following table highlights the infrastructure-related challenges in some police stations in the EC province:

<table>
<thead>
<tr>
<th>POLICE STATION</th>
<th>CHALLENGE</th>
<th>COMMENTS/ACTION BY THE SAPS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. CHATTY</td>
<td>The station park homes were complete but were vandalised, air conditioners, and pipes were stolen. Poor fencing and no generator.</td>
<td>Brick wall fence erected, an order has been issued for the installation of a generator. Contractor will be possibly on site after 15th January 2022. The station will require opening. Brick wall fencing was completed and the generator was installed. The Head Office Team visited the Station on 01/06/2022 to compile specification for repairing the damaged Park Homes.</td>
</tr>
<tr>
<td>2. COFIMVABA</td>
<td>The park homes for TRT and Cluster office were completed with no fencing and they were vandalised, and poor workmanship caused cracks to the slabs and other park homes were sinking.</td>
<td>The Project is SAPS Head Office Project and Security guards are appointed. Still outstanding is the repairs and replacement of the stolen items and fencing. The suppliers were invited to tender for building of perimeter wall fence and the closing date was 31/05/2022 and now it is at evaluation process.</td>
</tr>
<tr>
<td>PARK HOMES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. MADEIRA</td>
<td>The Station is overcrowded and requires an upgrade.</td>
<td>A project has been registered by DPW to upgrade the station, but the station is built on municipal grounds and the</td>
</tr>
<tr>
<td>4. HLABABOMVU</td>
<td>Park homes that were erected by Division Supply Chain Management are at the station premises but not in use because electricity and water is not connected, there is no cement slab and the water drainage system is inadequate thus causing the area to flood when there is heavy rain. The park homes are not in use and were never used since they were built.</td>
<td>municipality indicated to DPW that they want their site back as it is in the middle of the Town on the main street and they have the intention to have a taxi rank on the premises. DPW is still engaging the municipality and they will give feedback to SAPS on an alternative site to build a new police station if the municipality insists on taking the site back. With regard to the park homes Division SCM are busy with investigation for the repairs on the park homes. Head Office sent a Team of Experts on 27/06/2022 to compile scope of work for repairs, plumbing and electricity at the Station and Park Homes.</td>
</tr>
<tr>
<td>The single quarters at Hlababomvu were completely burnt by fire and DPW indicated that the installation of new park homes will be treated as an emergency and will be completed by the end of December 2020. WCS 055929. Repairs and renovation, drilling of water projects.</td>
<td>Designs and specification have been completed. Project was not included in the procurement plan for 2021/22 and submission has been made to Head Office (HO) for inclusion. It is still an emergency but due to the cost of the project, it has to go through a normal tender process. Follow-up was made with HO and resubmission was requested and was submitted on 30/11/2021. The ownership of the site where the Police Station is built is unknown, so the projects could not be executed as a site clearance is required. DPW indicated that they are engaging OR Tambo District Municipality to sign a memorandum of understanding. The</td>
<td></td>
</tr>
</tbody>
</table>
### 5. ZWIDE

The Station is accommodated in a former rental office of Zwide Police Station. There are only two offices available and are insufficient for the personnel. A procurement instruction for alternative accommodation was issued to DPW Head Office for alternative accommodation.

Elumanyweni Primary School which is vandalised was visited by Division SCM, DPW and Provincial Facility and was identified as suitable to accommodate Zwide Police Station. The Provincial Commissioner confirmed the procurement or leasing of the school to accommodate SAPS Zwide minute 21/2/2/1 dated 2020-06-10. Division SCM referred the matter to DPW Head Office to handle and has been sending requests for progress and coping this office. There is currently no progress reported. A request for progress was sent by this office on 2022-01-05. Procurement Instruction was issued on 2022-04-04.

### 6. MSOBOMVU

The Station is overcrowded and requires an upgrade. When there are heavy rains, water floods run through the CSC to the office. Repairs and renovations are required.

In a meeting held on 10 August 2021 with DPWI and SAPS it was concluded that repairs and upgrade scope is to be undertaken in the facility. Coega Development Corporation awaits a Procurement Instruction to commence project planning. This is the only status received from DPWI.

### 7. NGQAMAKHWE

A contractor was appointed by DPWI and the contractor absconded without completing the project. The building has been Division Supply Chain Management intervened by erecting park homes at a different site.

DPWI proposed that a new site be identified so as to build a new police station but Head office indicated that DPWI must account for the
<table>
<thead>
<tr>
<th>District</th>
<th>Description</th>
<th>Details</th>
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</thead>
<tbody>
<tr>
<td>8. NGANGELIZWE</td>
<td>A project is registered for repairs to the police station including electrical and civil works</td>
<td>A tender has been awarded and the contractor signed the contract and appointment on 2021/10/07. Construction is in progress, overall Progress is 10%, Time lapsed is 16% and expenditure is 3.2%. The anticipated practical completion is 25/01/2024. This is the latest status from the Department of Public Works.</td>
</tr>
<tr>
<td>9. THORNHILL</td>
<td>The Station is accommodated in a leased building and is overcrowded. The condition of the building is bad and there is no proper fencing and/or gates for access control.</td>
<td>DPWI has been contacted to engage the Landlord to repair the building and erect a proper fence with gates. According to leasing the landlord indicated that he won't be able to. This office is currently engaging with the Department of Public Works to resolve a way forward.</td>
</tr>
<tr>
<td>10. NGQELENI</td>
<td>Painting of cells, installation of guard rails, gate, motor gate and intercom.</td>
<td>DPWI submitted a request for allocation of funds to DPWI Head Office, awaiting allocation. Quotation documents were circulated to bidders by the Department of Public Works on 2022-05-22. Department of Public Work has not provided turnaround dates.</td>
</tr>
<tr>
<td>11. MOUNT FLETCHER</td>
<td>A project was registered for repairs and renovation but the</td>
<td>DPWI indicated that a completion of the project scope will be presented and a new project will be registered to</td>
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<tr>
<td><strong>12. COFIMVABA</strong></td>
<td>Repairs and Renovation of the entire complex including electrical and civil works. Contract terminated due to non-performance by the contractor.</td>
<td>The Project Manager is consulting with legal services and finance regarding how to deal with the contract that was terminated so that SAPS can be able to procure a replacement. The procurement of a contract for the installation of gates was delayed by clarity on the implementation of circular 160 of 2021. The advert will take place once the moratorium to advertise new tenders has been lifted by Treasury. The request for advertisement was submitted. The anticipated tender date is 2022-06-30 but will be rescheduled due to finalization and confirmation of funds that still need to be requested after finalization of the cost estimate.</td>
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<tr>
<td><strong>13. MBIZANA</strong></td>
<td>Mbizana repairs and maintenance Of Mbizana Crime Intelligence Building.</td>
<td>This project is over-running and the contractor is on penalties and a draft submission for termination has been prepared for approval by legal services.</td>
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<tr>
<td><strong>14. LUSIKISIKI</strong></td>
<td>Upgrading of Electricity</td>
<td>Site was visited on 14/11/2019 to assess the site conditions and verify the current electricity demand for the application of a new ESKOM supply. A report was sent to Key Account Management to make an application to ESKOM for a new connection. Engagements on a continuous basis are done with Eskom. However, ESKOM still has a challenge in providing a quotation.</td>
</tr>
<tr>
<td>Location</td>
<td>Details</td>
<td>Status/Action</td>
</tr>
<tr>
<td>---------------</td>
<td>-------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>STUTTERHEIM</td>
<td>Incomplete repairs &amp; renovations at No. 37 Murray Street</td>
<td>The contract was terminated due to contractor non-performance and the project will go on tender again. Department of Public Works: Internal QS busy finalising the Bill of Quantities and new estimate. The procurement process will commence and tenders will be invited in early July 2022.</td>
</tr>
<tr>
<td>WHITTLESEA</td>
<td>Whittlesea police complex Erf 166 Main road: repairs and maintenance of electrical, civil, mechanical and structural elements to the complex.</td>
<td>Progress 53% not satisfactory. Extension of time granted until 14 March 2022. An extension of time was submitted but returned with comments from the Chief Director on 26/2/2022. The contractor is in default and penalties are being applied. No allocation was allowed for contractor or consultant.</td>
</tr>
<tr>
<td>KINKELBOS</td>
<td>Kinkelbos police complex farm 301 PTN4: repairs and maintenance to civil, electrical, structural &amp; mechanical elements to the complex.</td>
<td>Project estimate exceeds the approved allocation. Additional funding has been requested.</td>
</tr>
<tr>
<td>KAREEDOUW</td>
<td>Kareedouw police complex Erf 141 (dum1) 143 and 144: repairs and maintenance of electrical, mechanical, civil and structural elements</td>
<td>Project estimate exceeds the approved allocation. Additional funding has been requested.</td>
</tr>
<tr>
<td>QUEENSTOWN</td>
<td>Upgrading and newly build accommodation including complete repairs and</td>
<td>Contractor was appointed and terminated due to non-performance and a new contractor to be appointed. Project recommendations were</td>
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<tr>
<td><strong>20. JOUBERTINA</strong></td>
<td>Joubertina complex Erf 1200: repairs and maintenance of electrical, civil, mechanical and structural elements of the complex.</td>
<td>Project was on hold based on the court order, but exemption was issued on 3 April 2022.</td>
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<tr>
<td><strong>21. EAST LONDON</strong></td>
<td>Woodbrook Erf 18939, 19008, 19268, 19273 and 19275 Military Base: repairs and maintenance of electrical, mechanical, civil and structural elements to the base.</td>
<td>The contractor was appointed and terminated due to non-performance and a new contractor to be appointed.</td>
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<tr>
<td><strong>22. KWAZAKHELE</strong></td>
<td>Complex condition base maintenance on civil, electrical and structural elements of the station and official quarters.</td>
<td>Contract was terminated and DPWI awaiting a court date.</td>
</tr>
<tr>
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<tr>
<td><strong>23. TYEFU</strong></td>
<td>Complex repairs and maintenance of electrical, civil, mechanical, and structural elements of the complex.</td>
<td>Delay due to the appointment of the RBAC members.</td>
</tr>
</tbody>
</table>

**6.2.17** Brigadier Genqese further submitted to the Investigation Team a list of police stations without electricity. He indicated that SAPS Head Office visited the police stations listed below with Eskom to conduct electricity installation assessments:

(a) Afsondering
(b) Lukholweni  
(c) Zamuxolo  
(d) Katkop  
(e) Mbizeni

Response to a Notice in terms of section 7(9)(a) of the Public Protector Act

6.2.18 A Notice dated 02 June 2023 was issued to SAPS. Major General Z.M Dladla in terms of section 7(9)(a) of the Public Protector Act. General Dladla responded to the Notice on 22 June 2023 and stated, *inter alia*, that:

6.2.18.1 According to the SAPS’ records in Matatiele, reported serious crimes decreased by fifty six (56) or 8.1%. A total of six hundred and ninety five (695) crimes were reported during the previous financial period of the 2021/2022 cycle in comparison to the six hundred and thirty nine (639) reported crimes during 2022/2023 financial period;

6.2.18.2 Fourteen (14) vehicles have been allocated to Matatiele;

6.2.18.3 According to the SAPS’ records in Maluti, reported serious crimes decreased by ninety six (96) or 7.7 %. A total of one thousand two hundred and forty (1240) crimes were reported during the previous financial period of the 2021/2022 cycle in comparison to the one thousand one hundred and forty four (1144) reported crimes during 2022/2023 financial period;
6.2.18.4 Crimes in Maluti under sexual offences reflected the following, i.e. rape increased by seventeen (17) cases, sexual assault increased by five (05) cases, attempted sexual offences decreased by five (05) cases, whilst contact sexual offences have no increase, it is zero (0) cases;

6.2.18.5 Maluti station is allocated fourteen (14) vehicles and the actual vehicles granted are nineteen (19) vehicles, therefore the station has a surplus of four (04) vehicles;

6.2.18.6 Fifteen (15) vehicles have been allocated to Centane and the actual vehicles at the station are seventeen (17) vehicles, therefore the station has a surplus of two (02) vehicles;

6.2.18.7 Centane SAPS is granted ninety two (92) posts and has seventy six (76) actual members with a shortage of sixteen (16) members and this is due to the fact that the fixed establishment of Centane was increased in 2020/2021 financial year to address crime in the area;

6.2.18.8 In a recruitment project 10 000 (Project 10 000) for the financial year 2022/2023 one (01) Student Constable was allocated to Centane SAPS' Qolorha Satellite Police Station;

6.2.18.9 Willowvale police station is allocated twelve (12) vehicles and the actual vehicles granted is eleven (11). Therefore, the station has a shortage of one (01) vehicle which will be addressed in the current financial year;

6.2.18.10 A mobile CSC is allocated to Willowvale as SAP No. BVB 399 B. The mobile vehicle will address the distance between the police station and communities as it will visit communities directly;
6.2.18.11 In relation to the complaint of Mr Mnguni of Mnyameni location in Ngqeleni with allegations that the Libode Police Station was unduly delaying to investigate a case of murder and robbery, which occurred at Ntlaza location in December 2017, there are still no developments regarding the case. As soon as further information is received the case will be reopened;

6.2.19 General Dladla submitted the following updated table indicating improvements and the current status of infrastructure related challenges in connection with certain police stations as follows:

<table>
<thead>
<tr>
<th>POLICE STATION</th>
<th>CHALLENGE</th>
<th>STATUS/PROGRESS TO DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. CHATTY</td>
<td>The station park homes were complete but were vandalised, air conditioners, and pipes were stolen. Poor fencing and no generator.</td>
<td>The station park home building is complete and was opened by the Minister of Police on 26-05-2023.</td>
</tr>
<tr>
<td>2. COFIMVABA</td>
<td>The park homes for TRT and Cluster office were completed with no fencing and they were vandalised, and poor workmanship caused cracks to the slabs and other park homes were sinking.</td>
<td>A contractor for fencing the whole site has been appointed and is working on site.</td>
</tr>
<tr>
<td>PARK HOMES</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. MADEIRA</td>
<td>The Station is overcrowded and requires an upgrade. Park homes that were erected by Division Supply Chain Management are at the station premises but not in use because electricity and water is not connected, there is no cement slab and</td>
<td>Head Office sent a Team of Experts on 27/06/2022 to compile the scope of work for repairs, plumbing and electricity at the Station and Park Homes. The specification is complete and procurement is expected</td>
</tr>
<tr>
<td>4. HLABABOMVU</td>
<td>The single quarters at Hlababomvu were completely burnt by fire and DPWI indicated that the installation of new park homes will be treated as an emergency and will be completed by the end of December 2020. WCS 055929. Repairs and renovation, drilling of water projects.</td>
<td>WCS 055929 - Hlababomvu SAPS installation of Park Homes with tenders closed on 10/02/2023. WCS 049675 DPW has confirmed that the ownership of the site has been confirmed and awaiting approval of allocation of funding.</td>
</tr>
</tbody>
</table>
| 5. ZWIDE | The Station is accommodated in a former rent office of Zwide police station. There are only two offices available and are insufficient for the personnel. A procurement instruction for alternative accommodation was issued to DPWI Head Office for alternative accommodation. | Leasing of alternative accommodation

The need assessment was revised to a Level 10 as they were previously made on a Level 12 and referred to DPWI on 2022-10-10.

**DPWI site identification for building a new police station.**

DPWI approached the Local Authority, Nelson Mandela Bay |
Metro on 29th May 2023 to indicate/avail a site for the establishment of a police station in Zwide.

The Local Authority indicated that there is no land parcel (no land available) that has been earmarked for a police station in Zwide Township.

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<tbody>
<tr>
<td><strong>6. MSOBOMVU</strong></td>
<td>The Station is overcrowded and requires an upgrade. When there are heavy rains water floods and runs through the CSC to the office. Repairs and renovations are required.</td>
</tr>
<tr>
<td></td>
<td>No status update provided to the Public Protector</td>
</tr>
</tbody>
</table>

**7. NGQAMAKHWE**
A contractor was appointed by DPWI and the contractor absconded without completing the contract. The building is currently vandalised and could not be occupied.
A meeting was held between DPWI Head Office, DPWI Mthatha, SAPS Division SCM and SAPS Provincial Facility Management. A new site was presented by DPWI to relocate the police station. The necessary administration is being processed for the relocation of the station by DPWI and Division SCM.
DPWI is in discussion for security measures at the temporal police park home station.

**8. NGANGELIZWE**
A project is registered for repairs to police station WCS046701-Ngangelizwe Police Station repairs to police
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>including electrical and civil works.</strong></td>
<td><strong>station including electrical and civil.</strong> The site hand over was on 25 January 2022 and construction is in progress. The anticipated practical completion is 25/01/2024.</td>
<td></td>
</tr>
<tr>
<td><strong>9. THORNHILL</strong></td>
<td>The Station is accommodated in a leased building and is overcrowded. The condition of the building is not good and there is no proper fencing and/or gates for access control.</td>
<td>The station was visited by Division SCM and DPWI and upgrading of the station could not be resolved due to the lease amount and agreement as it is not market related and in addition SAPS cannot spend money on a leased building.</td>
</tr>
<tr>
<td><strong>10. NGQELENI</strong></td>
<td>Painting of cells, installation of guard rails, gate, motor gate and intercom.</td>
<td>WCS 055583 Painting of cells, installation of guard rails, gate, motor gate and intercom. Practical Completion was taken and Final</td>
</tr>
<tr>
<td><strong>11. MOUNT FLETCHER</strong></td>
<td>A project was registered for repairs and renovation but the contract was terminated due to non-performance of supplier.</td>
<td>DPWI to finalise the scope of work. They are revising the scope for the completion project.</td>
</tr>
<tr>
<td><strong>12. COFIMVABA</strong></td>
<td>Repairs and Renovation of the entire complex including electrical and civil works. Contract terminated due to non-performance of the contractor.</td>
<td>DPWI is busy with an emergency project for gate and fence. They are revising in the scope of work for the completion project.</td>
</tr>
<tr>
<td><strong>13. BIZANA</strong></td>
<td>Bizana repairs and maintenance Of Bizana Crime Intelligence Building.</td>
<td>The project is in the process of termination.</td>
</tr>
<tr>
<td><strong>14. LUSIKISIKI</strong></td>
<td>Upgrading of Electricity</td>
<td>DPWI awaiting confirmation of funding from Division SAPS.</td>
</tr>
<tr>
<td>15. <strong>STUTTERHEIM</strong></td>
<td>Incomplete repairs &amp; renovations at No. 37 Murray Street</td>
<td>DPW reported that the project does not have allocation for current and future financial years. It is anticipated that the tender for the completion contract will be advertised on receipt of allocation and availability of revised procurement forms by SCM at DPW.</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>16. <strong>WHITTLESEA</strong></td>
<td>Whittlesea police complex Erf 166 Main road: repairs and maintenance of electrical, civil, mechanical and structural elements to the complex.</td>
<td>The contractor is on penalties since 07 June 2022 and the contractor made a submission DPWI for suspension of penalties due to severe cash flow constraints. PE DPWI regional office made a submission to national DPWI for the suspension of penalties on 06 June 2023. Failure to suspend penalties will lead to termination.</td>
</tr>
<tr>
<td>17. <strong>KINKELBOS</strong></td>
<td>Kinkelbos police complex farm 301 PTN4: repairs and maintenance to civil, electrical, structural &amp; mechanical elements to the complex.</td>
<td>Planning stopped in 2022. Revised scope determined on site with SAPS and DOJ on 13 April 2023 to be confirmed in writing for authorisation of funds.</td>
</tr>
<tr>
<td>18. <strong>KAREEDOUW</strong></td>
<td>Kareedouw police complex Erf 141 (dum1) 143 and 144: repairs and maintenance of electrical, mechanical, civil and structural elements</td>
<td>WCS 051857 Revised scope determined on site with SAPS and DOJ on 13 April 2023 to be confirmed in writing for authorisation of funds. Financial tender date will have to be moved out once</td>
</tr>
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</tr>
<tr>
<td><strong>19. QUEENSTOWN</strong></td>
<td>Upgrading and newly build accommodation including complete repairs and renovations to station complex.</td>
<td>WCS 037667 According to DPWI The Accounting Officer is to make a decision whether to continue with the evaluation of cancellation the bid and re-invite bids.</td>
</tr>
<tr>
<td><strong>20. JOUBERTINA</strong></td>
<td>Joubertina complex Erf 1200: repairs and maintenance of electrical, civil, mechanical and structural elements of the complex.</td>
<td>Department of Public Works Head Office Consultants visited the site for scope of work and Town Planning was on site on 2023-06-01.</td>
</tr>
<tr>
<td><strong>21. EAST LONDON</strong></td>
<td>Woodbrook Erf 18939, 19008, 19268, 19273 and 19275 Military Base: repairs and maintenance of electrical, mechanical, civil and structural elements to the base.</td>
<td>Department of Public Works Head Office Consultants visited the site for scope of work and Town Planning was on site on 2023-06-01.</td>
</tr>
<tr>
<td><strong>22. KWAZAKHELE</strong></td>
<td>Complex condition base maintenance on civil, electrical and structural elements of the station and official quarters.</td>
<td>The legal matter served at the High Court on 21 November 2022. The Judgment was reserved with no indication of when it will be passed down. The latest from Legal Services is that the judgment has still not being passed down thus the department cannot action anything until the court makes a determination.</td>
</tr>
<tr>
<td><strong>23. TYEFU</strong></td>
<td>Complex repairs and maintenance of electrical, civil, mechanical, and</td>
<td>No status update provided to the Public Protector</td>
</tr>
</tbody>
</table>
6.2.20 General Dladla further submitted the following table as a status update regarding police stations with no electricity:

<table>
<thead>
<tr>
<th>POLICE STATION</th>
<th>CHALLENGE</th>
<th>CURRENT STATUS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. AFSONDERING</td>
<td>No Electricity</td>
<td>Electricity installed and station with electricity.</td>
</tr>
<tr>
<td>2. LUKHOLWENI</td>
<td>No Electricity</td>
<td>Electricity installed in the Area, SAPS Head Office visited site and did assessment electricity installation with Eskom. Quotations received by Division SCM expired and they have requested new Quotations from Eskom.</td>
</tr>
<tr>
<td>3. ZAMUXOLO</td>
<td>No Electricity</td>
<td>Electricity installed and station with electricity.</td>
</tr>
<tr>
<td>4. KATKOP</td>
<td>No Electricity</td>
<td>Electricity was installed in the area, the SAPS Head Office visited site and did an assessment of the electricity installation by Eskom. Quotations received by Division SCM expired and they have requested new quotations from Eskom.</td>
</tr>
<tr>
<td>5. MBIZENI</td>
<td>No Electricity</td>
<td>Electricity was installed in the area, the SAPS Head Office visited site and did an structural elements of the complex.</td>
</tr>
</tbody>
</table>
assessment of the electricity installation by Eskom.

Quotations received by Division SCM expired and they have requested new quotations from Eskom.

Applicable law


6.2.21 Section 205(1) of the Constitution stipulates that:

“(1) The national police service must be structured to function in the national, provincial and, where appropriate, local spheres of government”.

6.2.22 Section 205(3) of the Constitution outlines SAPS’s constitutional duties. It assigns to SAPS the following duties:

“The objects of the police service 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.”

6.2.23 Section 205(2) of the Constitution further provides that:

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11 Section 2 of the Constitution provides for the Supremacy of the Constitution indicates that it is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled.
“National legislation must establish the powers and functions of the police service and must enable the police service to discharge its responsibilities effectively, taking into account the requirements of the provinces.”

The South African Police Service Act, 1995

6.2.24 In turn, section 13 of the South African Police Service Act\(^\text{12}\) (SAPS Act), states that:

“(1) Subject to the Constitution and with due regard to the fundamental rights of every person, a member may exercise such powers and shall perform such duties and functions as are by law conferred on or assigned to a police official.”

CASE LAW

6.2.25 In *Glenister II v President of the Republic of South Africa and Others\(^\text{13}\)*, Moseneke DCJ and Cameron J, writing for the majority, stated that it is equally clear that the national police service, amongst other security services, shoulders the duty to prevent, combat, and investigate crime.

Analysis

6.2.26 In terms of the Constitution and the legislation cited above, SAPS is the primary agency of the state responsible for the discharge of crime.

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\(^{12}\) Act 68 of 1995.

\(^{13}\) *Glenister v President of the Republic of South Africa and Others* [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (*Glenister II*) at para 176.
prevention, crime investigation, general policing and the duty to protect the public in general.

6.2.27 The implication of the above legal provisions can be understood to render the function of policing, a national competency and a central duty of SAPS, which arises directly from the Constitution and the SAPS Act. Thus, one finds a positive obligation on members of SAPS to enforce the law, both in the Constitution and in the SAPS Act.\(^\text{14}\)

6.2.28 In terms of the evidence received from the SAPS, the Public Protector has noted a backlog and existence of poor infrastructure such as poor conditions of buildings within certain police stations, which require upgrading, repairs, refurbishment and the installation of other basic necessities such as electricity, fencing and gates.

6.2.29 A shortage of other resources such as vehicles in certain police stations in the province was noted by the Public Protector and equally conceded by SAPS’ management. Issues of shortages in connection with staff or human resources were also acknowledged by the SAPS management as another factor that negatively impacts on the delivery of police services in the province.

6.2.30 It was also observed by the Public Protector that a significant number of contracts have been terminated due to alleged poor performance by the contractors, thereby contributing to the delays in finalising renovations and repairs at certain police stations.

6.2.31 However, in response to the Notice issued by the Public Protector, major improvements by SAPS in terms of vehicle allocation, upgrading

\(^\text{14}\) Carmichele v Minister of Safety and Security (CCT 48/00) [2001] ZACC 22; 2001 (4) SA 938 (CC); 2001 (10) BCLR 995 (CC) (16 August 2001) at paragraph 62.
of building infrastructure and installation of electricity to certain police stations that were previously affected, were noticed. Notwithstanding these improvements made by SAPS, there are still police stations in the province that remain affected by poor infrastructure and insufficient resources as shown in the updated tables above, provided by General Dladla.

Conclusion

6.2.32 Based on the remaining backlog on the improvement and upgrading of poor infrastructure in certain police stations, as well as inadequate resources as shown in the table above, the Public Protector concludes that these deficiencies are likely to present a crippling effect on the efficient delivery of police services in the EC province. The infrastructural and resource deficits within the SAPS in the province remain a challenge and an impediment to the proper delivery of policing services as envisaged by the statutory obligations imposed on SAPS by the Constitution and the SAPS Act.

FINDINGS

6.2.33 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether the provision of policing services by the South African Police Service in certain villages in the Eastern Cape Province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the
Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.2.33.1 The allegation that the provision of policing services by the South African Police Service in certain villages in the EC province is not delivered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

6.2.33.2 In terms of the submission of the EC SAPS, in response to various complaints raised by residents, the following challenges facing the police in the EC province, were noted:

(a) The shortage of human resources remains a challenge for most police stations due to early retirements, deaths through Covid-19 and resignations as well as a moratorium on recruitment from 2019. This resulted in no new recruits being enlisted by SAPS for the past three (03) years;

(b) SAPS in the EC province is also faced with challenges related to poor building infrastructure with the conditions of certain police station buildings being dilapidated due to non-repair. Most of the police stations in the province operate from heritage houses and are in need of an overhaul, repair, upgrade and refurbishment;

(c) Some of the police stations in the EC province are either overcrowded and/or built only as Park-Homes such as Cofimvaba, Madeira, Chatty, Zwide, Hlababomvu, Ngqamakhwe, Msobomvu, Ngangelizwe, Nqeleni, Thornhill, Bizana, Mount Fletcher and others;
(d) Some of the police stations in the EC province were not connected to Eskom electricity and those include Afsondering, Lukholweni, Katkop, Mbizeni and Zamuxolo police stations;

(e) The EC province is largely rural which hampers delivery of police services in the province since there are no street numbers and the police use landmarks for directions to crime scenes. As a result, police response is often delayed or takes long;

(f) Access roads are often in poor condition and are impassable when police is called to attend to crime scenes and this also affects police response time;

(g) Other resources such as allocation of vehicles to certain police stations is also not equitable and this results in a shortage of vehicles in some police stations, whilst there is a surplus at other police stations; and

(h) It was also observed by the Public Protector that a significant number of contracts have been terminated due to alleged poor performance by the contractors, thereby contributing to the delay in finalising renovations and repairs at certain police stations.

6.2.33.3 However, the Public Protector subsequently noticed major improvements by the SAPS in terms of vehicle allocation, infrastructure upgrade and installation of electricity to certain police stations, such as Maluti, Centane, Willowvale, Afsondering, Zamuxolo and Chatty that were previously affected. These improvements were recorded by the SAPS in its response to the Notice, which was submitted by General Dladla on 22 June 2023.
6.2.33.4 Notwithstanding improvements made by SAPS at the police stations indicated above, there are still police stations in the EC province that remain affected by poor infrastructure and insufficient resources as shown in the updated conversion tables in evidence.

6.2.33.5 The remaining backlog on the improvement of poor infrastructure in certain police stations as well as inadequate resources are likely to present a crippling effect on the efficient delivery of police services in the EC province. The infrastructural and resource deficits within the SAPS in the province remain a challenge and an impediment to the proper delivery of policing services as envisaged by the statutory obligations imposed on SAPS by the Constitution and the SAPS Act.

6.2.33.6 It is unlikely that the SAPS in the EC province can be adequately effective in discharging its statutory duties to prevent and investigate crime, uphold the law and secure all the inhabitants of the EC province against crime, whilst faced with challenges of poor infrastructure and insufficient resources. Until these challenges are addressed, residents in the affected villages shall continue to be prejudiced.

6.2.33.7 Due to the current and existing poor infrastructure and inadequate resources within certain police stations in the EC province, SAPS has accordingly not placed sufficient measures to ensure effective, equitable and reliable delivery of its obligations contemplated in terms of section 205(3) of the Constitution and section 13 of the South African Police Service Act.

6.2.33.8 The conduct of the SAPS in EC province accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.
REMEDIAL ACTION

6.2.34 Having regard to the evidence, the regulatory framework determining the standard that the SAPS should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The National Commissioner of the SAPS

6.2.34.1 Within sixty (60) calendar days of the date of this report and in line with the SAPS’ statutory obligations in terms of section 205(3) of the Constitution and powers of the National Commissioner in terms of section 207(2) of the Constitution as well as in line with obligations imposed by section 13 of the South African Police Service Act, submit to the Public Protector a detailed SAPS Project Plan for the province of the EC with clear dates, turn around periods, targets and deliverables indicating how the upgrading and building of infrastructure within police stations such as Cofimvaba, Madeira, Chatty, Zwide, Hlababomvu, Ngqamakhwe, Msobomvu, Ngangelizwe, Nqeleni, Thornhill, Bizana, Mount Fletcher, Afsondering, Lukholweni, Katkop, Mbizeni, Zamuxolo and others in need of refurbishment would be undertaken;

6.2.34.2 Within sixty (60) calendar days of the date of the final report and in line with the SAPS’ statutory obligations in terms of section 205(3) of the Constitution and powers of the National Commissioner in terms of section 207(2) of the Constitution as well as in line with obligations imposed by section 13 of the South African Police Service Act, submit to the Public Protector a detailed SAPS’ Project Plan for the province
of the EC with clear dates, turn around periods, targets and deliverables indicating how the shortage of human resources in the EC SAPS shall be addressed; and

6.2.34.3 Within sixty (60) calendar days of the date of the final report and in line with the SAPS’ statutory obligations in terms of section 205(3) of the Constitution and powers of the National Commissioner and in terms of section 207(2) of the Constitution, submit to the Public Protector the medium to long term Infrastructure Plan for all SAPS’ needs in the EC indicating how improvements will be made.

**Eastern Cape Department of Social Development (ECDSD)**

6.3 Whether the provision of social services by the Eastern Cape Department of Social Development in certain villages in the Province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

*Common cause*

6.3.1 The ECDSD is a provincial government department established in terms of Schedule 2 of the PSA. The core function of the ECDSD is the provision of social development services to individuals, groups and communities to enable them to enjoy an acceptable quality of life and become self-reliant.\(^{15}\) The primary focus of ECDSD is on the poor, vulnerable and socially excluded for the following:

\(^{15}\) Available at http://www.ecdsd.gov.za, accessed on 25 April 2022.
(a) Provision of social welfare services (promotive, preventive, palliative, rehabilitative, therapeutic);

(b) Provision of comprehensive social security services;

(c) Community development facilitation and support;

(d) Poverty and inequality eradication; and

(e) HIV/AIDS (prevent and mitigate effects of HIV/AIDS on vulnerable groups).

Issue in dispute

6.3.2 The issue for the Public Protector’s determination is whether the provision of social services by the ECDSD in certain villages in the EC province is rendered in a progressive and effective manner as contemplated in the Constitution and the law.

Ms Tsese’s version

6.3.3 On 18 March 2021, Ms Tsese alleged the following in relation to social services:

6.3.3.1 Matatiele lacks and/or does not have adequate social services and infrastructure, except for the two social services centres namely, the Maluti and Matatiele Social Development Centres;

6.3.3.2 There are allegations of corruption and bribery happening in these two centres since it is alleged that people must pay officials of the ECDSD
before being approved or recommended for certain social relief programmes or aid such as food parcels and social grants;

6.3.3.3 There are allegations of unqualifying people who are approved for social aid programmes and this needs to be audited. There is also no Drug Rehabilitation Centre for the youth that is addicted to drugs in the area of Matatiele;

6.3.3.4 Furthermore, there is a lack or inadequate provision of social services and social infrastructure such as the following:

(a) Provision of food relief programmes for people in need or affected by poverty;

(b) Child Protection and Family Welfare services such as Child Care and Protection; Family preservation services; Foster Care and Adoption; Care and Support for people with disabilities and Older persons;

(c) In-Patient Substance Abuse Rehabilitation Centres for the youth dependent on drugs;

(d) Crime awareness programmes and crime victim empowerment services;

(e) Provision of psycho-social support services for vulnerable groups in general;

(f) Home Based Care Facilities, and Older Persons Residential Care facilities;

(g) Prevention programmes and services in respect of Domestic Violence counselling and awareness programmes; and
(h) Referral services in respect of indigent groups qualifying and deserving for housing and other social relief or disaster programmes.

Response by the ECDSD

6.3.4 On 14 February 2022, the Public Protector raised the allegations with the ECDSD to afford them an opportunity for a response. On 30 May 2022, the ECDSD appeared before the Investigation Team for an oral presentation and provided a response to the allegations.

6.3.5 Furthermore, on 01 July 2022, the HoD of the ECDSD, Mr M Machemba (Mr Machemba), submitted a comprehensive written response to the Public Protector, indicating the ECDSD’s account and status of social services and infrastructure in Matatiele during the 2021/22 financial year. He indicated that:

6.3.5.1 Households that experience undue hardships and natural disasters are assessed for eligibility for Social Relief of Distress by Social Workers. Learners (girl children specifically), are also provided with school uniform and sanitary dignity towels to ensure that they do not miss their classes when undergoing their monthly menstrual cycle, due to the non-availability of sanitary dignity towels (pads).

6.3.5.2 ECDSD provided Social Relief of Distress in the form of food parcels as well as sanitary dignity towels to the people of the Matatiele Wards as follows:

Social Relief of Distress provided in 25 wards - Matatiele Local Municipality
### Ward-wise Total Items Delivered

<table>
<thead>
<tr>
<th>WARD</th>
<th>TOTAL ITEMS DELIVERED</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>252</td>
</tr>
<tr>
<td>2</td>
<td>104</td>
</tr>
<tr>
<td>3</td>
<td>163</td>
</tr>
<tr>
<td>4</td>
<td>63</td>
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<tr>
<td>6</td>
<td>89</td>
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<td>7</td>
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<td>09</td>
<td>2</td>
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<tr>
<td>10</td>
<td>37</td>
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<tr>
<td>11</td>
<td>94</td>
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<td>12</td>
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<td>25</td>
<td>177</td>
</tr>
<tr>
<td>26</td>
<td>194</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2675</td>
</tr>
</tbody>
</table>

### List of Matatiele Schools for Sanitary Dignity Towels 2021/2022

<table>
<thead>
<tr>
<th>NAME OF THE SCHOOL</th>
<th>NUMBER OF BENEFICIARIES</th>
<th>WARD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Azariel SSS</td>
<td>77</td>
<td>25</td>
</tr>
<tr>
<td>2. Hlangwini SSS</td>
<td>40</td>
<td>5</td>
</tr>
<tr>
<td>3. Ludidi SSS</td>
<td>63</td>
<td>22</td>
</tr>
<tr>
<td>4. Lupindo SSS</td>
<td>49</td>
<td>18</td>
</tr>
<tr>
<td>5. Magadla SSS</td>
<td>98</td>
<td>10</td>
</tr>
<tr>
<td>6. Maluti SSS</td>
<td>143</td>
<td>1</td>
</tr>
<tr>
<td>7. Mariazell SSS</td>
<td>64</td>
<td>14</td>
</tr>
<tr>
<td>8. Masakala SSS</td>
<td>39</td>
<td>3</td>
</tr>
<tr>
<td>9. Mnceba JSS</td>
<td>53</td>
<td>7</td>
</tr>
<tr>
<td>10. Mnukwa SSS</td>
<td>59</td>
<td>8</td>
</tr>
<tr>
<td>11. Moiketsi Graves SSS</td>
<td>55</td>
<td>14</td>
</tr>
<tr>
<td>NAME OF THE SCHOOL</td>
<td>NUMBER OF BENEFICIARIES</td>
<td>WARD</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-------------------------</td>
<td>------</td>
</tr>
<tr>
<td>12. Mokheseng SSS</td>
<td>121</td>
<td>16</td>
</tr>
<tr>
<td>13. Mosa Sibi SSS</td>
<td>133</td>
<td>8</td>
</tr>
<tr>
<td>14. Moshesh SSS</td>
<td>83</td>
<td>13</td>
</tr>
<tr>
<td>15. Mothibisi SSS</td>
<td>45</td>
<td>14</td>
</tr>
<tr>
<td>16. Mt Hagreaves SSS</td>
<td>70</td>
<td>17</td>
</tr>
<tr>
<td>17. Mpharane SSS</td>
<td>63</td>
<td>13</td>
</tr>
<tr>
<td>18. Mphatlalatsane SSS</td>
<td>32</td>
<td>4</td>
</tr>
<tr>
<td>19. Mvenyane SSS</td>
<td>259</td>
<td>21</td>
</tr>
<tr>
<td>20. Nyaniso SSS</td>
<td>69</td>
<td>18</td>
</tr>
<tr>
<td>21. Moorosi Agricultural School</td>
<td>28</td>
<td>18</td>
</tr>
<tr>
<td>22. Ralebitso SSS</td>
<td>24</td>
<td>15</td>
</tr>
<tr>
<td>23. Ramafole SSS</td>
<td>135</td>
<td>24</td>
</tr>
<tr>
<td>24. La grange SSS</td>
<td>61</td>
<td>7</td>
</tr>
<tr>
<td>25. St Margaret SSS</td>
<td>111</td>
<td>25</td>
</tr>
<tr>
<td>26. Tholang SSS</td>
<td>254</td>
<td>1</td>
</tr>
<tr>
<td>27. Zibi Meyer SSS</td>
<td>37</td>
<td>24</td>
</tr>
<tr>
<td>28. Phumelele Comp Tech School</td>
<td>35</td>
<td>17</td>
</tr>
<tr>
<td>29. Cedarville Public School</td>
<td>82</td>
<td>26</td>
</tr>
<tr>
<td>30. Khanya Naledi Combined School</td>
<td>126</td>
<td>20</td>
</tr>
<tr>
<td>31. Sive Special School</td>
<td>100</td>
<td>26</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2606</td>
<td></td>
</tr>
</tbody>
</table>

**CHILD PROTECTION SERVICES**

6.3.6 The ECDSD has undertaken the following child protection services during the 2021/22 financial year at Matatiele:

(a) Awareness Campaigns on Child Protection in collaboration with stakeholders (SAPS, ECDoE, ECDoH and Department of Justice);
(b) Therapeutic Service in the form of Counselling services to ease the trauma of effects of abuse on children who have been physically, emotionally and sexually assaulted as well as abandoned and abused children. Referrals to Psychologists and other professionals were also done;

(c) A number of two thousand (2000) children were placed in foster care;

(d) One adoption case was finalised;

(e) Marketing of adoption services was done in the wards; and

(f) A total of thirty three (33) Awareness campaigns on Child Protection were conducted across the Local Municipality reaching one thousand, two hundred and ninety seven (1297) community members. Psychosocial support Services were also rendered.

SERVICES TO FAMILIES (FAMILY PRESERVATION SERVICES)

6.3.7 A number of family members are participating in family preservation services provided by the ECDSD. In Matatiele the ECDSD had planned to reach five hundred (500) families and was able to reach six hundred and fifty (650) families due to more people who availed themselves for the Family Preservation Programme. ECDSD funded two organisations based in Ward 1 and Ward 27, respectively that are also providing Family Preservation Programmes, which includes referrals and walk-ins.
6.3.8 Matatiele benefitted from counselling services, behaviour modification, a Life Skills programme, Trauma debriefing, Conflict resolution, Communication Skills, Marriage preparation and Marriage enrichment as well as Psycho-social support Services. Awareness campaigns on Family Preservation were conducted across the Local Municipality and one thousand, two hundred and eighty (1280) community members in 19 Wards were reached.

OLDER PERSONS AND CARE

6.3.9 There are eight (08) service centres that provide income generation programmes, recreational services, nutrition and active ageing where elderly people are encouraged to maintain indigenous sporting activities to promote active ageing and also pass the skills to the younger generation. Service Centres are non-residential facilities where elderly people are taken care of during the day by caregivers.

6.3.10 For example, they receive two (02) nutritious meals per day. Frail elderly people are also visited by the caregivers in their homes and therefore benefit from the services of the service centres. There are also awareness campaigns on prevention of abuse of the elderly that are conducted by Social Workers on a number of topics including Dementia, Alzheimer's disease, care and protection of the elderly and rights of the elderly as per the Older Persons Act.

6.3.11 The ECDSD in Matatiele had planned to reach eighty (80) older persons accessing community-based care and support services in funded service centres, and the same number was achieved. Another fifty eight (58) older persons benefitted from unfunded service centres. About forty two (42) older persons received psycho-social support
services and aftercare services from social workers. About eight hundred and fifty two (852) community members received information sharing on the rights, care, support and protection of older persons in 13 Wards of Maluti and Matatiele.

CARE AND SUPPORT TO PEOPLE LIVING WITH DISABILITIES

6.3.12 In the 2021/22 financial year, planning was made to reach one hundred and fifty people (150), accessing Community Based Rehabilitation Services and one hundred and sixty two (162) people were reached, in funded facilities, whilst reaching fifty eight (58) in non-funded facilities. About fourteen (14) Awareness Campaigns were conducted in respect of the rights and protection of people living with Disabilities in fourteen (14) Wards reaching six hundred and five (605) community members. (Proof of awareness campaigns were provided to the Investigation Team).

IN PATIENT SUBSTANCE ABUSE REHABILITATION CENTRE

6.3.13 Referrals to outpatient are made to local health facilities for medical attention for those presenting with medical issues. Detoxification Services are also rendered on the basis of referrals and self-referrals. The ECDSD does not have local treatment centres and therefore depends on outside facilities in the province as well as KwaZulu-Natal (KZN) for referrals. Part of the deliverables of the programme is the issue of Awareness Campaigns on substance abuse that are implemented by Social Workers as well as Tada Co-ordinators in communities and in local schools. A total of two thousand, nine hundred and ninety two (2992) Community members were reached through preventative awareness campaigns.
CRIME AWARENESS PROGRAMMES

6.3.14 In order to prevent young offenders from getting deeper into the criminal justice system, as well as preventing them from offending, the ECDSD, in collaboration with stakeholders, conducts awareness programmes on crime in schools and communities of Matatiele and a total number of two thousand, four hundred and ninety eight (2498) people were reached through crime awareness campaigns in twenty seven (27) wards in Matatiele and Maluti in the 2021/22 financial year.

PSYCHOSOCIAL SUPPORT SERVICES

6.3.15 The ECDSD renders Psychosocial Support Services across its programmes from Older Person Support, People Living with Disabilities, HIV/AIDS, Social Relief of Distress, Care and Support to families, Child Protection Services, Crime Prevention and Support, Substance Abuse Programmes and Victim Empowerment Programmes. Psychosocial Support includes the following:

(a) Counselling Services;
(b) Life skills Programmes;
(c) Parenting Programmes;
(d) Marriage Enrichment Programmes;
(e) Trauma Debriefing;
(f) Pre and Post Test Counselling and Support Groups for People living and affected by HIV/AIDS; and
(g) Psychosocial Support Services to children and adults affected by physical and emotional abuse.

6.3.16 Psycho-social Support Services are a response to reported cases, walk-ins and referrals from stakeholders. Three thousand seven
hundred and eighty seven (3787) people received Psycho-social Support Services across the programmes in the 2021/22 financial year.

**HOME COMMUNITY BASED CARE FACILITIES**

6.3.17 There are two (02) funded Home Community Based Care (HCBC's), facilities in the area of Matatiele that offer door to door services for HIV and Aids awareness, psycho-social support and treatment support, support groups, referrals and awareness on HIV/AIDS. There are no residential care facilities for placement of older persons in Matatiele, however, frail older persons who are living alone are referred for placements in other districts within the province.

**VICTIM EMPOWERMENT PROGRAMMES (VEP)**

6.3.18 The ECDSD participated in the Rapid Response Team to ensure proper referrals and immediate attendance and tracking of cases of GBV and Femicide. The ECDSD has allocated a full time GBV Social Worker as from 2021, to date. This service was previously rendered by two Social Workers, who were not in the centre full time. All GBV cases are attended to on the spot at Thuthuzela Care Centres and referred for further management in the two service offices in Maluti and Matatiele. However, there are no social workers during the weekend, although the ECDSD make all necessary arrangements with officials to attend to urgent cases when required.

6.3.19 With the assistance of six (06) funded VEPs White Door Centres of Hope, the ECDSD has been able to reach out to communities through door-to-door awareness campaigns, community dialogues and
rendering of lay counselling services. Social workers also rendered psycho-social support services to clients who are attended for emotional containment for victims of GBV. In cases of femicide and in cases of death as a result of trauma due to natural disasters, the ECDSD social workers provide psycho-social support in the form of trauma debriefing. A total of two thousand, one hundred and eighty nine (2189) people were reached through awareness campaigns on GBV.

REFERRAL SERVICES IN RESPECT OF INDIGENT GROUPS

6.3.20 Whilst the ECDSD does not provide housing units, social workers contribute by assessing those affected by disasters or undue hardship and therefore referrals are made to the Department of Human Settlements, in terms of their Social Needs Policy. The ECDSD enjoys sound relations with these role-players, including the South African Social Security Agency (SASSA). Further referrals for provision of material support (including Social Relief of Distress), are made for needy families faced with undue hardships.

FIELD & INTAKE SERVICES (SOCIAL WORK SERVICES)

6.3.21 The ECDSD appointed three thousand one hundred and seven (3107) social workers across the EC province in all municipal districts. The appointment of social workers is done through a normal recruitment process. The table below indicates the appointments:

<table>
<thead>
<tr>
<th>Job Title</th>
<th>Alfred Nzo</th>
<th>Amathole</th>
<th>BCM</th>
<th>Chris Hani</th>
<th>Joe Gqabi</th>
<th>NMM</th>
<th>OR Tambo</th>
<th>Provincial Office</th>
<th>Sarah Baartman</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assistance Community Dev. Practitioner</td>
<td>35</td>
<td>72</td>
<td>23</td>
<td>62</td>
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<td>10</td>
<td>51</td>
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<tr>
<td>Job Title</td>
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<td>Amathole</td>
<td>BCM</td>
<td>Chris Hani</td>
<td>Joe Gqabi</td>
<td>NMM</td>
<td>OR Tambo</td>
<td>Provincial Office</td>
<td>Sarah Baartman</td>
<td>Grand Total</td>
</tr>
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<td>------------</td>
<td>----------</td>
<td>-----</td>
<td>------------</td>
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<td>25</td>
<td>63</td>
<td>32</td>
<td>45</td>
<td>49</td>
<td>1</td>
<td>36</td>
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<tr>
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<td>4</td>
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<td>5</td>
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<td>Social Work Policy Developer</td>
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<td>0</td>
<td>3</td>
<td>4</td>
<td>12</td>
<td>8</td>
<td>41</td>
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<tr>
<td>Social Worker Supervisor</td>
<td>17</td>
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<td>24</td>
<td>42</td>
<td>26</td>
<td>29</td>
<td>35</td>
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<td>446</td>
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<td>453</td>
<td>476</td>
<td>39</td>
<td>262</td>
<td>3107</td>
</tr>
</tbody>
</table>

**PROBATION SERVICES**

6.3.22 ECDSD implements integrated social crime prevention programmes, assumes responsibility for developmental assessments, diversion of young offenders, provides pre-sentence reports and manages five (05)
child and youth care centres in fulfilment of its mandatory role for maintenance of a specialised child and youth care system for arrested children. The following probation services are undertaken by the ECDSD:

(a) Integrated Social Crime Prevention Programmes;
(b) Diversion Programmes;
(c) Expert Witness Services;
(d) Placement of Children in Secure Care Centres;
(e) Development and Maintenance of an Accreditation System; and
(f) Reintegration and Aftercare.

6.3.23 The following is a list of Child and Youth Care Centres in the province:

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Child and Youth Care Centre (CYCC)</th>
<th>Child and Youth Care Centre (CYCC)</th>
<th>Physical Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Buffalo City</td>
<td>Bisho</td>
<td>Esikhobeni Village Bisho</td>
</tr>
<tr>
<td>2.</td>
<td>Nelson Mandela</td>
<td>Enkuselweni</td>
<td>Mbilini Road Kwazakhele Gqeberha</td>
</tr>
<tr>
<td>3.</td>
<td>Buffalo City</td>
<td>John X Merriman</td>
<td>1 Smithfield Road Cambridge East London</td>
</tr>
<tr>
<td>4.</td>
<td>Joe Gqabi</td>
<td>Lulama Futshane</td>
<td>Thembisa Township Burgersdorp</td>
</tr>
<tr>
<td>5.</td>
<td>OR Tambo</td>
<td>Qumbu</td>
<td>Mvumelwano Administrative Area</td>
</tr>
</tbody>
</table>

NON-PROFIT ORGANISATION (NPO) PARTNERSHIPS & FINANCE
6.3.24 ECDSD subsidised four hundred and thirty nine (439) NPOs in all district municipalities in the province who partnered with the ECDSD to deliver services such as:

(a) care and support for the elderly;
(b) care and support for disabled persons;
(c) child protection services;
(d) care and support services to families;
(e) victim empowerment programmes; and
(f) substance abuse and rehabilitation, crime prevention and youth development services.

REGISTRATION OF TREATMENT SERVICES

6.3.25 In terms of section 17(1) of the Prevention and Treatment for Substance Abuse Act, 2008, the Minister of Social Development is required to establish at least one public treatment centre in each province. This has been realised in the EC through the establishment of Ernest Malgas Treatment Centre in the Nelson Mandela Metropolitan Municipality, Gqeberha. Additional to the public treatment centre the province has eight (08) registered treatment facilities falling under the private and non-profit sector. These are also subject to registration and monitoring by the ECDSD in line with Minimum Norms and Standards for In-patient Treatment Centres. All the facilities provide for admission of adult service users.

6.3.26 The ECDSD has an agreement for admission of indigent service users in funded organisations such as SANCA, Central Eastern Cape (East London), Thembelisha Rehabilitation Centre (OR Tambo) and Koinonia Recovery Centre (East London). The referral process is in
many respects like that of minors in that the service user approaches their nearest Social Development Service office, which handles the application until the person is admitted.

6.3.27 The following table illustrates the 2021/22 financial year budget allocation for district-based substance prevention and treatment services:

<table>
<thead>
<tr>
<th>DISTRICT</th>
<th>PROGRAMME TYPE</th>
<th>QUANTITY</th>
<th>BUDGET ALLOCATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfred Nzo</td>
<td>TADA Programme</td>
<td>4</td>
<td>454,164</td>
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<tr>
<td></td>
<td>Community Based Service</td>
<td>2</td>
<td>254,467</td>
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<tr>
<td>Amatole</td>
<td>TADA Programme</td>
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<td>542,801</td>
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<td></td>
<td>Community Based Service</td>
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<td>Buffalo City</td>
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<td>Community Based Service</td>
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<td>Sarah Baartman</td>
<td>TADA Programme</td>
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<td>360,388</td>
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<td>Chris Hani</td>
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<tr>
<td>Nelson Mandela</td>
<td>Treatment Centre</td>
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<td>575,307</td>
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<tr>
<td></td>
<td>Community Based Service</td>
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<td>1,079,324</td>
</tr>
<tr>
<td>OR Tambo</td>
<td>TADA Programme</td>
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<tr>
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<td>Treatment Centre</td>
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<td>Joe Gqabi</td>
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<td>493,347</td>
</tr>
<tr>
<td></td>
<td>Community Based Service</td>
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<td>125,678</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>9,837,000</td>
</tr>
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6.3.28 The table below shows the current staff complement for the ECDSD:

<table>
<thead>
<tr>
<th>DISTRICT</th>
<th>CONTRACT</th>
<th>PERMANENT</th>
<th>INTERNS/ NATIONAL YOUTH SERVICE (NYS)</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALFRED NZO</td>
<td>0</td>
<td>420</td>
<td>3</td>
<td>423</td>
</tr>
<tr>
<td>DISTRICT</td>
<td>CONTRACT</td>
<td>PERMANENT</td>
<td>INTERNS/ NATIONAL YOUTH SERVICE (NYS)</td>
<td>TOTAL</td>
</tr>
<tr>
<td>-------------</td>
<td>----------</td>
<td>-----------</td>
<td>--------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>AMATHOLE</td>
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<td>490</td>
</tr>
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<td>CHRIS HANI</td>
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</tr>
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<td>JOE GQABI</td>
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<tr>
<td>NMM</td>
<td>0</td>
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<td>5</td>
<td>542</td>
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<tr>
<td>OR TAMBO</td>
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</tr>
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</table>

6.3.29 On 27 January 2023, Ms Nwabisa Qwabe (Ms Qwabe) of ECDSD, made an additional submission to the Public Protector, attaching a Guideline Document for Management of Workload for Social Service Practitioners and Framework for Social Welfare Services. She further explained to the Investigation Team that the client: social worker ratio varies and is largely dependent on a number of modalities including the setting in which the practitioner operates, level of seniority (implying assumption of an additional role as a supervisor) and intensity of interventions required.

6.3.30 The following was noted by the Investigation Team from the Relevant Norms as set out in Chapter 8 of the Guideline Document for Management of Workload for Social Service Practitioners, furnished by Ms Qwabe, that:

(a) The impact of factors can change from one office to the other, from one organisation to the other and even from one district or province to the other;
(b) Despite the changing impact of some factors, there are also other human and psychological dynamics or factors of both the practitioner and the organisation which the manager should consider when doing workload management; and

(c) These factors include the morale, commitment and efficiency of the individual worker, the culture and processes in the organisation

Applicable law and other prescripts


6.3.31 Section 27 of the Constitution provides that:

“(1) Everyone has the right to have access to –
(a) ...;
(b) sufficient food and water; and
(c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights”.

Older Persons Act, 2006

6.3.32 The Older Person Act deals effectively with the plight of Older Persons through a framework aimed at empowering, protecting, promoting and maintaining their status, rights, wellbeing, safety and security.
South African Policy for Older Persons

6.3.33 The South African Policy for Older Persons is the guide to care and support for older persons. The policy guides the DSD to facilitate services that are accessible, equitable and affordable to Older Persons and that conform to prescribed norms and standards.

Children’s Act, 2005, as amended

6.3.34 The Children’s Act gives effect to rights of the children as contained in the Constitution and sets out principles for the care and protection of children that define parental responsibility and rights.

Prevention and Combatting of Trafficking in Persons Act, 2013


6.3.36 This Act provides for the establishment of programmes for the prevention and treatment of drug dependency, the establishment and registration of treatment centres.

Prevention of and Treatment for Substance Abuse Act, 2008
6.3.37 The DSD draws its mandate for the establishment of public treatment centres from section 17(1) of the Prevention of and Treatment for Substance Abuse Act. In terms of this provision, the Minister of Social Development is required to establish at least one public treatment centre in each Province.

**Child Justice Act, 2008**

6.3.38 This Act is intended to establish a criminal justice system for children who are in conflict with the law and are accused of committing offences and make provision for the assessment of children, the possibility of diverting matters away from the formal criminal justice system, in appropriate circumstances and extend the sentencing options available in respect of children, who have been convicted and to entrench the notion of restorative justice in the criminal justice system in respect of children who are in conflict with the law.

**Probation Services Act, 1991**

6.3.39 This Act provides for the establishment and implementation of programmes aimed at combating crime; for the rendering of assistance to and treatment of certain persons involved in crime and for matters connected therewith. The ECDSD is expected to be responsible for the appointment and implementation of probation services in line with its mandate drawn from the Probation Services Act.

6.3.40 In the South African context, probation officers are social workers who carry out work in the fields of crime, care and rehabilitation of offenders, and support to families and communities. Statutory work rendered under probation focuses on developmental assessment,
provision of expert reports and witnesses to courts of law, and implementation and monitoring of therapeutic services targeting both children and adults in conflict with the law. Probation services programmes are to facilitate cognitive and behavioural change in a manner that results in the successful reintegration of offenders.

**Probation Services Amendment Act, 2002**

6.3.41 This Act makes provision for programmes aimed at the prevention and combating of crime, to extend the powers and duties of probation officers, to provide for the duties of assistant probation officers, to provide for the mandatory assessment of arrested children, to provide for the establishment of a probation advisory committee, to provide for the designation of family finders and to provide for matters connected therewith.

**Social Work Amendment Act, 1998**

6.3.42 This Act enables applicants and beneficiaries to apply to SASSA to reconsider its decision, to further regulate appeals against decisions of SASSA, to effect certain textual corrections and to provide for matters connected therewith.

**Social Service Practitioners Act, 2018 as amended**

6.3.43 The Act provides for the establishment of the South African Council for Social Service Professions and to define its powers and functions, for the registration of social workers, student social workers, social auxiliary workers and persons practising other professions in respect of which professional boards have been established, for control over the professions regulated under this Act and for incidental matters.
Domestic Violence Act, 1998

6.3.44 The Act affords the victims of domestic violence the maximum protection from domestic abuse that the law can provide and to introduce measures which seek to ensure that the relevant organs of state give full effect to the provisions of this Act, and thereby convey that the State is committed to the elimination of domestic violence.

Women Empowerment and Gender Equality Bill of 2012

6.3.45 The Bill gives effect to section 9 of the Constitution, in so far as the empowerment of women and gender equality is concerned, to establish a legislative framework for the empowerment of women, to align all aspects of laws and implementation of laws relating to women empowerment, and the appointment and representation of women in decision making positions and structures, and to provide for matters connected therewith.

Social Assistance Act, 1992

6.3.46 The Act guides the DSD to provide those unable to support themselves and their dependents with access to appropriate services and social assistance.

White Paper on Families in South Africa, 2018

6.3.47 The White Paper enhances the socialising, caring, nurturing and supporting capabilities of families so that their members are able to contribute effectively to the overall development of the communities and the country, empower families and their members by enabling
them to identify, negotiate around, and maximise economic, labour market, and other opportunities available in the country and improve the capacities of families and their members to establish social interactions which make a meaningful contribution towards a sense of community, social cohesion and national solidarity.

Policy on Disability (undated)

6.3.48 This policy enhances the independence and creation opportunities for people with disabilities in collaboration with key stakeholders. The social workers are expected to make use of the Policy on Disability as a guide to care for People living with Disabilities. The Policy capacitates communities to enhance the independence and creating opportunities for people with disabilities in collaboration with key stakeholders. The DSD provides a safety net for people with disabilities in the form of raising awareness on the protection of the disabled, care for the disabled, rights of the disabled as well as rendering psycho-social support services to abused and neglected disabled persons.

Policy Directive that guides in implementation of the programme: National and Provincial Strategic Plan for HIV and AIDS, Sexually Transmitted Infections (STI's) and Tuberculosis (TB)

6.3.49 This policy provides strategic direction, guidance and prevents the spread of HIV and AIDS and other sexually transmitted diseases (STI’s) and mitigate the impact thereof.

6.3.50 Consistent with its obligation to promote access to social welfare services, the State has developed a White Paper for Social Welfare (WPSD), which was adopted in August 1997. The WPSD is a comprehensive policy document, which sets out key social welfare
substantive issues in the restructuring of social welfare services, programmes and social security. The WPSD further details principles, guidelines and recommendations for the development of social welfare in South Africa and gives effect to the State’s constitutional obligation to provide everyone with access to social welfare care services. What is immediately relevant for this investigation is an Agenda for Action contained in WPSD’s Paragraphs 26 and 27, which entails amongst other things, the following:

**Universal access**

“26. Policies and programmes will be developed to ensure that every member of society can realise his or her dignity, safety and creativity.

Every member of society who finds him or herself in need of care will have access to support. Social welfare policies and legislation will facilitate universal access to social welfare services and social services benefits in an enabling environment.

A combination of public and private financing options will be harnessed to address the needs of all South Africans”.

**War on poverty**

“27. Social welfare policies and programmes will be developed which will be targeted at poverty prevention, alleviation and reduction and the development of people’s capacity to take charge of their own circumstances in a meaningful way.

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16 According to WPSD social welfare refers to an integrated and comprehensive system of social services, facilities, programmes and social services to promote social development, social justice and the social functioning of people.
(a) Individuals, families and households are particularly vulnerable to poverty in times of unemployment, ill health, maternity, child-rearing, widowhood, and old age. Disability in a family also increases the impact of poverty. Further, economic crises, political and social changes, urbanisation, disasters or social and political conflict and the displacement of people contribute to, or heighten the distress of poverty. Adequate social protection will be provided for people who are impoverished as a result of these events.

(b) Poverty coincides with racial, gender and geographic or spatial determinants, and these will be taken into account in the targeting of programmes. While poverty is widespread throughout South Africa, African people are most affected. Women and children (particularly in female-headed households), people with special needs, and those living in rural areas, informal settlements and on farms, are most at risk and will be assisted”.

Response to the Notice in terms of section 7(9)(a) of the Public Protector Act

6.3.51 A Notice in terms of section 7(9)(a) of the Public Protector Act, dated 02 June 2023 was issued to ECDSD. Mr Machemba responded to a Notice on 10 August 2023, stating inter alia that:

6.3.51.1 Section 17 (1) of the Prevention of and Treatment for Substance Abuse Act, 2008 directs that; “The Minister must, in consultation with the MEC, from funds appropriated by Parliament for that purpose, establish, maintain and manage at least one public treatment centre in each province for the reception, treatment, rehabilitation and skills
development of service users contemplated in sections 32, 33, 36 and 44”;

6.3.51.2 The Ernest Malgas Treatment Centre in Nelson Mandela was established in fulfilment of section 17 (1) of the Prevention of and Treatment for Substance Abuse Act. The facility has admitted children below the age of 18 (eighteen). The Ernest Malgas Treatment Centre is the only public resource that caters for all eight districts of the Eastern Cape. There are nine additional treatment centres that are available in the non-profit and private sectors;

6.3.51.3 They are registered for admission of adults (male and female). There is evidently a far greater demand for addiction treatment across all age groups versus resources (Infrastructure and cost of admission per person) at the disposal of the ECDSD. It was against these considerations that the ECSD had to alter Non-Profit Organisation (NPO) funding modalities to cover admission fees per person admitted rather than of generic programme;

6.3.51.4 The total funding allocated to NPOs for purposes of addiction treatment over 2022/23 financial year amounted to R3 446 031. The allocation has over 2023/24 increased to R4 472 455. The Alfred Nzo District has been allocated an additional sum of R795 907 for the implementation of community-based substance abuse prevention and treatment services;

6.3.51.5 In terms of the ECDSD’s endeavours towards the improvement of accessibility of treatment, additional funding has been allocated to NPOs based at Nelson Mandela, Buffalo City and OR Tambo Districts during the current financial year 2023/24. Of particular significance is an amount of R 3’158’ 629 that has been allocated to an OR Tambo
based NPO namely Thembelitsha Rehabilitation Centre for the purposes of establishing an in-patient treatment centre that will also provide admission space for Alfred Nzo District;

6.3.51.6 Notwithstanding the geographic location of Ernest Malgas Treatment Centre, the Department of Social Development’s referral and admission system enables service users to access addiction related services at the nearest local service office. Costs in respect of transport for admission, therapeutic work inclusive of family members and discharge are borne by the ECDSD;

6.3.51.7 The establishment of the Ernest Malgas Treatment Centre required a high capital investment of R56 137 000. The ECDSD relied mostly on conditional grants awarded by National Treasury over successive financial years as well as material investments by the DPWI. It is therefore the ECDSD’S humble view that a commitment to time-bound construction of additional treatment centres and implementation plans should not be made without proper consultation of the aforenamed stakeholders; and

6.3.51.8 In closing, the ECDSD has faced year on year budget cuts. These cuts have adversely impacted infrastructure projects implementation. In the financial year, 2015/16 the ECDSD had to place infrastructure projects on hold. This was because of financial constraints experienced at the time. The fiscal outlook in the country has not improved. As such, the ECDSD can only fund minor projects with the focus being rehabilitation and refurbishment of existing structures.
Analysis

6.3.52 In terms of the above constitutional provisions, the ECDSD has a duty to provide social services to everyone in a sustainable and practical manner, within available resources. Depending on the unique nature of each person’s social welfare needs, relief may be sought from any of the above-stated/discussed legal prescripts. The implicit or explicit of the above is that the ECDSD, in collaboration with other stakeholders and relevant spheres of government has an obligation to promote the above recommendations of WPSD.

6.3.53 Evidence before the Public Protector established that, the Minister, in line with section 17(1) of the Prevention and Treatment of drug dependency Act, established the Ernest Malgas Treatment Centre in Nelson Mandela Metro at Gqeberha. However, due to the vastness of the province, this facility is not centrally positioned to allow easy access to most of the population in the EC, especially the communities in Alfred Nzo district.

6.3.54 The Public Protector noted that whilst Ernest Malgas Treatment Centre is the only public resource that caters for all eight districts of the Eastern Cape, there are nine additional treatment centres that are available in the non-profit and private sector to assist with drug rehabilitation services. These non-profit centres are registered for the admission of adults (male and female). Budgetary cuts were advanced by ECDSD as adversely impacting negatively on infrastructure project implementation, which resulted in the ECDSD having to place projects on hold during financial year, 2015/16.
Conclusion

6.3.55 The Public Protector concludes that many people in the EC province, particularly in areas such as Matatiele, Mphetshwa, Hofisi, Ndakeni and Tyutyu village, constantly require material relief from social distress such as like food parcels, counselling, housing referrals and other forms of mobilisation to access social welfare protection and services.

6.3.56 Whilst the ECDSD constantly strives within its available resources to meet the demands for social services in the EC province, some residents are still not yet able to fully enjoy social services in a sustainable and effective manner envisaged by the Constitution and the law due to budgetary constraints and as a result, non-profit centres are used by ECDSD to supplement the shortage of social service centres.

FINDINGS

6.3.57 Having regard to the evidence and the regulatory framework determining the standard that ECDSD should have complied with, the Public Protector makes the following findings:

Whether the provision of social services by the Eastern Cape Department of Social Development in certain villages in the Eastern Cape Province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act
6.3.57.1 The allegation that the provision of social services by the ECDSD in certain villages in the Province is not delivered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

6.3.57.2 Whilst the investigation has found a demonstrable amount of evidence that the ECDSD strives within its available resources to meet the demands for social services in the EC province, it is manifest that some residents or areas such as Matatiele are still not yet able to enjoy social services in a sustainable and effective manner as envisaged by the Constitution and the law.

6.3.57.3 Information placed before the Public Protector, reveals that many poor and destitute people in Matatiele and other areas like Mphetshwa, Hofisi, Ndakeni and Tyutyu village, constantly require social relief distress in the form of food parcels, counselling, housing referrals and other forms of mobilisation to access social welfare protection and services, due to various reasons, including natural disasters, poverty, victims of GBV and other social ills such as youth affected by drugs.

6.3.57.4 The evidence presented to the Public Protector by the ECDSD revealed that, it does not have a public local treatment centre such as a Drug Rehabilitation Centre for areas under Alfred Nzo District. These areas depend on ad hoc referrals to outside districts and neighbouring provinces such as KwaZulu-Natal for this important service, since the Ernest Malgas Treatment Centre in Nelson Mandela Metro at Gqeberha is too far for people living in areas under the former Transkei homelands. Due to the vastness of the province, the Ernest Malgas Treatment Centre is not centrally positioned to allow easy access to most of the population in the EC, especially the communities in the Alfred Nzo district.
6.3.57.5 The ECDSD submitted that whilst the Ernest Malgas Treatment Centre is the only public centre, built in compliance with section 17(1) of the Prevention of and Treatment for Substance Abuse Act, 2008, to cater for all eight (08) districts of the EC province, there are nine (09) additional treatment centres that are available in the non-profit and private sector. They are registered for admission of adults (male and female) and they are used to ensure access to drug rehabilitation services for people living in areas far from the Nelson Mandela Metro at Gqeberha.

6.3.57.6 Budgetary cuts were advanced by ECDSD, as adversely impacting on infrastructure projects implementation, which resulted in the ECDSD having to place projects on hold during the financial year, 2015/16.

6.3.57.7 Although the ECDSD presented all its efforts or mechanisms that are currently in place to render social services, evidence at the disposal of the Public Protector indicates some dissatisfaction with the delivery of social services such as counselling, food parcels and housing referrals for people affected by social ills, in areas such as Matatiele, Mphetshwa, Hofisi, Ndakeni and Tyutyu villages.

6.3.57.8 The conduct of the ECDSD accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

**REMEDIAL ACTION**

6.3.58 Having regard to the evidence, the regulatory framework determining the standard that ECDSD should have complied with, the Public
Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

**The Head of the ECDSD**

6.3.58.1 Within **sixty (60) calendar days** of the date of this report and in line with the ECDSD’s statutory obligations in terms of section 27 of the Constitution, section 17 of the Prevention of and Treatment for Substance Abuse Act, submit to the Public Protector a detailed Infrastructure Implementation Plan for Alfred Nzo District with clear dates, turn around periods, targets and deliverables indicating how services related to Drug Rehabilitation Treatment and necessary social services will be made accessible to people within Alfred Nzo District.

**Eastern Cape Department of Education (ECDoE)**

6.4 Whether the provision of basic education by the Eastern Cape Department of Education within certain villages in the Eastern Cape Province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

*Common cause*

6.4.1 The DoE is established in terms of Schedule 2, column 1 of the PSA. The vision and the mission of ECDoE entail, amongst other things, to
provide learners with opportunities to become productive and responsible citizens through quality basic education.¹⁷

**Issue in dispute**

6.4.2 The issue for the Public Protector’s determination is whether the provision of basic education by the ECDoE within certain villages in the EC province is delivered in a progressive and effective manner as contemplated in the Constitution and the law.

**Complainant’s version**

6.4.3 On 20 May 2021, the Investigation Team visited the Mzimvubu Local Municipality under Alfred Nzo District Municipality. The Investigation Team met with the Complainant and other residents of Hofisi location under ward 23 of Mzimvubu Local Municipality, who complained, amongst other things about poor conditions of the local schools, including overcrowding.

**Ms Mbanga’s version**

6.4.4 On 20 May 2021, the Investigation Team visited the Mzimvubu Local Municipality under Alfred Nzo District Municipality where it held a meeting with the Complainant, Ms Thandiswa Mbanga (Ms Mbanga), and other residents of Hofisi location under ward 23 of Mzimvubu Local Municipality. The Complainants raised, amongst other things, poor conditions and overcrowding at the local schools.

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The version of staff members at Loyiso Senior Secondary School

6.4.5 On 24 May 2021, the Public Protector received a response from the Principal of Loyiso Senior Secondary School, Mr Xolani Ndamse (Mr Ndamse), following a visit to the school by the Investigation Team on 20 May 2021. Mr Ndamse stated that:

6.4.5.1 The school was constructed by the community school in 1996/97 and has been ruined or dilapidated due to the passage of time and ordinary usage;

6.4.5.2 The school has only ten classes with six hundred and eighteen (618) learners, for example, in Grade 8 there were one hundred and twenty one (121) learners crammed into one classroom, Grade 9 had one hundred and sixteen (116) learners, Grade 10 with one hundred and sixty four (164) learners. Therefore, it can no longer deal with the rising number of learners;

6.4.5.3 The conditions at the school are exacerbated by overcrowding in the classrooms and there was non-adherence to safety protocols put in place to curb the spread COVID-19 during the pandemic;

6.4.5.4 There is no administration block, no library, no laboratory for science components and no hall to assist during examination periods. About seventeen (17) educators share one staff room, which is also used as a kitchen and photocopying room. This particular staff room has cracked walls, leaking ceilings and a broken door;

6.4.5.5 The performance of the learners has decreased due to overcrowding and overpopulation of learners in classes. The network connection is totally absent which resulted in poor performance as the 2020
academic year was characterised by learners having to use other gadgets, due to the outbreak of the Covid-19 pandemic;

6.4.5.6 The school was placed on the priority list of schools to be built in the Alfred Nzo sub-region in 2015, however, no construction has taken place. The MEC for Public Works and Infrastructure in the province visited the school in May 2021 and promised to return sometime in June 2021 with at least two containers to help ease the overcrowding, however, there was no delivery; and

6.4.5.7 The poor condition of the access road to the school also contributed to the instability and poor attendance by both educators and learners, during rainy weather conditions, as cars cannot drive on the road to the school.

Conditions at Cancele Primary School

Complainant's version and others

6.4.6 Ms Mbanga submitted that the conditions of pit latrine toilets at Cancele Primary School are appalling. Furthermore, there are only four (4) toilets or ablution facilities for the entire school. She also stated that the community members had to erect the fence at the school on their own at some stage.

Response by the ECDoE

6.4.7 The Public Protector raised the allegations with ECDoE as per a letter dated 10 February 2022. In a response dated 01 June 2022, Mr M Qwase (Mr Qwase), the Acting Head of Department for the ECDoE indicated that:
The ECDoE would like to place on record that some of the allegations are not true and provided the status of the schools as indicated in the table below:

**Alfred Nzo West: Loyiso Senior Secondary School**

<table>
<thead>
<tr>
<th>Allegations</th>
<th>DoE Response (Current learners and infrastructure Status)</th>
<th>Evidence</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>School is dilapidated and can no longer deal with rising number of learners. 10 Classes with 618 Learners.</td>
<td>602 Learners enrolled. 5 x Classrooms (7 x 36m) 1 x Prefab classroom (8 x 7m) Learner/classroom ratio 54,72 <strong>Backlog: 4 Classrooms</strong></td>
<td>Site Monitoring &amp; Evaluation Verification Report School Enrolment List Completed Projects Close Out Reports</td>
<td><strong>Completed Projects</strong> Major repairs to existing infrastructure by CDC (P9005028) at Total Project Cost of R 2 199 365 <strong>Construction Projects</strong> DPW Disaster Programme (P9013175) – 51 to 75% <strong>Planned Projects</strong> Major repairs to existing infrastructure by CDC (P9006422) on hold.</td>
</tr>
</tbody>
</table>

Conditions at the school is exacerbated by overcrowding leading to non-adherence to health and safety protocols put in place to curb the spread of COVID 19 pandemic. E.g., Grade 8 there were 121 learners

<table>
<thead>
<tr>
<th>Grade</th>
<th>Enrolment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grade 8</td>
<td>101</td>
</tr>
<tr>
<td>Grade 9</td>
<td>116</td>
</tr>
</tbody>
</table>

| School Enrolment List | The scenario as per allegation should not be the norm. The numbers reflected in allegation would |

Grade 9 | 116 |
<table>
<thead>
<tr>
<th>Allegations</th>
<th>DoE Response (Current learners and infrastructure Status)</th>
<th>Evidence</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>confined in 1 classroom, Grade 9 had 116 learners, Grade 10 with 164 learners.</td>
<td>Grade 10: 133, Grade 11: 149, Grade 12: 103, Total: 602</td>
<td></td>
<td>constitute having an entire grade in one classroom.</td>
</tr>
<tr>
<td>No administration block, no library, no laboratory for science components and no hall. 17 educators share 1 staffroom, also used as kitchen and photocopying room.</td>
<td>Admin block (Principal’s office and staff room) (7x11m), Soup kitchen container (12x2.4m)</td>
<td>Site Monitoring &amp; Evaluation Verification Report</td>
<td></td>
</tr>
<tr>
<td>The performance of the learners is said to have decreased due to overcrowding and over population of learners in classes. The cellphone network connection and internet is totally absent and that also resulted in poor performance as 2020 academic year was characterized by learners using gadgets due to outbreak of Covid-19 pandemic</td>
<td></td>
<td></td>
<td>Infrastructure to liaise with IT Department</td>
</tr>
<tr>
<td>The poor condition of access road to the school also contributed to instability and poor attendance by both educators and learners.</td>
<td></td>
<td>Infrastructure to liaise with Department of Public Works</td>
<td></td>
</tr>
</tbody>
</table>
With regard to Cancele Primary School, Mr Qwase submitted the following table which reflects the ECDoE’s responses:

<table>
<thead>
<tr>
<th>Allegations</th>
<th>DoE Response (Current Infrastructure Status)</th>
<th>Evidence</th>
<th>Comments</th>
</tr>
</thead>
</table>
| The conditions of pit latrine toilets at Cancele Primary School are appalling. There are only four (4) toilets for the entire school. | Ablutions:  
Girls – 8 x cubicles and female staff – 2 x cubicles (6 x 2m)  
Boys – 6 x cubicles and male staff 1 x cubicule (6 x 2m) | Site Monitoring & Evaluation Verification Report | The school has been submitted to DBE for consideration for inclusion of SAFE. |
| The fencing of the school was also lamented by the community and they had to fix it on their own at some stage. | The school is poorly fenced with stock fence.  
Fencing perimeter – 781m | | District needs to submit a request for consideration and approval. |

On 02 June 2022, Mr Qwase, made an oral presentation to the Investigation Team, where he gave background information on issues of school infrastructure in the province of the Eastern Cape and indicated, *inter alia*, that:

The EC province has a huge backlog and infrastructure development gaps and as far back as 2009/2010, a discussion was initiated with Provincial Treasury and COEGA\(^1\) to start a technical assessment of all schools with inappropriate infrastructure such as mud structures, with a view to solicit additional funding or a loan from Provincial

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\(^1\) The Coega Development Corporation is a public entity, wholly owned by the Eastern Cape Provincial Government, mandated to develop and operate the 9003 hectare Coega Special Economic Zone (SEZ).
Treasury to eradicate all the infrastructure backlog within three years. However, that did not materialise, as it could not be approved by the relevant loan committees;

6.4.9.2 The money or infrastructure grant given to the ECDoE from the fiscus is far less compared to the infrastructure needs or demands facing the ECDoE and that is why some schools in the province remain in conditions of serious infrastructure disrepair. One hundred and seven (107) schools in the province have been affected by recent floods or natural disasters, which has since been costed at about one hundred and twenty two million rand (R122 000 000.00), from December 2021 to January 2022; and

6.4.9.3 In April 2022, another flooding disaster struck the province and affected school infrastructure in the area of Port St Johns, some parts of the Alfred Nzo and OR Tambo districts. The disaster increased the financial costs in these areas that had to be incurred from the existing minimal allocated infrastructure grant. As a result, prefabricated structures have been supplied to affected schools as an interim measure to ease overcrowding whilst working on permanent solutions, including two containers given to Loyiso Senior Secondary School. In terms of the priority list of schools, the DPWI has been appointed as an implementing agent for infrastructure development at this school.

Visit by the Acting Public Protector and the Premier to Loyiso Senior Secondary School

6.4.10 On 24 October 2022, the Acting Public Protector visited Loyiso Senior Secondary School with Mr Mabuyane, the Premier of the province as part of an annual campaign to promote good governance in the country. During this visit, the school was inspected and undertakings
were made by Mr Qwase and his officials from the district office of the ECDoE. Mr Qwase indicated that there is a major infrastructure plan that will target 120 schools to assist them with a facelift by 2025.

6.4.11 Mr Qwase further submitted that this project will assist schools by fixing windows, painting and fixing the current structure of the existing schools. ECDoE committed that by April 2023, Loyiso Senior Secondary School will be amongst the schools that will receive a facelift. Mr Qwase further committed that the interim relief for overcrowding of classrooms will be done by November 2022, by supplying additional prefabricated classes to the school until they have a more permanent solution.

Request for further information

6.4.12 On 26 January 2023, the Public Protector issued a subpoena to Mr Qwase requesting further information regarding the infrastructural conditions of certain schools in the province and the project plans.

6.4.13 Mr Qwase responded in an affidavit, dated 07 February 2023, with supporting documents, stating inter alia, that:

6.4.13.1 ECDoE provided Loyiso Senior Secondary School with a total of five (05) prefabricated classrooms between 01 and 02 February 2023 respectively. The school was assessed by Mayenzeke Quantity Surveyors in the quest to provide requirements to ECDoE for the provision of the fencing to the school. He indicated that the assessment report demonstrated a requirement of four hundred and fifteen (415) meters of fencing. He stated that the project would be rolled out on 29 March 2023 and will be completed by 18 April 2023; and
6.4.13.2 Cancele Primary School has been identified for the provision of sanitation facilities and allocated to The Mvula Trust (TMT), under the Department of Basic Education (DBE), Sanitation Appropriate for Education (SAFE) program. The project is currently at the planning stage and is envisaged to go out to tender on 03 March 2023. The provision of fencing at Cancele Primary School will form part of the fencing program to be rolled out in the fourth quarter of the 2023/24 financial year.

Sanitation Appropriate for Education Initiative as explained by Mr Mduba

6.4.14 On 08 February 2022, Mr Malikanye Mduba (Mr Mduba), Chief Director: Infrastructure at the ECDoE indicated that:

6.4.14.1 The SAFE Initiative, as launched by the President on 14 August 2018, has contributed tremendously towards the eradication of inappropriate ablution facilities in the EC. The purpose of this initiative is to restore the dignity of learners in mostly rural and township schools, by providing age-appropriate sanitation facilities;

6.4.14.2 The following table shows the project status of the SAFE program in the EC province as of 01 December 2022:

<table>
<thead>
<tr>
<th>Batch 1, 2, 3, 4 &amp; 4A - Project Status</th>
<th>DBSA</th>
<th>NECT</th>
<th>TMT</th>
<th>CDC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under construction</td>
<td>0</td>
<td>173</td>
<td>94</td>
<td>52</td>
<td>319</td>
</tr>
<tr>
<td>Practical Completion</td>
<td>58</td>
<td>187</td>
<td>305</td>
<td>25</td>
<td>575</td>
</tr>
<tr>
<td>Planning Stage; Project evaluation; site assessments</td>
<td>150</td>
<td>6</td>
<td>5</td>
<td></td>
<td>161</td>
</tr>
<tr>
<td>Grand Total</td>
<td>58</td>
<td>510</td>
<td>405</td>
<td>82</td>
<td>1055</td>
</tr>
</tbody>
</table>
6.4.14.3 Mr Mduba further submitted the following table, which portrays the SAFE breakdown of projects planned for 2022/23 financial year allocation as of 01 December 2022:

<table>
<thead>
<tr>
<th>SAFE Breakdown by IA as on 1 December 2022</th>
<th>DBSA</th>
<th>NECT</th>
<th>TMT</th>
<th>CDC</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Batch 2: DBSA &amp; Batch 5: TMT - Project Status</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under construction</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Practical Completion</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Planning Stage; Project evaluation; site assessments</td>
<td>93</td>
<td>277</td>
<td></td>
<td></td>
<td>370</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td>93</td>
<td>277</td>
<td></td>
<td></td>
<td>370</td>
</tr>
</tbody>
</table>

6.4.14.4 DBE has Public Private Partnerships (PPP), SAFE donor funders. He further indicated that to this end, successful province-wide sanitation projects have been completed with Assupol (29 projects), Northam Zondereinde (03 projects), Unilever SA (06 projects), Envirosan (02 projects), South Korea Embassy (06 projects), Sibanye Stillwater (07 projects), Water Research Commission (06 projects) as well as Harmony Gold (04 projects);

6.4.14.5 More projects are planned through the benevolence of the following donors; AVBOB (15), Gcap Technologies (106) and Sibanye Stillwater (11). In a bid to broaden the project funding base, the Department is working with the OTP-initiated Kauleza PMO to coordinate funding opportunities available for flagship infrastructure projects; and

6.4.14.6 A list of one hundred and eighty (180) schools, which have been identified for minor maintenance. He further stated that the school maintenance programme will be implemented as part of the turnaround plan to do minor maintenance at schools in the various districts, using
the two thousand four hundred (2400) artisans that were trained by the Department across the province, in various trades.

6.4.14.7 The following table indicates the number of schools per district identified for minor maintenance:

<table>
<thead>
<tr>
<th>Name of the District</th>
<th>Number of schools</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfred Nzo East</td>
<td>10</td>
</tr>
<tr>
<td>Alfred Nzo West</td>
<td>12</td>
</tr>
<tr>
<td>Amathole East</td>
<td>35</td>
</tr>
<tr>
<td>Amathole West</td>
<td>10</td>
</tr>
<tr>
<td>Buffalo City Metro</td>
<td>10</td>
</tr>
<tr>
<td>Chris Hani East</td>
<td>24</td>
</tr>
<tr>
<td>Chris Hani West</td>
<td>10</td>
</tr>
<tr>
<td>Joe Gqabi</td>
<td>10</td>
</tr>
<tr>
<td>Nelson Mandela Metro</td>
<td>10</td>
</tr>
<tr>
<td>OR Tambo Coastal</td>
<td>29</td>
</tr>
<tr>
<td>OR Tambo Inland</td>
<td>10</td>
</tr>
<tr>
<td>Sarah Baartman</td>
<td>10</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>180</strong></td>
</tr>
</tbody>
</table>

6.4.14.8 The basis of an accurate calculation of the infrastructure backlog is a reliable asset register (database) of all education infrastructure in the EC province. He stated that the ECDoe took a decision some time back to commission an asset and condition assessment survey at all schools in the EC Province, with the intention of ensuring that steps are put in place to maintain accurate data.

6.4.14.9 The ECDoe undertook assessments at about three thousand one hundred and thirty nine (3 139) schools in the EC in 2013. A service provider was appointed to assess all operational schools not included in the DBE project. Furthermore, the elimination of the backlog is done
in a phased approach over a 17-year timeframe and will need to include allowances for escalation.

6.4.14.10 The ECDOE prepared a three year plan for the elimination of backlog and that the plan is revised on an annual basis. He further provided the Investigation Team with the budget for 2022/23 financial year and stated that the original budget was revised to accommodate further spending triggered by natural disasters that occurred in 2022.

6.4.14.11 Progress has been made over the years to eliminate the backlog and the following table indicates the progress against the 3-year Basic Services Backlog:

<table>
<thead>
<tr>
<th>BASIC SERVICE</th>
<th>BASELINE EAS AT 2013/14</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Water Supply</td>
<td>261</td>
</tr>
<tr>
<td>No Sanitation</td>
<td>94</td>
</tr>
<tr>
<td>Pit latrines only</td>
<td>2885</td>
</tr>
<tr>
<td>No Electricity Supply</td>
<td>318</td>
</tr>
<tr>
<td>Inappropriate Material (Full) ASIDI</td>
<td>442</td>
</tr>
</tbody>
</table>
6.4.14.12 Significant progress has been made over the past three years in meeting the overwhelming challenges of providing basic services to schools, where these have been lacking entirely to the extent that with a few exceptions, the targets as per the Regulations are being met. Furthermore, the ECDoE acknowledges that much work still needs to be done to address schools with pit latrines and schools with insufficient basic services.

6.4.14.13 The estimated cost of addressing the infrastructure backlog based on the Regulations relating to Minimum Uniform Norms & Standards for Public School Infrastructure amounts to some seventy five billion rand (R75 000 000 000.00). He indicated that this is a present-day cost and does not allow for escalation over any timeframe. He stated that it also excludes annual maintenance of the existing or newly constructed facilities. According to Mr Mduba, if amounts for escalation and maintenance are included, then the total funding requirement over the 17-year period amounts to one hundred and thirty billion rand (R130 000 000 000.00).

6.4.14.14 The EC province has five thousand four hundred and five (5405) schools. He provided the following table, which illustrates the number of schools per district and the classification in terms of whether Primary, Combined, learners with special educational needs (LSEN), early childhood development (ECD), or Secondary schools:
<table>
<thead>
<tr>
<th>Row Labels</th>
<th>Count of Phase_PED</th>
</tr>
</thead>
<tbody>
<tr>
<td>ALFRED NZO EAST</td>
<td></td>
</tr>
<tr>
<td>COMBINED</td>
<td>227</td>
</tr>
<tr>
<td>LSEN</td>
<td>48</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>136</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>40</td>
</tr>
<tr>
<td>ALFRED NZO WEST</td>
<td>583</td>
</tr>
<tr>
<td>COMBINED</td>
<td>52</td>
</tr>
<tr>
<td>LSEN</td>
<td>2</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>455</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>74</td>
</tr>
<tr>
<td>AMATHOLE EAST</td>
<td>725</td>
</tr>
<tr>
<td>COMBINED</td>
<td>126</td>
</tr>
<tr>
<td>LSEN</td>
<td>1</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>512</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>86</td>
</tr>
<tr>
<td>AMATHOLE WEST</td>
<td>397</td>
</tr>
<tr>
<td>COMBINED</td>
<td>12</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>292</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>93</td>
</tr>
<tr>
<td>BUFFALO CITY</td>
<td>456</td>
</tr>
<tr>
<td>COMBINED</td>
<td>26</td>
</tr>
<tr>
<td>LSEN</td>
<td>11</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>307</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>112</td>
</tr>
<tr>
<td>CHRIS HANI EAST</td>
<td>471</td>
</tr>
<tr>
<td>COMBINED</td>
<td>63</td>
</tr>
<tr>
<td>LSEN</td>
<td>1</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>351</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>56</td>
</tr>
<tr>
<td>CHRIS HANI WEST</td>
<td>382</td>
</tr>
<tr>
<td>COMBINED</td>
<td>31</td>
</tr>
<tr>
<td>ECD</td>
<td>2</td>
</tr>
<tr>
<td>LSEN</td>
<td>1</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>262</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>86</td>
</tr>
<tr>
<td>JOE GQABI</td>
<td>303</td>
</tr>
<tr>
<td>COMBINED</td>
<td>64</td>
</tr>
<tr>
<td>LSEN</td>
<td>3</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>191</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>45</td>
</tr>
</tbody>
</table>
Response to the Notice in terms of section 7(9)(a) of the Public Protector Act

6.4.15 A Notice in terms of section 7(9)(a) and (b) of the Public Protector Act, dated 02 June 2023 was issued to ECDoE. The Acting HOD, Dr S. Nuku (Dr Nuku) responded to the Notice on 25 July 2023 and stated, *inter alia*, that:

6.4.15.1 In light of the findings communicated to ECDoE, the office of the Accounting Officer wishes to take the Public Protector to confidence with regard to strides the ECDoE has made in an effort to improve the

---

<table>
<thead>
<tr>
<th>NELSON MANDELA</th>
<th>362</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMBINED</td>
<td>32</td>
</tr>
<tr>
<td>ECD</td>
<td>12</td>
</tr>
<tr>
<td>LSEN</td>
<td>16</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>218</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>84</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OR TAMBO COASTAL</th>
<th>648</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMBINED</td>
<td>217</td>
</tr>
<tr>
<td>LSEN</td>
<td>2</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>349</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>80</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>OR TAMBO INLAND</th>
<th>621</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMBINED</td>
<td>63</td>
</tr>
<tr>
<td>LSEN</td>
<td>4</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>458</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>96</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SARAH BAARTMAN</th>
<th>230</th>
</tr>
</thead>
<tbody>
<tr>
<td>COMBINED</td>
<td>38</td>
</tr>
<tr>
<td>ECD</td>
<td>4</td>
</tr>
<tr>
<td>LSEN</td>
<td>2</td>
</tr>
<tr>
<td>PRIMARY</td>
<td>147</td>
</tr>
<tr>
<td>SECONDARY</td>
<td>39</td>
</tr>
</tbody>
</table>

Grand Total            5405
teaching and learning conditions in the schools across the EC province;

6.4.15.2 Notwithstanding the infrastructure backlog challenges confronting the ECDoe, in the 2022/2023 financial year, the ECDoe managed to, *inter alia*, provide the basic services such as water and sanitation to schools across the province, additional classrooms and high-level security fencing to curb inherent security threats;

6.4.15.3 The ECDoe managed to attain the following achievements in the previous financial year:

(a) 26 schools were provided with water supply;
(b) 15 schools received electricity infrastructure;
(c) 17 schools were supplied with sanitation facilities;
(d) 1 school was provided with a boarding facility;
(e) 40 schools received adequate maintenance;
(f) 6 new schools were upgraded to meet the norms and standards;
(g) 272 additional classrooms were provided to public schools; and
(h) 24 specialist classrooms were built in public schools.

6.4.15.4 The ECDoe is committed to improving the teaching and learning environment in schools through the delivery of quality and appropriate infrastructure and is currently embarking on the following infrastructure delivery programmes:

**One hundred and eighty (180) schools maintenance programme**

(a) The ECDOE has procured and received delivery of the material. Twenty (20) contractors have been appointed to schools in the
Nelson Mandela and Sarah Baartman districts, while the procurement of material for the remaining schools is in progress;

**Provision of Water**

(b) The ECDoE is currently rolling out 36 water infrastructure elevated water tanks, and boreholes and is in the process of installing water pumps. Twenty seven (27) water infrastructure projects are under construction while nine (09) projects remain under procurement;

(c) The ECDoE is also providing water tanks to three hundred and twenty three (323) schools across the province. About 171 contracts have been awarded and site handovers are underway while one hundred and twenty nine (129) projects are under procurement;

**Sanitation**

(d) Through the Education Infrastructure Grant, the ECDOE is currently rolling out various sanitation projects at different levels of delivery;

(e) A total of forty (40) sanitation projects were planned for procurement in the previous financial year. To date, six (06) of those projects have achieved practical completion while thirty two (32) projects are under construction and two (02) are under procurement;

(f) Over and above these projects, the department is also embarking on Sanitation Flush Toilets Programme for one hundred and
ninety six (196) schools. Tenders to thirty (30) schools closed on 12 July 2023 while one hundred and sixty six (166) schools are under planning (assessment stage);

(g) The province is also receiving assistance from the Department of Basic Education in addressing the sanitation backlogs through the Sanitation Appropriate for Education;

(h) To date, four hundred and thirty one (431) schools have been allocated to Implementing Agents and three hundred and fifteen (315) projects are under construction. 57 projects have since been advertised while 59 projects are on planning;

(i) In 2022/23 financial year, 446 sanitation (ablution) facilities were completed and handed over to communities while 91 projects are already complete in this financial year;

**Provision of Additional Classrooms (Prefabricated Units)**

(j) The ECDoE is confronted with classroom shortages, owing to the excessive number of learners in schools. This phenomenon has posed serious health risks to the users of school facilities. Over and above the additional classrooms provided in the previous year, the ECDoE has embarked on a programme focusing on providing two classroom blocks to 112 schools, adding up to 224 additional classroom units due to be provided in the current financial year. The department has since completed 02 schools, 32 schools are currently under construction, and 17 schools have been approved for award to contractors while 61 projects are on procurement;
Disaster Projects

(k) History has revealed that the EC province is prone to natural disasters namely, floods and storm damages (tornado), especially in the OR Tambo, Alfred Nzo and Chris Hani districts. The province currently has a total of 211 schools that were reportedly affected by storms and floods over the period of five years. Twenty seven (27) of these schools were badly affected by the recent floods that took place during February 2023. Over the five-year period, the ECDoE has completed 66 schools while 70 schools are under construction and, 75 are still at various stages of planning;

Fencing of Schools

(l) School vandalism is a serious problem confronting the Eastern Cape, particularly, as it places a heavy burden on the education budget. The social-ills such as theft, vandalism and break-ins have become a permanent feature that best defines the conditions that educators and learners are confronted with on a daily basis. This has caused learning to collapse, since it infringes on the right of learners to be taught in a safe environment;

(m) To respond to this sad reality, the ECDoE embarked on a school fencing programme that serves to deter acts of vandalism. In the 2022/23 financial year, 213 schools were identified to receive fencing and to date, 123 schools have been completed, with 59 schools still under construction and 31 schools recently awarded to contractors. The ECDoE further plans to implement another fencing programme for 150 schools across the province with a strong emphasis on Sarah Baartman, Nelson Mandela Bay and
Buffalo City Municipality, where vandalism of schools is prevalent; and

(n) The ECDoe confirms that Loyiso Senior Secondary School was successfully provided with security fencing and five prefabricated classrooms. With regards to Cancele Junior Secondary School, the site was handed over to the contractor for the construction of ablution facilities on 12 July 2023. This is a four-month project implemented under the SAFE Programme.

Applicable law and legal prescripts


6.4.16 Section 29 (1)(a) of the Constitution states that:

“Everyone has the right to a basic education, including adult basic education”.

The South African Schools Act, 1996

6.4.17 In terms of section 3(3) of the South African Schools Act,19 (SASA) every Member of the Executive Council (MEC) must ensure that there is enough space available at schools so that every child who resides in his or her province can attend school as required by subsections (1) and (2).

19 Act 84 of 1996.
Section 5A(1) of SASA provides for Norms and Standards for basic infrastructure and capacity in public schools and enjoins the relevant authorities to prescribe minimum uniform norms and standards for—

(a) school infrastructure;
(b) capacity of a school in respect of the number of learners a school can admit; and
(c) the provision of learning and teaching support material.

In terms of section 5A(2) of SASA, the Norms and Standards contemplated in subsection (1) must provide for, but not be limited to, the following:

(a) In respect of school infrastructure: the availability of classrooms; electricity; water; sanitation; a library; laboratories for science, technology, mathematics and life sciences; sport and recreational facilities; electronic connectivity at a school; and perimeter security;

(b) In respect of the capacity of a school: the number of teachers and the class size; quality of performance of a school; curriculum and extra-curricular choices; classroom size and utilisation of available classrooms of a school; and

(c) In respect of provision of learning and teaching support material, the availability of: stationery and supplies; learning material; teaching material and equipment; science, technology, mathematics and life sciences apparatus; electronic equipment; and school furniture and other school equipment.
6.4.20 In terms of the SASA Regulations, relating to Minimum Uniform Norms and Standards for Public School Infrastructure signed by the Minister of Basic Education on 26 November 2013, acceptable norms for class size for Grade R is a maximum of thirty (30) learners and for all other classes a maximum of forty (40) learners.

Analysis

6.4.21 The unqualified nature of the basic right to education as provided for in Section 29(1)(a) of the Constitution means that it is an immediately enforceable right and therefore the obligation is on the ECDoE to ensure the progressive realisation thereof.

6.4.22 Sections 5A(1) and 5A(2) of SASA create a legal obligation for the ECDoE to ensure that every child who resides in the province can be accommodated at a school. On 02 June 2022, Mr Qwase indicated, during his recorded oral submission to the Investigation Team, that the learner/teacher ratio in terms of Norms and Standards is 1:35 for high schools and 1:40 for primary schools. However, he also submitted that this ratio is often interrupted by issues of budget constraints and staff shortages within the basic education system.

6.4.23 On 25 July 2023, Dr Nuku indicated that the ECDOE is also receiving assistance from the National Department of Basic Education in addressing the sanitation backlogs through the Sanitation Appropriate for Education (SAFE). According to Dr Nuku, of the 196 schools that lack sanitation flush toilets, 30 schools are already embarking on a sanitation flush programme and the tender for this project closed on 12 July 2023. Dr Nuku indicated that there are 166 schools remaining that are still under the planning and assessment stage.
6.4.24 In terms of the evidence gathered by the Investigation Team during inspections *in loco* and from submissions received from the ECDoE, it is manifest that the basic education infrastructure or schools in certain villages in the EC remains inadequate. During site inspection conducted by the Investigation Team on 20 May 2021 and 24 October 2022 respectively, it became evident that in some schools such as the Loyiso Senior Secondary School, education takes place under conditions that are not conducive and appropriate for teaching and learning due to inadequate facilities and poor infrastructure, resulting in overcrowding in the classrooms.

6.4.25 However, on 25 July 2023, Dr Nuku confirmed to the Investigation Team that Loyiso Senior Secondary School was successfully provided with security fencing and five prefabricated classrooms. With regards to Cancele Junior Secondary School, he confirmed that the contractor for the construction of ablution facilities was handed over on 12 July 2023 for construction of ablution facilities, this is a four months project implemented under the SAFE Programme.

*Conclusion*

6.4.26 Based on the existence of poor conditions such as inappropriate ablution facilities in certain schools within the EC province such as Cancele Primary and Loyiso Senior Secondary, the Investigation Team concludes that challenges relating to the lack of providing basic services, pose a serious risk to the well-being and lives of the learners and educators at the schools. The overcrowding has a negative impact on the quality of teaching and learning, as it might be a crippling challenge for the educators to give every learner the necessary attention.
FINDINGS

6.4.27 Having regard to the evidence and the regulatory framework determining the standard that ECDoE should have complied with, the Public Protector makes the following findings:

Whether the provision of basic education by the Eastern Cape Department of Education in certain villages in the Province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.4.27.1 The allegation that the provision of basic education by the ECDoE in certain villages in the EC province is not delivered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

6.4.27.2 The investigation revealed that the provision of basic education by the ECDOE is at risk of being compromised by the lack of proper school infrastructure or facilities, which manifest itself in the following challenges within certain schools such as Loyiso Senior Secondary and Cancele Primary Schools:

(a) Overcrowding conditions at Loyiso Senior Secondary School;

(b) The school has been ruined or dilapidated by time and ordinary usage and it can no longer deal with the rising number of learners;
(c) Loyiso Senior Secondary School only has ten classes to cater for over six hundred (600) learners at the time of site inspection by the Investigation Team in 2021;

(d) The risk of the spread of the COVID-19 virus was high considering the overcrowding in the classrooms of Loyiso Senior Secondary School, due to non-adherence to safety protocols;

(e) At the time of the visit to the Loyiso Senior Secondary School in 2021, Grade 8 had one hundred and twenty one (121) learners crammed into one classroom, Grade 9 had one hundred and sixteen (116) learners, Grade 10 had one hundred and sixty four (164) learners in one classroom respectively;

(f) Loyiso Senior Secondary School has no administration block, library, laboratory for science components and no hall to accommodate learners during examinations. About seventeen (17), educators share one staff room, which is also used as a kitchen and photocopying room;

(g) The staff room at Loyiso Senior Secondary School has visible cracked walls, leaking ceilings and a broken door;

(h) The performance of the learners is alleged to have decreased due to overcrowding of learners in classes at Loyiso Senior Secondary School;

(i) The network connection is totally absent and has resulted in poor performance as the 2020 academic year was characterised by learners having to use gadgets due to the outbreak of the Covid-
19 pandemic. Internet connectivity is a basic need in schools and if they cannot access the internet, educators and learners are unable to log onto a digital network to access information;

(j) The conditions of pit latrine toilets at Cancele Primary School are appalling and there were only four (04) toilets for the entire school at the time of inspection;

(k) The perimeter fencing of Cancele Primary School was not in a good condition and the community members had to erect it on their own at some stage; and

(l) School infrastructure such as a library; laboratories for science, technology, mathematics and life sciences; electronic connectivity at a school; are either absent or inadequate at Loyiso Senior Secondary school.

6.4.27.3 The poor condition of the schools concerned pose a serious risk to the well-being and lives of the learners and educators alike. Furthermore, the overcrowding has a negative impact on the quality of teaching and learning as it might be a challenge for the educators to give every learner the attention required.

6.4.27.4 However, on 25 July 2023, Dr Nuku confirmed to the Public Protector that Loyiso Senior Secondary School was successfully provided with security fencing and five prefabricated classrooms as previously undertaken by Mr Qwase. With regard to Cancele Junior Secondary School, Dr Nuku confirmed that the contractor for the construction of ablution facilities was handed over on 12 July 2023 for construction of ablution facilities, this is a four (04) month project implemented under the SAFE Programme.
6.4.27.5 Notwithstanding the significant strides and commendable improvements made by the ECDoe at Loyiso Senior Secondary School, Cancele Primary school and in other schools in the province, it is evident that basic and essential infrastructure such as ablution and sanitation facilities are still lacking in a number of schools within the EC province. According to evidence by Dr Nuku, out of one hundred and ninety six (196) schools which lack sanitation flush toilets, only thirty (30) schools are already embarking on a sanitation flush programme and the tender for this project closed on 12 July 2023. Dr Nuku indicated that there are one hundred and sixty six (166) schools remaining that are still under planning and assessment stage.

6.4.27.6 The ECDoe has not put sufficient measures in place to ensure that the obligation to deliver education as required in terms of section 29(1)(a) and (b) of the Constitution, section 3(3) and section 5A of South African Schools Act, takes place under safe and proper conditions conducive to teaching and learning.

6.4.27.7 The conduct of the ECDoe accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

REMEDIAL ACTION

6.4.28 Having regard to the evidence, the regulatory framework determining the standard that ECDoe should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:
6.4.28.1 Within **sixty (60) calendar days** of the date of this report and in line with the ECDoe’s statutory obligations in terms of section 29(1)(a) and (b) of the Constitution and section 3(3) and 5A of South African Schools Act, to submit to the Public Protector a detailed ECDoe’s Refurbishment Project Plan for Loyiso Senior Secondary School and Cancele Primary School under Alfred Nzo District with clear dates, turn around periods, targets, budgets and deliverables indicating how the upgrading and development of these schools’ infrastructure would be re-prioritised as undertaken by ECDoe; and

6.4.28.2 Within **sixty (60) calendar days** of the date of this report and in line with the ECDoe’s statutory obligations in terms of section 29(1)(a) and (b) of the Constitution and section 3(3) and 5A of South African Schools Act, conduct an audit and develop a medium to long term plan in order to address school challenges related to basic infrastructure in the EC province.

**Eastern Cape Department of Health (ECDoH)**

6.5 Whether the provision of basic health care services by the Eastern Cape Department of Health in certain villages in the Province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act
Common cause

6.5.1 The ECDoH is established in terms of Schedule 2, column 1 of the PSA. The mission of the ECDoH is to provide and ensure accessible comprehensive integrated services in the EC province, emphasising the primary health care approach, optimally utilising all resources to enable all its present and future generations to enjoy health and quality of life.20

Issue in dispute

6.5.2 The issue for the Public Protector’s determination is whether the provision of healthcare services by the ECDoH in certain villages in the EC province is delivered in a progressive and effective manner as contemplated in the Constitution and the law.

Ms Tsese’s version - Taylor Bequest Hospital Matatiele

6.5.3 On 18 May 2021, the Investigation Team met with the Complainant, Ms Tsese who complained about poor services and lack of basic healthcare infrastructure around Matatiele, in particular, the surrounding locations. Ms Tsese submitted that there is only one hospital in Matatiele namely, Taylor Bequest Hospital, servicing all locations, and as a result, there is overcrowding, a lack of proper medical healthcare and a lack of proper medical equipment/machinery.

6.5.4 According to Ms Tsese, patients with serious medical conditions are transferred mostly at 02:00 am, which is odd hours of the morning, to either Mthatha General Hospital or Nelson Mandela Academic Hospital. She further stated that whilst patients wait to be transported,  

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20 ECDOH’s Service Charter, 2015 at page 2.
they sleep on benches at the Taylor Bequest as there is no proper facility where awaiting patients can sleep. She submitted that there are not enough clinics around Matatiele and as a result, one clinic service has about twenty (20) locations and the service at Taylor Bequest Hospital is very slow and poor due to overcrowding.

*Mr Zakhabana’s version - Zulu Clinic Ndabeni, Ntabankulu*

6.5.5 On 21 May 2021, the Investigation Team met with Mr Zakhabana, who is a Ward Councillor, and other residents of Ndakeni location under Ward 8 of Ntabankulu Local Municipality who complained about the conditions of their local clinic, namely, Zulu Clinic.

*Mr Soga’s version - Thafalofefe Hospital, Cebe Administrative Area Centane*

6.5.6 On 26 July 2021, the Investigation Team met with the Complainant, Mr Victor Soga of Cebe Administrative Area under ward 27 in Centane, which is made up of Komkhulu, Mateisi, Diko, Mkhunqwana and Fihlani locations. Mr Soga indicated that there is a hospital nearby, namely Thafalofefe Hospital, which people use for their daily medical needs.

6.5.7 He further stated that the challenge faced by the community is that there are no ambulances and people seeking urgent medical attention must use their own transport to access the hospital or hire which costs about six hundred rand (R600.00), per trip and this is costly for poor people who are mostly dependent on government grants.
Mr Segalo and Ms Makaba’s versions – Ndofela Clinic, Ndofela Administrative Area

6.5.8 On 29 July 2021, the Investigation Team conducted a site inspection *in loco* with Ms Siziwe Makaba (Ms Makaba) and other community members in Ndofela Administrative Area. Ms Makaba stated, *inter alia*, that:

6.5.8.1 The town of Sterkspruit has six clinics serving all the locations, and one of those is situated within Ndofela Administrative Area. Ndofela Administrative Area is made up of three (03) locations namely:

(a) Walaza;
(b) Ndofela which is subdivided into three sections (Mfiki, Mbobo, and Bikizana); and
(c) Qhimirha.

6.5.8.2 Ndofela Clinic is a four-roomed structure that was built in 1964 by members of the community. It is approximately 30 kilometres away from the town of Sterkspruit. The clinic faces many challenges, because it is small and cannot meet the demands of the community. The clinic committee has made several requests to the ECDoH for a proper structure (building) that would accommodate all the medical needs of the community;

6.5.8.3 The upgrading of the Ndofela Clinic was on the priority list of clinics to be built by the government, but it did not materialise. Ms KN Mjamba and Mr Marhafu from ECDoH also did an inspection of the clinic in 2010 and 2011 respectively. Requests to the office of the former President, Mr Jacob Zuma, as well as to the Motsepe Foundation and the Lottery for the upgrading of the Clinic were not responded to;
6.5.8.4 Around 2015/2016, the Methodist Church of Southern Africa promised to build the clinic. Photos were taken of the architectural structure of the Zanethemba Clinic in Sterkspruit. He stated that this was followed by the launch of the project in 2016, wherein the whole community of Ndofela was invited. Mr Segalo added that sponsorship was received from Mvula Trust for five hundred thousand rand (R500 000.00), as well as Senqu Municipality and subsequently, a building foundation was done;

6.5.8.5 The ECDoH, however, stopped them from implementing the project stating that it was a government project and if they wanted to assist, they should provide the funding from Mvula Trust to the government. The church decided against giving money to the ECDoH. In 2017, the ECDoH announced that they would be building the clinic but would first do some renovations;

6.5.8.6 A company trading under the name Sakhiwo Constructions was appointed to do the renovations, and the total amount used for the work is five million rand (R5 000 000). It is of importance to note that no new building structure was constructed, but instead three (03) park-homes were installed consisting of a reception room, an observation room, toilets, a medicine room, two consulting rooms, an open shelter, a kitchen, consulting rooms, a guard room, waiting room and a nurses home. The clinic committee requested the following:

a) The waiting area to be fully enclosed;
b) Inside doors to have ramps to accommodate wheel chairs;
c) Car parking area to accommodate at least five cars;
d) Security cameras for security and crime prevention; and
e) Pavement and sheltered walkways to outside toilets.
6.5.8.7 The clinic structure has ten rooms and the service provider has since left without finishing the work. Electric cables are dangling on the roof, no wiring was ever done and the two flushing toilets never worked. The ECDoH was informed of this hazardous situation, but nothing was done to make the appointed company return to finish the work. Engineers from the Eastern Cape Department of Public Works and Infrastructure came to conduct inspections and advised that the building was suitable for occupation; and

6.5.8.8 The clinic receives medicine from Mthatha Hospital on a monthly basis and sometimes their supply is delayed. The clinic has no option but to request assistance from nearby clinics. There is a challenge of staff shortage in Ndofela Clinic and it operates with only one Operational Manager, two Professional Nurses, three Nursing Assistants, one Data Capturer, one Cleaner and one General Worker.

*Observations by the Investigation Team and briefing during the site inspection at St Michael’s Clinic*

6.5.9 The Investigation Team visited St Michael’s Clinic, which is situated 13km from the town of Sterkspruit *en route* to Tele Bridge (the border between Eastern Cape and Lesotho).

6.5.10 The Investigation Team met with St Michael’s Clinic management, who indicated that the clinic serves the community of Dulcies Nek and KwaGcina Administrative Areas, rendering all clinical and health programmes as prescribed by the Department of Health. They have the following challenges relating to infrastructure, which was also observed by the Investigation Team:
(a) Walls and floors have cracks caused by roots of the trees inside the yard;
(b) The ceiling is falling apart and is barely covering the structure or the roofing;
(c) Doors are unhinged and do not have handles;
(d) There are no ramps and rails for physically challenged patients;
(e) Archived files are kept in the sluice; and
(f) The clinic is well fenced, but the yard is untidy with many trees.

6.5.11 There is only one consultation room. The second room which is supposed to also serve as a consultation room, is subdivided into five compartments accommodating the Dispensary, Emergency Room, Manager’s office, Counselling and Testing room.

6.5.12 The clinic has a small waiting area, which under normal circumstances accommodates twenty (20) people/patients. As a result, the rest of the patients wait outside, sometimes in unfavourable weather conditions. In some instances, it serves as a boardroom as well as an observation room, with the result that service delivery is interrupted when used as a boardroom.

6.5.13 The clinic is still using pit latrine toilets with no windows, broken doors, no handles, and no electricity. They further stated that the restrooms are not sufficient for the number of staff.

6.5.14 Staff shortage is a challenge at the clinic and the position of Operational Manager has been since the incumbent retired. The Nursing Sister in charge, Ms Dlepu, has been performing these duties since January 2018, but has not been formally appointed to act and is not receiving an acting allowance.
6.5.15 Staff composition at the clinic is as follows:

(a) One Admin Clerk;
(b) Four Professional Nurses;
(c) One Enrolled Nurse on contract;
(d) Two assistant nurses;
(e) One Data Capturer;
(f) One General Worker;
(g) Community health workers; and
(h) Community health workers for COVID 19.

6.5.16 The community and the clinic committee went to the Department’s Head Office in Pretoria in 2013 to lodge a complaint about the clinic, but nothing had been done to assist the community at the date of the inspection;

6.5.17 There was a delegation sent by the ECDoH to observe the situation and photos were also taken of the whole premises, but there has not been any feedback or improvement to the clinic.

Mr Mtyi’s version - Rabula Clinic, Rabula Administrative Area, Keiskammahoek

6.5.18 On 27 August 2021, the Investigation Team visited Rabula Administrative Area in Keiskammahoek to meet with the Complainant, Mr Lamla Mtyi (Mr Mtyi), who complained about the condition of their local clinic, namely, Rabula Clinic. Mr Mtyi stated that:

6.5.18.1 The facility is operating from an old four-roomed house, which was built by the community with an extension of one room. A non-governmental
organisation (NGO) donated the extension of the said room and it is used for counselling;

6.5.18.2 There is another four-roomed house, whose kitchen is used by both the Nurses Home and the clinic;

6.5.18.3 There are two consulting rooms, one is used for emergencies as well as an examination room and the other as a consultation room only;

6.5.18.4 There are structural defects, as the waiting area has small cracked walls and floors. Staff members and clients/patients use pit latrine toilets, which are not in good condition and the geysers are installed on the outside wall and therefore pose a danger to patients and the staff; and

6.5.18.5 The clinic is too small, making it difficult for the staff to operate fully, as a result, it takes a long time to attend to all patients. Staff composition at Rabula Clinic is inadequate and consists of one Sister-in-charge, two Professional Nurses, one Enrolled Nursing Assistant, one Caretaker, one Data Capturer, one Cleaner, seven Community Workers and two Lay Counsellors.

Mr Magqaza’s version - Tyutyu Village Clinic, King William’s Town

6.5.19 On 10 October 2021, the Investigation Team visited Tyutyu Village, King William’s Town to meet with Mr Simphiwe Magqaza (Mr Magqaza), on behalf of Mr Vika, the Complainant, regarding a complaint about the condition of Tyutyu Village Clinic.

6.5.20 Mr Magqaza indicated that the clinic is situated at Matyholweni location and the structure used for purposes of a clinic is an old house allegedly
bought from a local farmer. According to Mr Magqaza, the clinic serves approximately fourteen (14) locations and as a result, patients wait longer because of overcrowding. Mr Magqaza further alleged that there is an area earmarked for building a new clinic in 1987, but no progress was made in this regard.

Observations of the Investigation Team during site inspection at Tyutyu Village Clinic

6.5.21 The Investigation Team made the following observations during the site inspection at the Tyutyu Village Clinic:

6.5.21.1 The roof has visible signs of water leaks;
6.5.21.2 Windows in some rooms are broken;
6.5.21.3 Most doors have no handles and locks, making the whole building vulnerable to robberies and/or theft;
6.5.21.4 Shortage of water supply - this challenge is exacerbated by damaged pipes as a result of rat infestation;
6.5.21.5 The staff is sharing toilets with patients and pit latrines are still used;
6.5.21.6 There is no guardroom, instead, the waiting area is used for such purposes; and
6.5.21.7 Information is kept at the data capturer’s room and working apparatus like computers, printers, etc. are at risk of being destroyed because of the leaking roof.

Responses by ECDoH

6.5.22 On 09 February 2022, the Investigation Team raised the allegations with ECDoH to afford them an opportunity to respond. On 31 May 2022 the ECDoH led by HOD, Dr R Wagner (Dr Wagner), responded to the allegations and stated, inter alia, that:
6.5.22.1 The population size of Matatiele does not warrant two District Hospitals, however, the use of Primary Health Care (PHC), services can reduce the bypass rate and the influx of patients in the Outpatient Department (OPD);

6.5.22.2 Taylor Bequest Hospital has new medical equipment that was purchased by the Provincial Health Technology Unit, District Clinical Specialist Teams (DCST) and Hospital Budget. The only equipment that is a challenge at the hospital, which causes delays and increased waiting times, is the old X-ray machine that keeps on showing an error message when in use;

6.5.22.3 Doctors move up and down with patient’s files, because there are no viewing stations at service points as such, the viewing of X-ray results is only done in the X-ray department. This is the only medical equipment that frustrates management, doctors and patients. The ECDoH requested a second X-Ray machine from the Health Technology Unit and is awaiting the response;

6.5.22.4 The ECDoH has allocated a budget of six million, twenty-nine thousand and five hundred (R6 029 500.00), over the Medium-Term Expenditure Framework\(^\text{21}\) (MTEF), for the maintenance and procurement of medical equipment at District Hospitals in Alfred Nzo District and Taylor Bequest Hospital is part of the facilities that are expected to

\(^{21}\text{MTEF sets out spending plans of the national and provincial governments. It aims to ensure that budgets reflect Government's social and economic priorities and give substance to Government's reconstruction and development commitments. It is a transparent planning and budget formulation process within which government establishes contracts for allocating public resources to their strategic priorities while ensuring overall fiscal discipline. The MTEF forms part of the Medium Term Budget Policy Statements (MTBPS) on the National Treasury website.}
benefit from this budget. However, all procurements are currently delayed due to the moratorium as a result of the Constitutional Court Case. Appropriate Medical Equipment will be provided to the hospital based on the requests received from the facility;

6.5.22.5 Taylor Bequest Hospital is a District hospital and does not offer specialised services, hence referring patients to Mthatha Regional Hospital and Nelson Mandela Academic Hospital for specialised services. Planned Patient Transport leaves at 02:00 in the morning, because of the speed the bus must travel, which is 80 km per hour and the distance to Mthatha. If the transport can leave later, patients will arrive late at the clinics and may end up coming back without receiving medical attention which could result in patients’ conditions deteriorating;

6.5.22.6 The waiting area was ideally built for visitors coming to visit their admitted relatives. In this way, they would have a space to wait inside, even if the weather is not good;

6.5.22.7 Due Matatiele being a rural area, most of the patients are coming from remote areas and they do not have transport in the early hours of the morning to travel to the central point to catch the transport to Mthatha. The patients, therefore, come to wait at the hospital overnight for the following day so that they do not miss their appointment dates. The ECDoH is considering an appropriate waiting area for overnight stays for such patients;

6.5.22.8 The ECDoH is aware of the condition of Zulu Clinic. Assessment and specification for Zulu Clinic to be built have been conducted and submissions were made to the Provincial Infrastructure office. This is
currently in a planning phase through the Implementing Agent, ECDPWI;

6.5.22.9 The ECDPWI has allocated an amount of twenty seven million, two hundred and twenty five thousand (R27 225 000.00), in the MTEF for repairs and renovations to Primary Health Care (PHC), facilities in Alfred Nzo District. The project has passed the Framework for Infrastructure Delivery and Procurement Management\(^{22}\) (FIDPM), Initiation Stage 1;

6.5.22.10 The ECDoH acknowledges delays in the implementation of this project but expects work to be completed before the end of the 2022 financial year. The delay is mainly due to reprioritisation of human resources within the ECDoH and the Implementing Agent to deal with Disaster Projects that affected the province in December 2021 and April 2022. ECDPWI has now resorted to a procurement process to appoint professionals to undertake the professional service required;

6.5.22.11 The mobile teams are used to assist in servicing Mhlonyaneni, Xhukula and Ngozi locations that are parts of the catchment area of Zulu Clinic. Community Health Workers (CHW) are used to assist in home visits. The cleaning services are outsourced (grass cutting) and brooms and brushes and colour-coded mops have been procured;

6.5.22.12 The issue of the road was reported to Ntabankulu Local Municipality and is included in the IDP. As part of ongoing infrastructural facility condition assessments, the Infrastructure unit within ECDoH has a budget for the assessment of the facilities throughout the province, as required by the GIAMA Act. Alfred Nzo District has an allocation of one

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\(^{22}\) The FIDPM prescribes minimum requirement for effective governance of infrastructure delivery and procurement management.
million, five hundred and seventy six thousand, two hundred and fifty rand (R1 576 250.00), for the assessment of its seventy four (74) facilities; and

6.5.22.13 This exercise will inform the ECDoH of each clinic’s infrastructural needs in accordance with National Standards. Any additional infrastructural requirements can then be planned for in consultation with the Clinical Cluster and included on the User Asset Management Plan (UAMP). The conditional assessment will determine the level of health care required in the area, based on population and disease profile. This data will determine whether the ECDoH should provide a mobile clinic, health post, small clinic or a Community Health Centre (CHC) at each of the above sites.

6.5.23 As a background to Thafalofefe Hospital’s complaint, the following was submitted by Dr Wagner:

6.5.23.1 Amathole District is serving a population of 968 896;
6.5.23.2 Thafalofefe Hospital depends on the Emergency Medical Services (EMS) base in Butterworth to provide services to both Mnquma and Mbhashe population;
6.5.23.3 Mnquma and Mbhashe population combined is 582 061 and constitute more than 50% of Amathole population;
6.5.23.4 Butterworth EMS Base is operating with 08 Ambulances for the above population; and
6.5.23.5 The EMS norms state that 01 ambulance is supposed to serve 10 000 population, but in this case, the base ends up serving a population of 50 000 with 01 Ambulance.

6.5.24 Thafalofefe Hospital is serviced by a Patient Transport Vehicle (PTV) Bus on a daily basis except for the days when it goes for repairs. The
PTV covers only the inter-facility transport and not transport from the community to the hospital. Thafalofefe EMS base had four (04) employees of whom two (02) passed away and were never replaced, whilst one went on retirement with the result that only 01 Ambulance Driver is left, who is stationed at Butterworth;

6.5.25 Bad roads are affecting the functioning of the ambulance. The EMS staff were given office space in “Maternity”, as there was never separate space to accommodate their offices;

6.5.26 It is recommended that Thafalofefe should get additional staff and additional vehicles with well-maintained gravel roads for effective functioning. The plan is to have at least one (01) ambulance stationed at Thafalofefe on a daily basis to cover community calls for an ambulance;

6.5.27 Rabula Clinic was prioritised as one of the new clinics, amongst the four, to be built due to the poor condition of the clinic as reflected in the Gazette. A site was identified by the community along the main road in Kwa 15. The identified site belongs to the NDPWI, but it is being used by the Department of Forestry, Fisheries and Environment. The NDPWI visited the site but have not yet officially responded to the request. The application for the land transfer from NDPWI is delayed. Some community members came with the proposal to render health services from the unused old school building close to the Rabula old clinic; and

6.5.28 While waiting for these two proposals, the community in conjunction with the Clinic Governance Structure, identified other land not far from the main road. The previous land identified is close to the Rabula Senior Secondary School. On 26 May 2022, NDPWI visited the third
site identified and NDPWI was satisfied with the site. It will now follow up to determine the ownership of the land through its Properties Section. NDPWI is finalising appointment letters to renovate the disaster affected areas in the Rabula old clinic structure for rendering health services.

6.5.29 As a background to the complaint raised in respect of Tyutyu Village Clinic, Dr Wagner responded as follows:

6.5.29.1 This clinic is situated 07 km from King Williams Town and it is serving seven (07) villages. The clinic services a total of approximately one thousand four hundred (1 400) patients per month. The pipes were damaged by the rats, which were reported and repaired on 05 October 2021;

6.5.29.2 Tyutyu Village Clinic has seven (07) Jojo water tanks and they supply the whole clinic with water. Should the water levels in the Jojo water tanks get to low levels, the clinic gets water on request. The staff establishment at Tyutyu Village Clinic is as follows:

(a) 01 Operational Manager;
(b) 03 Professional Nurses;
(c) 01 Enrolled Nurse;
(d) 01 Enrolled Nurse Assistant;
(e) Pharmacy assistant who visits 02 days a week from Jafta Clinic;
(f) 02 Lay Counsellors and 03 Community Health Workers;
(g) 01 Data Capturer from ECDoh and 1 Data Capturer Match (NGO);
(h) 01 Property Caretaker; and
(i) 01 Cleaner.
6.5.29.3 The current project “Infrastructure Improvements to Primary Health Care facilities in the Buffalo City District”, will cover maintenance type of infrastructure interventions in some Primary Healthcare Facilities in Buffalo City Metro. Tyutyu Village Clinic forms part of the list of facilities to receive these maintenance interventions. The scope of the project will include items such as roof repairs, replacement of broken windows, broken doors and broken iron mongery, ceiling repairs and plumbing repairs etc;

6.5.29.4 The maintenance interventions for Tyutyu Village Clinic and other PHC facilities in the Buffalo City Metro will be funded over the MTEF from an allocated budget of three million rand (R3 000 000.00). A detailed assessment will be conducted on the need for additional waiting area space, a guardroom and appropriate ablution facilities for both staff and patients. The appropriate additions will be provided as per the assessment and that the project is currently at Stage of Project Initiation.

6.5.29.5 Dr Wagner furnished the Public Protector with the ECDoH’s infrastructure investment for the financial year 2020/21 and indicated that a total of sixteen (16) projects were completed during April 2021 to March 2022. The names of Health Facilities are highlighted in the table below:

<table>
<thead>
<tr>
<th>District</th>
<th>Hospital</th>
<th>Type of work</th>
<th>Value of the project</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfred Nzo</td>
<td>Taylor Bequest</td>
<td>Provision of outpatient dept., screening and testing area</td>
<td>R24 923 284.73</td>
</tr>
<tr>
<td>Location</td>
<td>Hospital/Sub-Hospital</td>
<td>Project Description</td>
<td>Cost</td>
</tr>
<tr>
<td>--------------------</td>
<td>--------------------------------</td>
<td>-----------------------------------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Amathole</td>
<td>Victoria Hospital</td>
<td>Upgrading of staff accommodation</td>
<td>R19 900 000.00</td>
</tr>
<tr>
<td>Amathole</td>
<td>Thafalofefe Hospital</td>
<td>Upgrading of water and sanitation</td>
<td>R24 900 000.00</td>
</tr>
<tr>
<td>Amathole</td>
<td>Madwaleni Gateway Clinic</td>
<td>Upgrading of a Gateway Clinic</td>
<td>None</td>
</tr>
<tr>
<td>Buffalo City</td>
<td>Grey Hospital</td>
<td>Refurbishment and Renovations of Staff Accommodation</td>
<td>R16 000 000.00</td>
</tr>
<tr>
<td>Metro Municipality</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chris Hani</td>
<td>Mjanyana Hospital</td>
<td>Phase 2 - Upgrading of Staff Accommodation</td>
<td>R92 403 508.77</td>
</tr>
<tr>
<td>Chris Hani</td>
<td>Mjanyana Hospital</td>
<td>Improvements to Pharmacy, OPD, Casualty and pedestrian access</td>
<td>R5 162 267.25</td>
</tr>
<tr>
<td>Chris Hani</td>
<td>Mdanjelwa Clinic</td>
<td>Upgrading of staff accommodation</td>
<td>None</td>
</tr>
<tr>
<td>Chris Hani</td>
<td>Mjanyana Clinic</td>
<td>Upgrading of staff accommodation</td>
<td>None</td>
</tr>
<tr>
<td>Joe Gqabi</td>
<td>Burgersdorp Hospital</td>
<td>Refurbishment of an existing building to available Covid-19 beds</td>
<td>R3 536 556.26</td>
</tr>
<tr>
<td>Name</td>
<td>Location</td>
<td>Description</td>
<td>Amount</td>
</tr>
<tr>
<td>---------------------------</td>
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<td>-----------------------------------------------------------------------------</td>
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</tr>
<tr>
<td>Sarah Baartman</td>
<td>KwaNonzwakazi Clinic</td>
<td>Refurbishment &amp; Renovation of Clinic</td>
<td>R6 903 424.00</td>
</tr>
<tr>
<td>Sarah Baartman</td>
<td>Majorie Parish TB Hospital</td>
<td>Emergency Repairs and Renovations of the hospital</td>
<td>None</td>
</tr>
<tr>
<td>OR Tambo</td>
<td>St Elizabeth Hospital</td>
<td>Phase A: Lilitha College of Nursing &amp; Student Centre. Phase B: Paediatrics, Kitchen &amp; Laundry</td>
<td>R246 919 350.00</td>
</tr>
<tr>
<td>OR Tambo</td>
<td>Dr Malizo Mpehle Hospital</td>
<td>Rehabilitation of existing structure to avail Covid-19 beds</td>
<td>R 4 948 162.20</td>
</tr>
<tr>
<td>OR Tambo</td>
<td>Nessie Knight Hospital</td>
<td>Phase 3 - Construction of New Health Professional Accommodation</td>
<td>R105 303 830.00</td>
</tr>
<tr>
<td>OR Tambo</td>
<td>Flagstaff CHC</td>
<td>Construction of a New Community Health Centre</td>
<td>R173 283 657.00</td>
</tr>
</tbody>
</table>
6.5.30 With regard to Ndofela Clinic, Dr Wagner indicated the following:

6.5.30.1 The upgrading of Ndofela Clinic is underway and 60% of work had been completed on site, however, the contractor defaulted and his contract has been terminated. The ECDoH, utilising the decentralised hospital fund, has completed critical outstanding services such as the provision of water, electricity, and sewer works. The outstanding items will be included in the scope of work under Phase 2: New Ideal Clinic Project. The project was initiated by the ECDPWI. That the tender advertisement for the procurement of Professional Service providers is expected in the 1st Quarter of the 2022/2023 financial year;

6.5.30.2 The guardhouse and Pharmacy upgrades at Steynsburg Hospital is underway and FIDPM is 90% complete. The contractor defaulted and his contract has been terminated. The project was reinitiated with the ECDPWI as the new Implementing Agent to complete outstanding works;

6.5.30.3 There are critical staff shortages in the face of budgetary pressures in public health facilities within the EC province. She further indicated that about 2,949 Contract Workers’ contracts ended at the end of November 2021 and the Annual Recruitment Plan (ARP) for 2022/23, allocates seven hundred and ten million rand (R710 000 000.00) to fill two thousand, nine hundred and forty one (2941) posts. According to Dr Wagner, approved Post Listing was set at the 31 January 2021 commitments. She submitted that posts can be filled within value of replacements and the following posts were allocated:

(a) Clinical and allied services are allocated one thousand six hundred and sixty (1660) posts making up 75% of the recruitment budget;
(b) Direct clinical support positions at the facilities is allocated five hundred and eighty seven (587) posts making up 11% of the budget;

(c) The Head Office and District based support functions are allocated six hundred and fifty one (651) posts making about 10% of the financial allocation; and

(d) The management categories are allocated forty three (43) posts at 4% of the budget.

Response to the Notice in terms of section 7(9)(a) of the Public Protector Act

6.5.31 A Notice dated 02 June 2023 was issued to ECDoH in terms of section 7(9)(a) of the Public Protector Act. Dr Wagner responded to the Notice on 17 August 2023 and stated *inter alia* that:

6.5.31.1 ECDoH continues to embark on a mission of improving health care facilities around the province. The departmental vision is to ensure that accessible quality health care services are offered to the healthcare users. With regards to the procurement and contract management challenges, the ECDoH notes the concern. However, the ECDoH retains the right to terminate poor performing contracts in favour of replacement contracts in managing risk and to ensure quality, value for money, adherence to contractual obligations, and service delivery goals are met for both the clients and the community;

6.5.31.2 With regards to Taylor Bequest Hospital, the severity of the damages at the facility warranted a comprehensive maintenance solution for the facility. The ECDoH has identified the facility as one of the hospitals that require major refurbishment and it has been included in the UAMP
(10 year User Asset Management Plan). The project is currently at Framework for Infrastructure Delivery and Procurement Management (FIDPM).23 Stage 1 of its life cycle (Feasibility Study). The project does not increase the footprint of the facility but makes provision for alternative option for patient waiting and protection;

6.5.31.3 As a contingency measure, given the extreme current budgetary constraints and the service pressures, the ECDoH has plans to re-purpose the newly built Khutsong TB Hospital, about 5km away from the current Taylor Bequest Hospital to consolidate the comprehensive package on the new site. Since the TB hospital had been contemplated, designed and completed, there has been significant changes in how TB is managed country-wide and advances in treatment means that TB hospitalisation rates have decreased significantly. This creates an opportunity to consolidate the District hospital services in the region, introduce efficiencies and improve the patient experience of care at the new site;

6.5.31.4 ECDoH undertook the option of Alternative Building Technology (ABT) solutions to mitigate low hanging issues such as spatial requirement, derelict facilities and patient waiting at Primary Health Care level to improve all clinical facilities across the province;

6.5.31.5 Zulu Clinic falls under the facilities earmarked to be improved by the implementation of ABT structure interventions. Condition assessment for this programme to determine specification requirements is being undertaken by the appointed ECDoH Implementing Agent. A bid for installation of ABT was advertised and is currently at final stages of evaluation. Zulu Clinic will be one of the beneficiaries to ensure

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23 The FIDPM prescribes minimum requirement for effective governance of infrastructure delivery and procurement management.
additional spaces are provided. Projects for upgrading of security services (fencing and guardhouses for Primary Healthcare Facilities) is also at the final stages of procurement; it will also be prioritised under this project for a new guardhouse;

6.5.31.6 ECDHoH initiated a capital works project in 2017 in Ndofela Clinic, with Sakhiwo Health Solutions (SHS) as the implementing agent. The contractor appointed for the project was BPL Construction. The project reached 60% completion, after which it was terminated on the 25 January 2021, due to non-performance by the contractor. The unfinished project made it difficult to render clinical service. As a short-term solution, the ECDHoH initiated a five hundred thousand (R500, 000.00) threshold project internally, through the district, to assist with the provision of essential services (water, electricity and sewer) for the clinic to function while the second phase of the upgrades is planned and implemented. The final works completion for this work was achieved on 01 February 2022. The ECDHoH initiated a second phase capital works project through, DPWI as the implementing agent, to upgrade the Ndofela clinic;

6.5.31.7 The ECDHoH in conjunction with the DPWI initiated a program to eradicate the backlog of maintenance and dilapidated structures for the purposes of creating a habitable environment in all facilities, including at St Michael’s Clinic. The program intends to ensure that the basic maintenance (painting, plumbing and carpentry) is carried out at clinic facilities. She approved the recommendation of the ECDPW at the regional level, on 12 April 2023, to conduct conditions assessments and procurement of service providers, project management, and implementation to fast track the implementation of this program;
6.5.31.8 The ECDoH has identified 80 facilities to be prioritised for the current financial year, as a pilot, and further rollout for the next 3 years to cover other facilities. St. Michaels Clinic has been included in the 80 prioritised facilities in the Joe Gqabi district. As a short-term solution, St. Michaels Clinic, have been included in the Maintenance Backlog Eradication Programme, to receive infrastructure improvement to the value of one million rand (R1 000 000.00);

6.5.31.9 The park homes at Empilisweni Hospital have also been earmarked to be relocated to assist with space challenges at St Michael's clinic. As a long-term solution at St Michael's clinic, the ECDoH has including a project on the 10-year User Asset Management Plan (UAMP) to replace the existing building on the site with a new clinic building including a Nurses home, site works and bulk service. The timeframes allocated for this project is in the 2026/27 financial outer years. The ECDPW has initiated the acquisition process to obtain 10,000 sqm of land from the Roman Catholic Church for construction of a new clinic;

6.5.31.10 The ECDoH is aware of the situation at Rabula Clinic. Budget was allocated for the planning of a new structure, however, the community couldn’t initially agree on the location for the new structure. Furthermore, the land transfer proved to be a lengthy and unsuccessful process, resulting in the community agreeing to continue with the planning of the new structure on the existing site. Plans for the new clinics are being accelerated;

6.5.31.11 A project to cover infrastructure improvements at Tyutyu Village Clinic has found expression on the Infrastructure Programme Management Plan (IPMP) for the MTEF. The bid document to procure the built environment professionals, who will do the designs and project site supervision is in the procurement stage. A bid for installation of ABT
was advertised and is currently at final stages of evaluation. As a short-term solution, Tyutyu village clinic will be one of the beneficiaries to receive a temporary structure to ensure additional spaces are provided;

6.5.31.12 The project for upgrading of security services fencing and guardhouses for Primary Healthcare Facilities in Amathole and BCM was handed over on 04 July 2023. Tyutyu village clinic will also be prioritised under this project for a new guardhouse. Roof leaks will be addressed through the departmental call centre, where calls are logged by facilities to be assisted with day to day maintenance; and

6.5.31.13 The ECDoH is also rolling out maintenance hub and spoke workshops, with 140 youths as artisan apprentices, trainees and ground staff allocated per district. They will provide day-to-day basic carpentry, painting and plumbing as required at the facilities and ensure that the grounds are maintained. The programme was kick-started in Nelson Mandela Bay Metro with the Alfred Nzo and OR Tambo Districts next in line.

Applicable law and legal prescripts


6.5.32 Section 27 of the Constitution provides *inter alia*:

1)  *Everyone has the right to have access to –*

(a)  *Health care services...;*

(b)  *... ;*
(c) ...;
2) The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.”

National Health Act, 2003 (NHA)

6.5.33 Section 3 of the NHA lists the responsibilities of the Minister of Health as follows:

“The Minister must, within the limits of available resources-

a) endeavour to protect, promote, improve and maintain the health of the population;

b) promote the inclusion of health services in the socio-economic development plan of the Republic;

c) determine the policies and measures necessary to protect, promote, improve and maintain the health and well-being of the population;

d) ensure the provision of such essential health services, which must at least include primary health care services, to the population of the Republic as may be prescribed after consultation with the National Health Council; and

e) equitably prioritise the health services that the State can provide.”

6.5.34 The powers and obligations of the Director-General of the Department of Health in terms of section 21 of the NHA include:

(a) The issuing and promoting adherence to norms and standards on health matters, including the provision of health services, which include social, physical and mental health care; and
(b) Promoting adherence to norms and standards for the training of human resources for health.

6.5.35 Section 21(5) of the NHA further provides that the Director-General must integrate the health plans of the national department and provincial departments annually and submit the integrated health plans to the National Health Council.

6.5.36 Section 25(1) of the NHA stipulates that the relevant member of the Executive Council of a Provincial Government (MEC), responsible for Health must ensure the implementation of the national health policy, norms and standards in his or her province.

6.5.37 Section 25(2) of the NHA lists a number of powers and obligations of the head of a provincial department of health, which include amongst other things planning, co-ordinating and monitoring health services and evaluating the rendering of health services; planning, managing and developing human resources for the rendering of health services; controlling and managing the cost and financing of public health establishments and public health agencies; facilitating and promoting the provision of comprehensive primary health services and community hospital services, controlling the quality of all health services and facilities.

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24 The head of the provincial department must act in accordance with national health policy and the relevant provincial health policy in respect of or within the relevant province. On observance of the state of affairs at health facilities and on the evidence traversed there has been an apparent lapse in adherence to the relevant policy guidelines of the National Health Act.
National Health Act Norms and Standards Regulations, 2018

6.5.38 The National Health Act Norms and Standards Regulations applicable to different categories of health establishments, issued as per Government Gazette 67 No. 41419, dated 02 February 2018. (Regulations were promulgated with the purpose to promote and protect the health and safety of users and health care personnel. The Regulations stipulates *inter alia* the following:

Medicines and Medical Supplies

“10(1) *The health establishment must comply with the provisions of the Pharmacy Act, 1974 and the Medicines and Related Substances Act, 1965.*

(2) *For the purposes of sub-regulation (1), the health establishment must-

(a) implement and maintain a stock control system for medicine and medical supplies; and

(b) *The health establishment must ensure the availability of medicines and medical supplies for the delivery of services*.”

Medical Equipment

“13(1) *Health establishment must ensure that the medical equipment is available and functional in compliance with the law.*

(2) *For the purpose of sub-regulation (1) the health establishment*
must ensure that equipment is:

(a) licensed where required from the relevant licensing body; and
(b) in accordance with the essential equipment list in all clinical service areas”

Human resources management

“19. (1) The health establishment must ensure that they have systems in place to manage health care personnel in line with relevant legislation, policies and guidelines.

(2) For the purposes of sub-regulation (1), the health establishment must, as appropriate to the type and size of the establishment:

(a) have and implement a human resource plan that meet the needs of the health establishment;
(b) have a performance management and development system in place; and
(c) have a system to monitor that health care personnel maintain their professional registration with the relevant councils on an annual basis”.

Management of buildings and grounds

“14(1) The health establishment and their grounds must meet the requirements of the building regulations.

(2) For the purposes of sub-regulation (1), a health establishment must as appropriate for the type of buildings and grounds of the establishment:

(a) have all the required compliance certificates in terms of the
building regulations;
(b) have a maintenance plan for buildings and the ground;
(c) ensure emergency exit and entrance points are provided in all service areas and kept clear at all times; and
(d) have ventilation systems that maintain the inflow of fresh air, temperature, humidity and purity of the air within specified limits set for different service areas such as theatres, kitchen and isolation units”.

Engineering services

“15(1) The health establishment must ensure that engineering services are in place.

(2) For the purposes of sub -regulation (1) a health establishment must have: 24-hour electrical power, lighting, medical gas, water supply and sewerage disposal system.”

Transport management

“16(1) The health establishment must ensure that vehicles used to transport users and health care personnel are safe and well maintained.

(2) For the purposes of sub -regulation (1), a health establishment must ensure that:

(a) vehicles, owned or used, are licensed and maintained; and
(b) drivers have valid driver’s license and or public transport driving permit”.
Occupational health and safety

“20 The health establishment must comply with the requirement of the Occupational Health and Safety Act, 1993”.

Analysis

6.5.39 The Public Protector acknowledges the significant strides that have been made by ECDoH in renovating, upgrading, developing and future planning for healthcare related infrastructure and facilities in EC province. However, the current backlog in the development of new infrastructure, repair of structural defects and upgrading of physical infrastructure such as the buildings, within certain health facilities in the EC province, hinders the proper delivery of healthcare services.

6.5.40 The progressive realisation of the right to have access to health care services as contemplated by the Constitution requires that the government must take immediate steps within its means towards the fulfilment of the right to primary healthcare.

6.5.41 Therefore, the ECDoH has an obligation to observe and adhere to the above legal provisions of the Constitution, the NHA as well as the Regulations of the NHA, which are intended to govern the operations of the state of healthcare facilities in the EC province.

6.5.42 The Public Protector has further noted from the information submitted by the ECDoH in response to a Notice that a total of thirty (30) contracts were terminated between 2015 and 2021 alone. Poor contract management has a potential to contribute to delays in finalising certain infrastructure projects. Evidence further shows that the shortage of
critical staff is another common feature in most health facilities. These inadequacies negatively affect the progressive delivery of quality healthcare services in the EC province.

**Conclusion**

6.5.43 The Public Protector concludes that the delivery of health care services by the ECDoH, is prone to being ineffective and/or unreliable, as a result of various challenges caused by poor contract management which contributes to delays in finalising infrastructure projects, backlog in upgrading health facilities and defective infrastructure. Furthermore, the shortage of staff at most health facilities hampers the effective provision of services.

**FINDINGS**

6.5.44 Having regard to the evidence and the regulatory framework determining the standard that ECDoe should have complied with, the Public Protector makes the following findings:

**Whether the provision of basic health care services by the Eastern Cape Department of Health in certain villages in the province is delivered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act**

6.5.44.1 The allegations that the provision of basic health care services by the ECDoH in certain villages in the EC province is not delivered in a
progressive and effective manner as contemplated in the Constitution and the law, is **substantiated**.

6.5.44.2 The Public Protector acknowledges the significant strides that have been made by ECDoh in renovating, upgrading, developing and future planning for healthcare related infrastructure and facilities in the EC province, as indicated in the updated submission handed in by Dr Wagner in response to a Notice on 17 August 2023. However, the current backlog in the development of new infrastructure, repair of structural defects on old facilities and upgrading of existing infrastructure such as the buildings, within certain health facilities in the EC province, hinders proper delivery of healthcare services.

6.5.44.3 The Public Protector has further noted with concern from the spreadsheet submitted by Dr Wagner, in response to the Notice that a total of 30 contracts were terminated by ECDoh between 2015 and 2021 alone. These terminations and contract management challenges has a potential to contribute to delays in finalising certain infrastructure projects, which are meant for the benefit of the healthcare users in the EC province.

6.5.44.4 Evidence further shows that the shortage of critical staff is another common feature in most health establishments that the Investigation Team visited and inspected. These inadequacies may negatively affect a progressive delivery of quality healthcare services in the EC province, as contemplated in the Constitution.

6.5.44.5 The investigation has disclosed that Tayler Bequest Hospital in Matatiele is servicing all locations around the area, as a result there is overcrowding and patients with serious medical conditions are transferred to Mthatha General Hospital, as well as Nelson Mandela
Academic Hospital. The ambulances transporting patients from Tayler Bequest Hospital to other hospitals leave around 02:00 in the morning. The HoD for ECDOH, Dr Wagner, confirmed that the hospital does not have a proper waiting area for patients awaiting to be transported to other hospitals, but use the visitors waiting area to sleep while waiting.

6.5.44.6 The investigation further revealed that Zulu Clinic services six (6) locations, but the existing structure is an old small house given or donated to the community. The waiting area is too small and the overflow of the patients extends to the outside, even during inclement weather conditions. There is no kitchen and the guardroom is used as kitchen. Male and female patients are sharing the two available toilets. There is no stove, no microwave, no kettle, no heater, and a very old fridge. No working tools such as grass cutter, wheelbarrow and spade. No cleaning equipment such as brooms and mops. The road to the clinic is in bad condition, as a result cars and ambulances are unable to enter the clinic to deliver medication or to take patients freely.

6.5.44.7 The investigation revealed that Ndofela clinic is about thirty kilometres (30km), away from the town of Sterkspruit and was built in 1964 by members of the community and it is a four-roomed structure, it is small and cannot meet the medical needs or demands of the community.

6.5.44.8 St Michael's Clinic, which is situated 13km away from the town of Sterkspruit en route to Tele Bridge a border between EC and Lesotho. The St Michael's clinic management and staff indicated that they have the following challenges relating to infrastructure, which was also observed or noted by the Investigation Team:

(a) Walls and floors have cracks caused by roots of the trees inside the yard;
(b) The ceiling is falling apart and is barely covering the structure or the roofing;
(c) Doors are falling and do not have handles;
(d) There are no ramps and rails for physically challenged patients;
(e) Sluice and archived files are in the same place; and
(f) The clinic is well fenced but the yard is untidy with many trees.

6.5.44.9 St Michael’s clinic has one consulting room, as the other consulting room is subdivided into five compartments accommodating the Dispensary, Emergency Room, Manager’s office, Counselling, and Testing room. St Michael’s clinic is still using pit latrines toilets with no windows, broken doors and with no handles.

6.5.44.10 Rabula clinic is operating from an old four roomed house built by the community with an extension of one room donated by a Non-Governmental Organisation (NGO) and is used for counselling. There is also another four roomed house used as a Nurses Home with a kitchen and is used by both the nurses and the clinic. There are structural defects on the Rabula clinic such as the waiting area being very small with cracked walls and floor, staff members, and clients/patients use pit latrine toilets and are not in good condition.

6.5.44.11 Tyutyu Village Clinic is characterised by overcrowding as it serves +/-14 locations and patients wait longer before being assisted. The Investigation Team made the following physical observations during the site inspection at the Tyutyu Village Clinic:

(a) The roof has visible signs of water leaks;
(b) There is a shortage of staff;
(c) Windows in some rooms are broken;
(d) Most doors have no handles and locks, making the whole building vulnerable to robberies and/or theft;

(e) Shortage of water supply, this challenge is exacerbated by damaged pipes as a result of a rat infestation;

(f) The staff is sharing toilets with patients and pit latrines are still used;

(g) There is no guardroom, instead, the waiting area is used for such purposes; and

(h) Information kept at the data capturer’s room and working apparatus like computers, printers, etc are at risk of being destroyed because of the leaking roof.

6.5.44.12 Notwithstanding the commendable long and short term plans, contingency measures and some steps indicated by Dr Wagner in her response to the Notice, which the ECDoH has taken in an effort to address infrastructural deficiencies and ease service pressures, these challenges remain in place and shall continue to prejudice the healthcare users in the EC province until they are addressed and eliminated.

6.5.44.13 The ECDoH has not placed sufficient and adequate measures in place to enable itself to meet its obligations in terms of section 27 of the Constitution, section 3, 21, 21(5), 25(1), 25(2), 77-79 of the National Health Act, 2003, the National Health Act Norms and Standards Regulations issued as per Government Gazette 67 No. 41419, dated 02 February 2018.

6.5.44.14 The conduct of the ECDoH accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.
REMEDIAL ACTION

6.5.45 Having regard to the evidence, the regulatory framework determining the standard that ECDoH should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Head of Department of ECDoH

6.5.45.1 Within sixty (60) calendar days of the date of this report and in line with the ECDoH’s statutory obligations in terms of section 27 of the Constitution; section 3, 21, 21(5), 25(1), 25(2), 77-79 of the National Health Act, 2003; the National Health Act Norms and Standards Regulations issued as per Government Gazette 67 No. 41419 dated 02 February 2018, submit to the Public Protector a detailed ECDoH’s Refurbishment/ Project Plan for Zulu Clinic, Tyutyu Village Clinic, Ndofela Clinic, Rabula Clinic and St Michael’s Clinic with clear dates, turn around periods, targets and deliverables indicating how the building or upgrading of the infrastructure in these health facilities will be undertaken.

6.5.45.2 Within sixty (60) calendar days of the date of this report and in line with the ECDoH’s statutory obligations in terms of section 27 of the Constitution; section 3, 21, 21(5), 25(1), 25(2), 77-79 of the National Health Act, 2003; the National Health Act Norms and Standards Regulations issued as per Government Gazette 67 No. 41419 dated 02 February 2018, submit to the Public Protector a detailed ECDoH’s report/ plan, which includes timelines, indicating how the critical shortage of human resources within the health facilities will be addressed.
Eastern Cape Department of Roads and Transport (ECDoT)

6.6 Whether the provision of road infrastructure by the Eastern Cape Department of Roads and Transport in certain villages in the Province is delivered in a progressive and effective manner as contemplated in the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

Common cause

6.6.1 The ECDoT is established in terms of Schedule 2, column 1 of the PSA. The mission of the ECDoT is to provide, facilitate, develop, regulate, and enhance a safe, affordable and reliable multi modal transport system, which is integrated with land uses to ensure improving levels of accessibility and optimal mobility of people and goods in support of socio economic growth and development in the province of the Eastern Cape.26

6.6.2 Roads are integral elements in the public infrastructure, providing mobility and access for people and goods. The ownership of roads is typically vested in public entities such as municipalities, provincial government and the South African National Road Agency Limited (SANRAL).

26 ECDoT’s Presentation to the Public Protector dated 13 March 2022.
**Issue in dispute**

6.6.3 The issue for Public Protector’s determination is whether the provision of roads infrastructure by the ECDoT in certain villages in the EC province is delivered in a progressive and effective manner as contemplated in the Constitution and the law.

**Ms Tsese’s version**

6.6.4 On 18 May 2021, the Investigation Team interviewed Ms Tsese, who complained, amongst other things, about the poor conditions of the roads and bridges around her area of Matatiele. Ms Tsese stated that:

6.6.4.1 Most roads in Matatiele (including the R56), which are provincial and municipal roads are not maintained, while the vehicular traffic has increased;

6.6.4.2 The roads are narrow and have potholes which have contributed to a lot of fatal accidents in the area of Matatiele, even the streets within the central business district of Matatiele have massive potholes; and

6.6.4.3 Ha-Khoapa location is often flooded by the overflow water from Kiniga Bridge during storms and heavy rainfall. The bridge was not properly built and cannot accommodate all storm water. As a result, cars cannot pass during heavy rainfall.

**Mr Lupindo’s version**

6.6.5 On 21 February 2022, the Public Protector received another complaint against the ECDoT for failing to complete a project of upgrading a Provincial Road namely, the R405 in Matatiele. The complaint was
lodge by Mr Lupindo on behalf of the communities of Wards 17, 18 and 21. Mr Lupindo alleges that:

6.6.5.1 The R405 is 88 km long and starts at Mango Plantation to Mount Frere. Only 22, 5 km of the road, from the side of Mount Frere has tarmac and the remainder of more than 60 km is still a gravel road;

6.6.5.2 The gravel condition of the road has deteriorated which makes it very difficult to drive on the road, especially when it is raining. This dire situation of the road affects twenty-six locations, one police station (Lukholweni Police Station), three High Schools (namely, Lupindo, Nyaniso, and Ludidi), two Clinics (namely Lukholweni and Hillside), and three Tribal authorities (namely Lupindo, Nyaniso and Ludidi);

6.6.5.3 The gravel road has a negative impact on communities, particularly women who are in labour, in that, sometimes they are left with no option but to hire a bakkie to transport them to the hospital in town, because even ambulances find it hard to drive on the roads. All culverts need to be completely replaced and the drainage system adjacent to the road is also in dire need of repair. When it rains, water flows down the road because they live in a mountainous area;

6.6.5.4 They also have a big challenge in relation to the conditions of the bridges connecting locations, in that, these bridges are small and in bad shape or condition and as such, they need to be upgraded;

6.6.5.5 All the bridges are one-way, and unsafe, because there are no handrails. They need two-way bridges with a pedestrian walkway so that children and villagers can walk freely over the river to school;
6.6.5.6 Most locations have low-bed bridges and these get waterlogged during rainy seasons. Three bridges need urgent attention, namely the Bethesda, Qili, and Bhubesi Bridges. The matter was reported to the Alfred Nzo District office as well as to the ECDoT through a letter dated 07 October 2021; and

6.6.5.7 On 14 January 2022, they decided to approach the National Council of Provinces by way of a letter dated 14 January 2022. This was followed by a letter dated 07 February 2022, to the Honourable Minister of Transport: Fikile Mbalula, for the latter’s intervention, but there has been no response hence the decision to approach the Public Protector for assistance.

Mr Mgquba’s version

6.6.6 On 19 May 2021, the Investigation Team met with Messrs Mgquba and Mavenge (the local headman) and other residents of Mphetshwa. Mr Mgquba alleged that:

6.6.6.1 There is a stream crossing Mphetshwa location, which is used by kids going to school and elderly people to access the other part of the location every day. This is the shortest route from the R61 road preferred by the pedestrians in the location. This stream has mud and damp grass;

6.6.6.2 The community has placed big stones in the middle of the stream to use as steps to crossover. However, when it is raining, the stream becomes full and kids and elderly people often fall when making their way across, since it is slippery;
6.6.3  People with disabilities have difficulties when trying to cross this stream. The community, therefore, requests that a footbridge be constructed to make it easy for them to cross the stream;

6.6.4  The R61 provincial road across Mbizana is narrow and full of potholes and it has become a source of road carnage. This road also lacks speed humps to reduce speed for the safety of pedestrians and the kids in particular. The area has one school namely, Mphetshwa Primary, which is also serving nearby locations. Children cross this busy road to and from the school and during 2020, more than five (05) school children were hit by speeding cars on the R61 road; and

6.6.5  The matter was raised with the District Municipality and with the office of the MEC for Transport, but no assistance was received by the residents. The community is of the view that an underground tunnel would be appropriate, as the livestock can also be driven under the tunnel. At the moment, livestock also cross the R61 anywhere and contribute to accidents.

Ms Pukayi’s version

6.6.7  On 18 January 2022, the Investigation Team interviewed Ms Phathiswa Pukayi (Ms Pukayi) at Ladyfrere under Chris Hani District Municipality on behalf of Mr Mzukisi Pukayi, who could not attend due to other commitments. Ms Pukayi stated that:

6.6.7.1  The roads in the area are not maintained and as such, are in a very bad state and need urgent attention. The roads have donga formations within them, thus making it very difficult for cars to pass. There is no proper drainage system to channel or redirect storm water during rainy seasons;
6.6.7.2 The Xonxa Dam route is very bad and it has not been maintained in the last five (5) years. Tshatshu Location road maintenance was half done in the 2020/2021 financial year and no further maintenance was done. When it is raining, children attending school at Rantsana Junior Secondary School and Nonkululeko Senior Secondary School from Kwa-Hala, Elixeni and Methane locations, are left with no option but not to go to school at all, because the road is inaccessible;

6.6.7.3 School children and adults cannot pass Kwano-Zinayikana River, because there is no bridge at all and parents sometimes help the children to cross, but it is a dangerous exercise. The children from Kwa-Hala, Elixeni and Mbetheni locations are also alleged not have a scholar transport to take them to school, the distance is long and they usually arrive late at school;

6.6.7.4 These issues were constantly discussed during community meetings and escalated to relevant authorities, namely Emalahleni Local Municipality, Chris Hani District Municipality, and ECDOT. Ms Pukayi submitted that save for empty promises, nothing happened and there was no delivery and the status quo remains; and

6.6.7.5 During site inspection, the Investigation Team assisted by Ms Pukayi, observed that most locations within Ward 1 of Tshatshu Location in Ladyfrere are surrounded by rivers and streams and there are no proper bridges. The bridges built in the area do not have handrails and are narrow, allowing only one vehicle to pass at a time. Some of the bridges are low-bed bridges found along the DR08569 road, between Xonxa and Tshatshu and can be completely submerged under water during torrential rainfall.
Mr Mfeki’s version

6.6.8 On 19 January 2022, the Investigation Team interviewed Mr Mfeki, the Ward Councillor of Ward 13, Engcobo on behalf of the Complainant, Mr P Mqikela (Mr Mqikela), who could not attend because of work commitments. Mr Mqikela had lodged a complaint with the Public Protector about the poor and/or the lack of basic infrastructure and services in Ward 13. He submitted that:

6.6.8.1 The R229 road starts at the Qhokama location at Engcobo and goes through to the neighbouring town of Elliot. The road passes through several locations of Wards 10 and 13;

6.6.8.2 The R229 was last maintained in 2017 and even then, it was not properly done. He added that for example, at Upper Qebe no work was done on the road and as such, people in that area struggle to use that particular stretch of the road;

6.6.8.3 The Upper Qebe location is a critical area, because there is a clinic and Masilingane High School and when it rains they become inaccessible. The other major challenge faced by the community, which was also observed by the Investigation Team during site inspection, relates to poor and old bridges. The bridges were badly constructed and/or are old and pose a danger to the community due to lack of maintenance; and

6.6.8.4 The Khanyi Bridge is very old, looks frail and requires urgent attention. Mr Mfeki further pointed out that there are also other bridges like, Lubisi in Gilandoda, Marheleni, as well as some few low-bed bridges in Mdeni, which all need urgent maintenance and architectural attention.
Response of the ECDot

6.6.9 On 13 February 2022, the Public Protector raised the allegations with ECDot, to afford them an opportunity to respond. On 29 April 2022, Mr MC Mafani (Mr Mafani), the Head of Department for ECDot responded and indicated, amongst other things, that:

6.6.9.1 The ECDot is responsible for maintenance, construction and management of provincially proclaimed roads, however, there can be exceptional cases where ECDot intervenes on assets that do not reside under ECDot’s jurisdiction and that these interventions are done in the interest of Inter-Governmental relations, or where such action/intervention can be supported by means of legislation;

6.6.9.2 The R61 is a class 2 road that is regarded as a major arterial road. This section of the road is in a poor condition and the bid was advertised for implementation in the 2021/22 financial year. The project was not successfully awarded as the recommendations of ECDot’s, Bid Adjudication Committee (BAC), did not get support from Provincial Treasury and this was all in line with prescripts governing supply chain management;

6.6.9.3 The bid was scheduled to be re-advertised, talks for ceding some of the strategic routes to SANRAL started and this road was identified for transfer to SANRAL. Discussions had advanced to a stage that necessitated advertising being put on hold as substantial investment on this road would have resulted in further budget limitations in the ECDot;

27 The Head of Department further presented oral submissions to PPSA on two occasions held on 9 March and 14 April 2022.
6.6.9.4 In principle, the road has been accepted for cession but awaiting formal declaration processes, including gazetting. As the road remains the responsibility of ECDoT, routine maintenance is carried out to ensure safety and trafficability of the road. A contractor was on site in February 2022, to plug the potholes and currently the ECDoT is implementing the resealing of the Flagstaff to Magusheni section of the same road;

6.6.9.5 The *Maluti-Matatiele road project* was awarded two years ago with a duration of 14 months. The contractor was duly appointed and all applicable processes were followed in appointing the service provider, but the performance proved to be contrary to what was considered during the evaluation. The contractor has been struggling for some time and this necessitated the ECDoT to invoke penalty clauses, as per the applicable contract document GCC2015. The contract is currently on penalties and they get deducted from all monthly payment certificates. All the necessary support is being provided by ECDoT to ensure that the completion of the project is realised. The project is also closely monitored and the latest program submitted by the contractor indicates that the project will be completed in August 2022;

6.6.9.6 The R405 (also referred to as T15) in Matatiele, is the road in Alfred Nzo District that traverses between Mt Frere and Matatiele. The road is approximately 88km long and that about 20km of this road was upgraded to surface standard around 2010. More than 60km of this road remains a gravel road and is being maintained in its current state. There are no immediate plans to upgrade this road due to financial constraints in the ECDoT and this has also been communicated to the Complainant;

6.6.9.7 The R405 road is receiving maintenance at reasonable intervals. The project for the maintenance of the remaining 60km gravel section, was
scheduled to be implemented over two phases. Phase one of this project commenced in the 2021/22 financial year and completion is anticipated in the first quarter of the 2022/23 financial year. The remaining phase, which is 30km is planned for the 2023/24 financial year, but there could be delays due to a current moratorium on tenders. It is unfortunate that the Complainant and the majority of the communities affected by this road are demanding that this road be surfaced (upgraded) and have no interest on current interventions by the ECDoT;

6.6.9.8  **The DR08569 at Emalahleni**, is a gravel road, which is about 26km long in the Ladyfrere under Emalahleni Local Municipality. The road is being maintained on reasonable intervals and sections of this road were regravelled in the 2013/14 financial year, however, there were allegations from one community member, that the project for the road was not implemented as expected. Prior to implementation of this project, the municipality was briefed about the scope and it was well understood and accepted by the municipality. The scope entailed regravelling certain sections of the DR08569 and the other four (4) roads at the Emalahleni municipality. This project was completed as per the awarded specification. Certain sections of these roads were again regravelled in the 2020/21 financial year, with another 10km regravelling planned for the 2022/23 financial year. It must be noted that current resources do not permit the ECDoT to attend to this road in its entirety at once, due to other roads in the EC province that must be attended to;

6.6.9.9  According to maintenance manuals, gravel roads are to be bladed at least three (3) times a year, provided that there is still adequate wearing course (gravel material). Due to challenges faced by the ECDoT, priority for blading is given to highly trafficked roads and the
ECDoT strives to always ensure trafficability and safety. Regravelling is the most expensive activity in routine maintenance and should be done approximately at four-year intervals. The activity comprises importing of suitable gravel material of a specified depth. There is also what is termed periodic maintenance that is normally carried out on surfaced roads and this primarily comprises of resealing and rehabilitation. This is normally carried out every 7-10 years or depending on designed maintenance intervals;

6.6.9.10 Over the years, the ECDoT has been transferring some of the province’s strategic routes to SANRAL and the first batch of roads were transferred around 2011-2012. Discussions to consider transferring more routes were again revived towards the end of the 2021/22 financial year. ECDoT submitted five roads for transfer consideration, the list was endorsed by the Premier and receipt of acknowledgement by the National Minister of Transport. Plans are underway to formally transfer the five roads and in line with set processes. There are other roads that are being considered for transfer and consultations are also afoot;

6.6.9.11 In the 2018/19 financial year that ECDoT entered into a service level agreement with NDPWI, for the construction of Bailey-type bridges. According to the agreement, NDPWI is managing the Programme on behalf of ECDoT. To date, a total of nine bridges have been completed and out of the nine bridges, three were under the jurisdiction of the local municipality, but implemented using ECDoT’s funds in the spirit of Inter-Governmental relations; and

6.6.9.12 An assessment was conducted under the same programme for construction of seventeen (17) additional bridges. Based on the assessment, thirteen (13) bridges were found to be suitable for bailey-
type construction methods and construction is awaiting NDPWI confirmation. Construction will also be subject to availability of funding from the Presidential Stimulus Fund. There are other bridges that are being maintained and/or constructed on a yearly basis, using conventional methods and implementation will be dependent on the current tender moratorium.

Response by Department of Defence

6.6.10 On 28 February 2022, the Public Protector engaged the Department of Defence (DOD), to establish its role and/or involvement in the development of bridges in the EC province. On 31 March 2022, the Secretary of Defence (SecDef), Ambassador, GS Kudjoe (Ms Kudjoe), responded to the Investigation Team and stated the following:

6.6.10.1 In 2009, the Minister of DPWI, in collaboration with the Minister of Defence and Military Veterans (DMV), established an Interdepartmental Task Team to deal with the challenge of infrastructure backlog. The task team was to determine the priorities pertaining to rural development objectives with regard to access roads and bridges in rural areas;

6.6.10.2 A memorandum of agreement (MOA) and an Implementation Protocol (IP) that provided intergovernmental and operational frameworks were entered into by the two departments. That since 2009, various Bailey Bridges (a type of portable, pre-fabricated, truss bridge with different configurations), have been constructed for vehicles and suspension, krupp and steel bridges have been constructed for pedestrians in three provinces of South Africa, including the EC with the help of South African Army Engineers;
The following bridges were constructed, completed and handed over to the local municipalities in the EC province and the bridge names are according to the area or nearest area, where the bridge was constructed:

<table>
<thead>
<tr>
<th>Ser No</th>
<th>Bridge Name</th>
<th>Municipality</th>
<th>Area within Municipality</th>
<th>Bridge Length</th>
<th>Completion Date</th>
<th>Handed Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tsomo</td>
<td>Lufukufuku</td>
<td>KwaKasura</td>
<td>SS5Ba 15 m</td>
<td>03/12/2009</td>
<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>Nthafufu</td>
<td>Port St John</td>
<td>Emanaleni</td>
<td>DS 10 Ba 30m</td>
<td>21/12/2009</td>
<td>Yes</td>
</tr>
<tr>
<td>3</td>
<td>Daluhlanga</td>
<td>Kokstad</td>
<td>Lubaleko</td>
<td>Suspension 120 m</td>
<td>22/03/2010</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>Cofimvaba</td>
<td>King Sebata Dalindyebo</td>
<td>Maqwatini</td>
<td>Details not available</td>
<td>06/05/2011</td>
<td>Yes</td>
</tr>
<tr>
<td>5</td>
<td>Coffee Bay I</td>
<td>King Sebata Dalindyebo</td>
<td>Coffee Bay</td>
<td>Details not available</td>
<td>06/05/2011</td>
<td>Yes</td>
</tr>
<tr>
<td>6</td>
<td>Coffee Bay 2</td>
<td>King Sebata Dalindyebo</td>
<td>Coffee Bay</td>
<td>Details not available</td>
<td>06/05/2011</td>
<td>Yes</td>
</tr>
<tr>
<td>7</td>
<td>Kugguna (Qunu)</td>
<td>Qumbu</td>
<td>Ikelweni</td>
<td>DS 10 Bay (30 m)</td>
<td>21/09/2013</td>
<td>Yes</td>
</tr>
<tr>
<td>8</td>
<td>Nthafufu (RB*)</td>
<td>Port St John</td>
<td>Manaleni</td>
<td>DS 12 Bay (36 m)</td>
<td>04/01/2014</td>
<td>Yes</td>
</tr>
<tr>
<td>9</td>
<td>Bawa</td>
<td>King Sebata Dalindyebo</td>
<td>Mnquma, Amathole</td>
<td>DS 10 Bay (30 m)</td>
<td>25/02/2016</td>
<td>Yes</td>
</tr>
<tr>
<td>10</td>
<td>Amazizi</td>
<td>King Sebata Dalindyebo</td>
<td>Lahlangubo</td>
<td>DS 6Ba (18 m)</td>
<td>31/04/2016</td>
<td>Yes</td>
</tr>
<tr>
<td>11</td>
<td>Zazulwana</td>
<td>King Sabata Dalindyebo</td>
<td>Mnquma, Amathole</td>
<td>DS 12 Bay (36 m)</td>
<td>31/04/2016</td>
<td>Yes</td>
</tr>
<tr>
<td>12</td>
<td>Mancam</td>
<td>King Sabata Dalindyebo</td>
<td>KuGxwalibomvu</td>
<td>DS 10 Bay (30 m)</td>
<td>31/04/2016</td>
<td>Yes</td>
</tr>
<tr>
<td>13</td>
<td>Nkosana</td>
<td>OR Tambo</td>
<td>Port St Johns</td>
<td>DS 8 Bay 24 m</td>
<td>21/12/2018</td>
<td>Yes</td>
</tr>
<tr>
<td>14</td>
<td>Queens Mercy</td>
<td>Alfred Nzo</td>
<td>Matatiele</td>
<td>DS 5 Bay 15m</td>
<td>15/03/2019</td>
<td>Yes</td>
</tr>
<tr>
<td>15</td>
<td>Zazulwana (RB)*</td>
<td>King Sabata Dalindyebo</td>
<td>Mnquma, Amathole</td>
<td>DS 12 Bay (36 m)</td>
<td>12/04/2019</td>
<td>Yes</td>
</tr>
<tr>
<td>16</td>
<td>Kru I</td>
<td>Alfred Nzo</td>
<td>Hasetati, Matatiele</td>
<td>Krupp 25 m</td>
<td>17 m</td>
<td>25/04/2019</td>
</tr>
<tr>
<td>17</td>
<td>Kru 2</td>
<td>Alfred Nzo</td>
<td>Hasetati, Matatiele</td>
<td>Krupp 25 m</td>
<td>30/04/2019</td>
<td>Yes</td>
</tr>
<tr>
<td>18</td>
<td>Kru 3</td>
<td>Alfred Nzo</td>
<td>Hasetati, Matatiele</td>
<td>Krupp 17 m</td>
<td>12/05/2019</td>
<td>Yes</td>
</tr>
<tr>
<td>19</td>
<td>Mbizana 1</td>
<td>OR Tambo</td>
<td>Port St Johns</td>
<td>Krupp 25 m</td>
<td>07/05/2019</td>
<td>Yes</td>
</tr>
<tr>
<td>20</td>
<td>Mbizana 2</td>
<td>OR Tambo</td>
<td>Port St Johns</td>
<td>Krupp 25 m</td>
<td>07/05/2019</td>
<td>Yes</td>
</tr>
<tr>
<td>21</td>
<td>Ntabankulu 1</td>
<td>OR Tambo</td>
<td>Port St Johns</td>
<td>Krupp 25 m</td>
<td>07/05/2019</td>
<td>Yes</td>
</tr>
<tr>
<td>22</td>
<td>Ntabankulu 2</td>
<td>OR Tambo</td>
<td>Port St Johns</td>
<td>Krupp 25 m</td>
<td>07/05/2019</td>
<td>Yes</td>
</tr>
<tr>
<td>23</td>
<td>Port St Johns 1</td>
<td>OR Tambo</td>
<td>Port St Johns</td>
<td>Krupp 17 m</td>
<td>07/05/2019</td>
<td>Yes</td>
</tr>
<tr>
<td>24</td>
<td>Port St Johns 2</td>
<td>OR Tambo</td>
<td>Port St Johns</td>
<td>Krupp 25 m</td>
<td>07/05/2019</td>
<td>Yes</td>
</tr>
</tbody>
</table>
6.6.10.4 The following areas have been earmarked by DPWI and assessed by the South African Army for the construction of vehicular bridges in the 2022/23 financial year:

<table>
<thead>
<tr>
<th>Ser/ No</th>
<th>Bridge Name</th>
<th>Municipality</th>
<th>Area within Municipality</th>
<th>Bridge Length</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>01</td>
<td>Emaxesibeni Gap 1</td>
<td>Umzimvubu</td>
<td>Mount Ayliff</td>
<td>DS 12 Bay (36m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>02</td>
<td>Emaxesibeni Gap 2</td>
<td>Umzimvubu</td>
<td>Mount Ayliff</td>
<td>DS 12 Bay (36 m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>03</td>
<td>Emaxesibeni Gap 3</td>
<td>Umzimvubu</td>
<td>Mount Ayliff</td>
<td>DS 12 Bay (36 m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>04</td>
<td>Ntsintsinyane</td>
<td>Ntabankulu</td>
<td>Sipetu</td>
<td>DS 10 Bay (30 m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>05</td>
<td>Mfundiswa School Dambeni</td>
<td>Ntabankulu</td>
<td>Mfundisweni</td>
<td>DS 10 Bay (30 m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>06</td>
<td>Zixambuzi</td>
<td>Nyandeni</td>
<td>Gazini</td>
<td>DS 10 Bay (30 m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>07</td>
<td>Mbobyi</td>
<td>Winnie Madikizela-Mandel</td>
<td>Tilongo</td>
<td>DS 12 Bay (36 m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>08</td>
<td>Dedeni</td>
<td>Winnie Madikizela-Mandel</td>
<td>Umtweni</td>
<td>DS 10 Bay (30 m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>09</td>
<td>Thembalisizwe</td>
<td>Winnie Madikizela-Mandel</td>
<td>Mhlanga</td>
<td>DS 10 Bay (30 m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>10</td>
<td>Ndlankala</td>
<td>Winnie Madikizela-Mandel</td>
<td>Mdankala</td>
<td>DS 12 Bay (36m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>11</td>
<td>Mkhata</td>
<td>Winnie Madikizela-Mandel</td>
<td>Ndayini</td>
<td>DS 8 Bay (24 m)</td>
<td>Already Assessed, Possible</td>
</tr>
<tr>
<td>12</td>
<td>Mneno</td>
<td>Port St Johns, OR Tambo</td>
<td>Mdakatweni</td>
<td>DS 12 Bay (36 m)</td>
<td>Already Assessed, Possible</td>
</tr>
</tbody>
</table>
6.6.10.5 As directed by the President in his State of the Nation Address (February 2022), there is a total of Ninety Six (96) bridges planned for the 2022/23 financial year, for different provinces, including the EC.

Response by SANRAL

6.6.11 On 01 March 2022, the Investigation Team engaged SANRAL to establish its role and/or involvement in development of roads in the EC province.

6.6.12 A letter dated 29 March 2022, signed by the Acting Chief Executive Officer of SANRAL, Mr L Memeza (Mr Memeza), provided amongst other things, a table indicating Eastern Cape Strategic and Primary Roads transferred to SANRAL and indicated the following:
It is important to realise that the roads transferred to SANRAL occurred without any budget transfers from the Province to SANRAL. SANRAL will immediately commence with applying the SANRAL Asset Management Procedures and proceed with the appointment of Contractors for the Routine Road Maintenance (i.e. Grass Cutting, Fence Repairs, Pothole Repairs, Guardrail repairs, Cleaning of side drains, Line Markings, Road Signs, etc), of the transferred road sections after proclamation as National Roads, to address any maintenance backlog that developed whilst under provincial government control.

The Eastern Cape Strategic Primary Road Network to fall under SANRAL jurisdiction is made up of a total of 3290 km and has been transferred to SANRAL on the Proclamation Date, as summarised in the table below:

<table>
<thead>
<tr>
<th>Province</th>
<th>Road</th>
<th>Year Incorporated</th>
<th>Proclamation Date</th>
<th>Length (Estimate)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>N9 - Eastern Cape border and Middelburg</td>
<td>2003/04</td>
<td>2003/04/22</td>
<td>30 km</td>
</tr>
<tr>
<td></td>
<td>R61 - N9 to Eastern Cape border</td>
<td>2003/04</td>
<td>2003/04/22</td>
<td>137 km</td>
</tr>
<tr>
<td></td>
<td>R61 – Between intersections of the N9 and N10</td>
<td>2003/04</td>
<td>2003/04/22</td>
<td>88 km</td>
</tr>
<tr>
<td></td>
<td>R61 - between intersections N10 and N6</td>
<td>2003/04</td>
<td>2003/04/22</td>
<td>145 km</td>
</tr>
<tr>
<td></td>
<td>R61 – between N6 to Umtata</td>
<td>2003/04</td>
<td>2003/04/22</td>
<td>220 km</td>
</tr>
<tr>
<td></td>
<td>R61 - N2 Wild Coast portions</td>
<td>2003/04</td>
<td>2003/04/22</td>
<td>120 km</td>
</tr>
<tr>
<td></td>
<td>R56 – Middelburg to KZN Border</td>
<td>2012/13</td>
<td>2012/04/10</td>
<td>546 km</td>
</tr>
<tr>
<td></td>
<td>R58 – Colesberg to Elliot</td>
<td>2012/13</td>
<td>2012/04/10</td>
<td>370 km</td>
</tr>
<tr>
<td></td>
<td>R62 – WC Border to N2</td>
<td>2012/13</td>
<td>2012/04/10</td>
<td>118 km</td>
</tr>
<tr>
<td></td>
<td>R63- WC Border to N2</td>
<td>2012/13</td>
<td>2012/04/10</td>
<td>428 km</td>
</tr>
<tr>
<td></td>
<td>R67- N2 to R61</td>
<td>2012/13</td>
<td>2012/04/10</td>
<td>200 km</td>
</tr>
</tbody>
</table>
6.6.12.3 The SANRAL MTEF approved projects and budget allocation, based on the above proclamation process for the EC province for the period from 01 April 2021 to 31 March 2025, which is summarised in the table below:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfred Nzo Mun</td>
<td>4</td>
<td>R32 545 430</td>
<td>R67 038 508</td>
<td>R33 459 143</td>
<td>R15 846 495</td>
<td>R148 889 576</td>
</tr>
<tr>
<td>Amahlatih Local Mun</td>
<td>1</td>
<td>R10 000 000</td>
<td>R10 000 000</td>
<td>R0</td>
<td>R0</td>
<td>R20 000 000</td>
</tr>
<tr>
<td>Amathole DM Mun</td>
<td>1</td>
<td>R 900 000</td>
<td>R 3 87000</td>
<td>R 88 000 000</td>
<td>R92 775 000</td>
<td></td>
</tr>
<tr>
<td>Amatole District Mun</td>
<td>8</td>
<td>R 81 036 539</td>
<td>R 85 336 539</td>
<td>R 52 627 819</td>
<td>R50 952 000</td>
<td>R 269 952 897</td>
</tr>
<tr>
<td>Bitou Local Mun</td>
<td>1</td>
<td>R 115 000 000</td>
<td>R79 376 352</td>
<td>R38 863 948</td>
<td>R0</td>
<td>R233 231 300</td>
</tr>
<tr>
<td>Blue Crane Route Local Mun</td>
<td>4</td>
<td>R231 537 252</td>
<td>R 56 839 403</td>
<td>R 187 821 379</td>
<td>R 70 243 305</td>
<td>R 546 441 339</td>
</tr>
<tr>
<td>Buffalo City Metro Mun</td>
<td>14</td>
<td>R229 291 262</td>
<td>R383 901 321</td>
<td>R 295 577 001</td>
<td>R 95 925 766</td>
<td>R696 333 350</td>
</tr>
<tr>
<td>Cadadu District Mun</td>
<td>7</td>
<td>R 34 663 000</td>
<td>R33 060 000</td>
<td>R30 060 000</td>
<td>R29 400 000</td>
<td>R 127 186 000</td>
</tr>
<tr>
<td>Camdeboo Local Mun</td>
<td>1</td>
<td>R0</td>
<td>R0</td>
<td>R0</td>
<td>R0</td>
<td>R0</td>
</tr>
<tr>
<td>Chris Hani District Mun</td>
<td>7</td>
<td>R285 534 071</td>
<td>R334 090 454</td>
<td>R385 959 196</td>
<td>R 153 008 597</td>
<td>R 1 158 592 318</td>
</tr>
</tbody>
</table>

Total Length Transferred to SANRAL: 3,290 km
<table>
<thead>
<tr>
<th>Local/Regional</th>
<th>Name</th>
<th>Code</th>
<th>Total Revenue</th>
<th>Total Expenditure</th>
<th>Surplus/Deficit</th>
<th>Total Revenue</th>
<th>Total Expenditure</th>
<th>Surplus/Deficit</th>
<th>Total Revenue</th>
<th>Total Expenditure</th>
<th>Surplus/Deficit</th>
<th>Total Revenue</th>
<th>Total Expenditure</th>
<th>Surplus/Deficit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dr Beyers Naude Local Mun</td>
<td>8</td>
<td>R 48 989 233</td>
<td>R 110 368 539</td>
<td>R 72 269 446</td>
<td>R 50 404 446</td>
<td>R 282 031 664</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Elundini Local Mun</td>
<td>3</td>
<td>R139 982 677</td>
<td>R37 031 308</td>
<td>R21 120 000</td>
<td>R22 110 000</td>
<td>R220 243 985</td>
<td></td>
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As indicated in the table above, SANRAL has two hundred and eighteen (218) approved projects to an estimated total value of thirty billion, three hundred million rand (R30 300 000 000.00), for the SANRAL road network in the EC. The rollout of these projects is subject to various regulatory approval processes that need to be

28 Environmental Authorisation under Spatial Planning and Land Use Management Act 16 of 2013 ("SPLUMA"); Tribal Land Acquisition and Borrow/Quarry Pits Approvals pits.
followed and will ensure continued maintenance of SANRAL roads in the EC to international norms.

Additional Response by ECDoT

6.6.13 On 29 April 2022, the Investigation Team received an additional response from Mr Mafani indicating the following:

6.6.13.1 The ECDoT remains committed to service delivery standards that will not compromise the livelihood of communities. ECDoT has made strides towards achieving the objectives of the District Development Model, where there is a number of Service Level Agreements with municipalities, which undertake an implementing agent role for roads construction and maintenance;

6.6.13.2 The ECDoT wishes to register its concern on the credibility of some of the complaints the Public Protector is receiving. Some of the complaints received are from Eastern Cape citizens who are not based in the province, but in other provinces. ECDoT has also observed that Complainants are not in touch with their respective municipalities, whereas ECDoT plans and progress are shared with the municipalities;

6.6.13.3 There are historical issues that are considered inimical to the road network in the Eastern Cape Province and the situation the province in general and the ECDoT in particular finds itself in these days, can be traced back to the pre-1994 era, e.g. homelands versus the Cape Province Administrations. The homelands (Ciskei and Transkei), invested little in terms of roads infrastructure as opposed to the Cape Provinces. During the amalgamation post 1994, the country missed an opportunity to start with trying to level the playing fields e.g. deciding where to invest first and limit investment simultaneously. As a
consequence, the country is now forced to compare the Eastern and Western Cape provinces, both of which were ever at differing levels of development on the eve of the first democratic era in 1994;

6.6.13.4 Depreciation and preservation of infrastructure assets is very important and needs to be taken into consideration whenever decisions are made. With regards to the Provincial Roads Maintenance Grant (PRMG), a requirement or condition is that for every rand given, the Provincial Treasury ought to give the same amount (to a respective Transport Department), however, in the EC, this arrangement is not honoured;

6.6.13.5 ECDoT is responsible for administering, construction and maintenance of about 42000km of roads, which are provincially proclaimed. This network comprises of about ninety (90) gravel roads and ten (10) surfaced roads. Maintenance backlog in the province is in excess of three billion rand (R3 000 000 000.00) and the current funding trends do not assist in reducing this backlog. The EC province is currently receiving just less than one billion rand (R1 000 000 000.00), to maintain its network;

6.6.13.6 The roads infrastructure in the ECDoT is funded by two sources namely, Equitable Shares for upgrades or construction projects and PRMG for maintenance. It is the condition of PRMG that the Provinces’ Equitable Share allocation should match or surpass the PRMG allocation, as the PRMG is meant to supplement the provincial allocation. **ECDOT is currently receiving just about R1, 5 billion from National Department of Transport, this is inclusive of Expanded Public Works Programme (EPWP) allocation**, which is mainly meant to address poverty challenges. Equitable Share portion is only about
seven hundred million rand (R700 000 000.00), and the allocation also does not equate to PRMG allocation as per the conditions. The table below supports the submissions for the road network per category:

6.6.13.7 The minimum intervention to ensure roads are trafficable in the province (excluding rehabilitation and periodic maintenance) requires at least one billion three hundred million rand (R1 300 000 000.00), per annum. Minimum periodic maintenance requirements are as follows:

(a) Re-gravelling of 10% of gravel network per annum; and

(b) Reseal and Rehabilitation of 10% of surfaced network per annum.

6.6.13.8 A periodic maintenance will therefore require two billion, two hundred and fifty five million rand (R 2 255 000 000.00) per annum. There are
also bridges that are in urgent need of intervention to the value of one hundred and forty million rand (R 140 000 000.00). An annual amount of one hundred and fifty million rand (R150 000 000.00) is required for normal maintenance of bridges, thus in total, the EC province requires a minimum of three billion, eight hundred and fifty million rand (R3 850 000 000.00), annually to maintain its network.

6.6.13.9 Below is an infographic presentation of the current EC Road Network:

6.6.13.10 Explanation of the legends on the graph: Only approximately 9% of the EC roads are surfaced, versus a national average of 25%. This severe backlog indicates under-investment in roads in the EC province over an extended period, especially in the former homeland areas.
6.6.13.11  Explanation of the legends on the graph: Conditions of the road in former homelands areas compare relatively poor to historically advantaged areas like BCMM and NMBMM.

6.6.13.12  Explanation of the legends on the graph: There are one thousand and nineteen (1 019) bridges and one thousand five hundred and five (1 505) major culverts on provincial roads with approximately 27 % of structures on paved roads, which carry the highest traffic.
6.6.13.13 The economic well-being of a country is closely related to the state of its road network. The agricultural, mining, forestry and tourist industries of all countries rely heavily on an adequate network of all-weather roads, for their economic viability. The future development of most third world countries is fundamentally dependent on the existence of adequate road networks. Gravel roads are mostly referred to as rural roads and they are the major component of the road network in the EC.

6.6.13.14 It is unlikely that the overall percentage of gravel roads will decrease significantly in the foreseeable future and techniques for improving the unpaved road networks are thus becoming increasingly important. Many unpaved roads are presently designed with very little scientific input and are constructed from the nearest available material. Minimal attention is directed towards providing adequate or effective drainage, or towards selecting suitable material for the prevailing conditions. Minimal maintenance is the norm in most provinces of South Africa, including the EC.

Applicable law and legal prescripts


6.6.14 Transport is a function that is legislated and executed at all levels of government. Schedule 5 Part A of the Constitution guides the mandate of the Department of Transport, with specific reference to provincial roads and traffic.

6.6.15 The ECDot derives its mandate from a number of legislation, schedules and strategies, which include the following:
(1) Eastern Cape Roads Act, 2003 as amended; and
(2) SANRAL, Act 7 of 1998.

The Eastern Cape Roads Act, 2003

6.6.16 Section 3 of the Eastern Cape Roads Act\textsuperscript{29} spells out the general powers and duties of the MEC and states \textit{inter alia}:

“3(1)(a) subject to the provisions of this Act and the Road Traffic Act, the MEC or his or her delegate may:-

(a) Plan, design, construct, finance, control, manage, develop, maintain, control and rehabilitate a provincial road and fences relating thereto;

(b) provide and maintain road infrastructure, boreholes, pumps and all appurtenances or conveniences which he or she deems necessary for the travelling public;

(c) …………..;

(d) …………..;

(e) …………..;

(f) regulate, control, close or deviate an entrance to or exit from a provincial road;

(g) …………..;

(h) rehabilitate or landscape or otherwise improve areas within a provincial road;

(i) …………..;

(j) provide financial or other assistance, in agreement with an owner of land for the erection or maintenance of fences, gates, on other structures on provincial roads or land adjacent thereto, or the construction or maintenance of any road;

\textsuperscript{29} Act 3 of 2003, Provincial Gazette Extraordinary No. 1025 issued on 5 June 2003 in Bisho.
(k) grant financial or other assistance to a municipality, on conditions that the MEC determines for:
   i) For the construction or maintenance of roads infrastructure in the area of its jurisdiction;
   ii) For the expropriation for that by that municipality of land or a right in land for the purpose mentioned in paragraph (k)(i);

(l) construct or maintain a road or portion thereof in the area of jurisdiction of a municipality on behalf of that Municipality;

(m) provide service facilities and allow the provision of filling stations, restaurants, playgrounds and other facilities for the use of the travelling public within provincial roads;

(n) proclaim any provincial road or any portion thereof, including any bridge or tunnel on such road as a toll road, and for the purposes of this Act, amend or withdraw any such proclamation.

(2) The MEC or his or her delegate must provide and maintain such traffic signs, traffic control devices and markings as he or she may deem necessary for guidance and safety of traffic on provincial roads, and may, subject to the Road Traffic Act, decide where such signs, devices and markings must be erected or placed”.

6.6.17 Section 4(1) of the Eastern Cape Roads Act, states further that the MEC or his or her delegate may conclude an agreement with another province, a municipality, or the South African National Roads Agency Limited established by section 2 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998), or with another person or body, in this section referred to as the “other party” in terms of which-

(a) (i) the other party will take over any or all responsibility for or in
relation to a provincial road.

(ii) In case of a provincial road, it must continue to be a provincial road until the MEC proclaims by notice in the Gazette that it is no longer such for the purposes of this Act, or

(b) the other party may do work in connection with a provincial road, including the construction and maintenance thereof or have the work done under its supervision for the account of the province, or that the province will do such work for the account of the other party, or otherwise in terms of the agreement; or

(c) a road under the jurisdiction of the other party or owned by the other party must be a provincial road for the purposes of this Act, in which case, where the other party is a municipality, the municipality must nevertheless be responsible for disposal of all storm water from such provincial road or deviation thereof and expenditure incurred in connection therewith, and the MEC must not be responsible for damage caused by or arising from the disposal of storm water by that municipality or the failure by it to dispose of storm water;

(d) the land on which a provincial road is situated is transferred to the other party, where the province owns the land;

(e) the province will perform any of the functions envisaged in this Act, or work for the purposes of or in connection with functions of that nature, in the area of jurisdiction of, or on land belonging to, the other party, at the cost of the other authority in accordance with and subject to this Act".
(3) An agreement in terms of subsection (1) may provide for the sharing of the costs of a project between the parties.

(4) Where an agreement has been reached under subsection 1(d) to transfer a road to a municipality, the road concerned or relevant portion thereof must be deemed to be a municipal road within the area of jurisdiction of the municipality concerned, and no compensation must be payable to the owner of the land taken up by the road”.


6.6.18 The SANRAL Act, intends to make provision for a national roads agency for the Republic to manage and control the Republic’s national roads system and take charge, amongst others, of the development, maintenance and rehabilitation of national roads within the framework of government policy.

6.6.19 Section 25(1) of the SANRAL Act provides that “the Agency” within the framework of government policy, is responsible for, and is hereby given power to perform, all strategic planning with regards to the South African national roads system, as well as the planning, design, construction, operation, management, control, maintenance and rehabilitation of national roads for the Republic, and is responsible for the financing of all those functions in accordance with its business and financial plan, so as to ensure that government’s goals and policy objectives concerning national roads are achieved.

6.6.20 Section 40 of the SANRAL Act provides that:
i. Subject to subsections (2) and (3), the Minister may from time to time by notice in the Gazette—

ii. declare any existing road, or any route of which the boundaries have been fixed by survey, to be a national road; and

iii. Amend or withdraw any declaration so made.

vi. (2) A national road may be declared under subsection (1) only on the recommendation of the Agency, and then only—

vii. (a) with the agreement of the Premier of each province in which the road is situated, in the case of an existing road that is to be declared a national road, subject to subsection (3);

viii. (b) in the case of a new road that will have a substantial impact on the traffic lows in any one or more provinces, after consultation with the Premier of the province or Premiers of the provinces in which the road is proposed to be situated (as the case may be)

ix. (3) For the purposes of obtaining the agreement of a Premier required by subsection (2)(a), the Minister and the Premier must act in a manner and spirit consistent with the principles of cooperative government prescribed by section 41 of the Constitution. Where the Premier's agreement cannot be obtained after having made every reasonable effort to settle the dispute or difference and having exhausted all the mechanisms and procedures available for that purpose, the matter may be referred to the Constitutional Court in terms of section 167(4)(a) of the Constitution for decision.

Response to the Notice in terms of section 7(9)(a) of the Public Protector Act

6.6.21 A Notice in terms of section 7(9)(a) of the Public Protector Act, dated 02 June 2023 was issued to ECDot. Mr Mafani and his team provided
comments to the Notice during a virtual meeting held with the Investigation Team on 03 August 2023 and stated *inter alia*:

6.6.21.1 The provisional findings in the Notice seem to ask the ECDot to explain how allocated funds were utilised and that this would be a challenging exercise to do, because this investigation was not necessarily about specific capital projects.

6.6.21.2 Mr Mafani further requested that the findings should clearly articulate the challenge of funding constraints, which faces the ECDot. Mr Mafani contended that some roads are maintained by ECDot, while they remain gravel roads in order to make them trafficable and that not all roads shall be upgraded to a tarmac surface, as often demanded by Complainants.

*Analysis*

6.6.22 The above provisions manifestly oblige the ECDot with a legal duty to develop, design, construct, manage, maintain, control and finance provincial roads. The conduct of the ECDot is therefore expected to measure up to this legal duty in as far as provincial roads are concerned.

6.6.23 In terms of the above provisions, SANRAL powers are obviously limited to proclaimed national roads only. The primary road network in the Eastern Cape now falls under SANRAL jurisdiction after being transferred in terms of the above defined process. The transfer of road network in the EC made up of a total of 3,290km to SANRAL and it occurred on various proclamation dates from 2003 to 2016.
6.6.24 The ECDoT has acknowledged the backlog in road infrastructure in the province but contended that the current funding trends do not assist the ECDoT in reducing the historical backlog of upgrading and maintenance of the roads in the EC province. However, funding constraints were cited and it was indicated by the ECDoT that it is currently receiving about one billion five hundred million rand (R1 500 000 000.00), inclusive of EPWP to maintain its road network. According to Mr Mafani the ECDoT requires a minimum of three billion, eight hundred and fifty million rand (R 3, 850 000 000.00), annually to maintain its road network.

6.6.25 In addition, the ECDoT acknowledges that it faces the following challenges with regard to Roads Maintenance in the EC province:

(a) Community demands when the ECDoT is implementing a project e.g. compensation for borrow pits;
(b) Project stoppages by Small, Medium and Micro Enterprises (SMME’s), usually demanding “beneficiation”;
(c) Demands for roads to be surfaced (though a road may be in a good/reasonable condition); and
(d) Extension of scope on awarded projects, e.g. request to work on access roads or other culverts.

6.6.26 The investigation by the Public Protector has also revealed a pattern of incomplete or partial road upgrading and maintenance notably for roads such as the R61, R405 and DR08569, at Emalahleni, in instances where service level agreements were in place and budgets allocated. This can be attributed to improper and/or lack of upfront planning and/or a lack of proper management of contracts.
Conclusion

6.6.27 In the context of the evidence placed before the Public Protector, the Public Protector concludes that most roads and some bridges in the EC province are in a dilapidated state and desirous of urgent intervention. Accordingly, the ECDoT has not been able to effectively deliver the road infrastructure in the EC province as contemplated by the Constitution and the Eastern Cape Roads Act and funding constraints were cited as the major impediment.

FINDINGS

6.6.28 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether the provision of road infrastructure by the Eastern Cape Department of Roads and Transport within certain villages in the Eastern Cape Province is delivered in a progressive and effective manner as contemplated by the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.6.28.1 The allegation that the provision of road infrastructure by the EC Department of Roads and Transport, within certain villages in the EC province is not delivered in a progressive and effective manner as contemplated by the law, is substantiated.
6.6.28.2 The evidence placed before the Public Protector reveals that most of the provincial major roads and some bridges in particular those under Alfred Nzo District such as the stretch of R61 along Mbizana, and the R405 between Matatiele and Mount Frere are dilapidated and desirous of urgent intervention or repair as extrapolated from evidence.

6.6.28.3 The investigation by the Public Protector has revealed a pattern of incomplete or partial road upgrading and maintenance, notably for roads such as R61, R405 and DR08569 at Emalahleni, where service level agreements were in place and budgets already allocated. This may be attributed to lack of proper planning and management of contracts on the part of the ECDoT.

6.6.28.4 Investigation has further revealed that conditions of the roads in former homelands areas such as those under Alfred Nzo District compare relatively poor to areas like BCMM and NMBMM as adumbrated in evidence.

6.6.28.5 The ECDoT acknowledged the backlog in the provision of road infrastructure but indicated that funding constraints and the current funding trends and model do not assist the ECDoT in reducing the historical backlog of upgrading and maintenance of the roads in the EC province. The HOD for ECDoT, Mr Mafani submitted that the ECDoT is currently receiving about one billion, five hundred million rand (R1 500 000 000), inclusive of EPWP to maintain its road network and that the ECDoT requires a minimum of three billion, eight hundred and fifty million rand (R3 850 000 000), annually to maintain its road network.

6.6.28.6 Investigation has also determined that the ECDoT faces the following challenges with regard to Roads Maintenance in the EC province:
(a) Community demands when ECDoT is implementing a project e.g. compensation for borrow pits;

(b) Project stoppages by Small, Medium and Micro Enterprises (SMME’s), usually demanding “beneficiation’’;

(c) Demands for roads to be surfaced with tar (though a gravel road may be in a good/reasonable condition); and

(d) Extension of scope on awarded project, e.g. request to work on access roads or other culverts.

6.6.28.7 Given the persistent backlog in the provision of road infrastructure and incomplete or partial road upgrading and maintenance, for roads such as R61, R405 and DR08569, the ECDoT has not been able to effectively put in place sufficient road infrastructure to meet its obligations in terms of Schedule 5 Part A of the Constitution and section 3 and 4(1) of the Eastern Cape Roads Act.

6.6.28.8 The conduct of the ECDoT accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

REMEDIAL ACTION

6.6.29 Having regard to the evidence, the regulatory framework determining the standard that ECDoT should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:
The Head of Department of ECDoT

6.6.29.1 Within **sixty (60) calendar days** from the date of this report and in line with the ECDoT’s statutory obligations in terms of Schedule 5 Part A of the Constitution and section 3 and 4(1) of the Eastern Cape Roads Act, submit to the Public Protector a detailed ECDoT’s Infrastructure Implementation Plan for the provincial and districts roads, bridges and culverts under Alfred Nzo District with clear dates, turn around periods, targets and deliverables indicating how the upgrading and the maintenance of road infrastructure will be undertaken.

Eastern Cape Department of Public Works and Infrastructure (ECDPWI)

6.7 Whether the management and/or the maintenance of the government immovable property by the Eastern Cape Department of Public Works and Infrastructure within certain villages in the Eastern Cape Province is rendered in a progressive and effective manner as contemplated in the law, if no, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

*Common cause*

6.7.1 The ECDPWI is a provincial government department in the EC province, established in terms of Schedule 2, column 1 of the PSA. The mission of the ECDPWI is to be a custodian of provincial government immovable assets, a co-ordinator and provider of
sustainable infrastructure resulting in socio-economic transformation and development.\textsuperscript{30}

6.7.2 In terms of the Provincial Notice 119 of 2017\textsuperscript{31}, the former Premier of the EC province: Mr Phumulo Masualle (Mr Masualle), whilst acting in terms of section 137(b) of the Constitution read with section 3A (b) of the PSA, transferred the road function from ECDPWI to the ECDoT with effect from 01 April 2018.

6.7.3 As a result of the above stated arrangement, it is therefore common cause that the development of infrastructure such as roads and bridges now lies with ECDoT and ECDPWI plays no role in this regard.

\textit{Issue in dispute}

6.7.4 The issue for the Public Protector’s determination is whether the ECDPWI as a custodian and a caretaker of government immovable assets maintains public facilities and/or infrastructure in the EC province in a progressive and effective manner as contemplated in the law.

6.7.5 On 15 February 2022, the Investigation Team raised the allegations relating to poor conditions of public facilities such as public clinics, hospitals, police stations, schools and bridges with ECDPWI to afford it an opportunity to respond. The nature of allegations related to government owned buildings or public infrastructure, which is said to be either lacking or in a state of disrepair and neglect due to lack of maintenance and upgrades, are already stated under complaints directed to ECDoH, ECDOE, ECDoT and SAPS above.


\textsuperscript{31} Available at www.gpwnline.co.za.
Response by ECDPWI

6.7.6 On 03 June 2022 the ECDPWI responded to the allegations related to poor, lack of maintenance and/or non-existence of critical public infrastructure in the EC province, through the letter signed off by its Head of Department, Mr TL Manda (Mr Manda) who stated the following:

6.7.6.1 The ECDPWI is allocated a budget from the equitable share of the province (the Fiscus) to construct and maintain Provincial Government assets. Although the ECDPWI is generally regarded as the custodian of government Immovable Assets, it neither receives nor is it allocated an appropriation for the construction and maintenance of all government assets. In this regard the ECDoE, ECDoH and ECDoT are all allocated their own budget for their immovable assets. As a result the ECDPWI functions as an implementing agent for various provincial departments at their request. The relationships are regulated by Service Delivery Agreements (SDA), with the various provincial departments.

6.7.6.2 The ECDPWI is an implementing agent on behalf of the ECDoE and that every project implemented by ECDPWI is done under the request of the ECDoE. The school in question (Loyiso Senior Secondary), has not been allocated as a project to be implemented or a school in the disaster program. The MEC for ECDPWI visited the school as part of his office oversight visit on various facilities around the province. From the visit, the MEC’s office prioritised the school and the problems facing it and the ECDPWI officials wrote to the ECDoE and requested to add the school and two others to the list of disaster schools, which needed to be attended to. ECDoE informed ECDPWI that the request
for any intervention in the school needs to be received from the district office.

6.7.6.3 ECDPWI started a process of procuring two prefabs, but the process was cancelled twice due to procurement challenges. The region will be proceeding with a tender process in order to get two prefabs for the school. The prefabs will be mobiles that will be owned by ECDPWI and be moved elsewhere once the school has been built.

6.7.6.4 With regard to Zulu clinic, the funding for maintenance, upgrade and construction of all health facilities get allocated to the ECDoH. The identification of facilities that either require, repair, renovations, refurbishments, alteration and upgrading is the responsibility of ECDoH. Once the facility gets identified, it is included in the planning document that is termed as Infrastructure Program Management Plan (IPMP).

6.7.6.5 The IPMP would contain projects that are funded over the MTEF period (three-year period) and that the IPMP would then be given to ECDPWI, which will comprise of the list of the identified projects. The ECDPWI would then respond to the IPMP with the Infrastructure Project Implementation (IPIP), which shall detail the ECDPWI approach of the IPMP. Once the IPIP has been signed by the accounting officers, the ECDoH planning unit shall, in conjunction with the ECDoH clinical service unit, produce the initiation report for each identified project. The ECDPWI shall only proceed with the implementation of each individual project once the initiation report from the ECDoH has been received.

6.7.6.6 The maintenance budget for health facilities is also with the ECDoH, however, the ECDPWI regional offices across the province do provide technical support and skilled artisans to various districts to undertake
maintenance. Clinics that were mentioned by the Complainants to the Investigation Team as having poor infrastructure such as Zulu clinic, the clinic is not included in the current IPMP that has been received from ECDoH. With regard to Ndofela clinic, the clinic is included in the current IPMP and the DPWI has received a project brief from ECDoH for the construction of the new clinic. The ECDPWI is busy with the designs for the clinic and is targeting to go out to tender for the procurement of the contractor during the fourth quarter of the 2022/23 financial year.

6.7.6.7 With regard to St Michael’s Clinic, it is not included in the current IPMP by ECDoH. In connection with Rabula Clinic, the clinic is included in the current IPMP. The consultation meeting with the Rabula community together with the Ward Councillor and the Clinic Committees, the community indicated that, due to the small site where the current clinic is situated, an alternative has to be identified. The community identified an area known as Kwa 15.

6.7.6.8 This site is under the custody of the National Department of Public Works (NDPW) and had been given to Department of Agriculture Rural Development and Agrarian Reform for utilization. The ECDPWI’s Property Section had written to NDPW requesting permission to utilize this land for the construction of the clinic. Tyutyu Village Clinic is not included in the current IPMP by ECDoH.

6.7.6.9 The IPMP for the 2022-2025 MTEF, which was received from ECDoH, and submitted to Provincial Treasury by 31 August 2021, contains the portfolio of all projects allocated to the ECDPWI, as Implementing Agent. The IPMP reflects each project name, scope, agent, and budget from 2022 to 2025 MTEF.
Applicable law and legal prescripts


6.7.7 Schedule four (4) and five (5) of the Constitution lists the key functions of concurrent and exclusive competencies of provinces. With regard to the matters raised these would include the provision of adequate housing, proper infrastructure and sanitation in schools, proper maintenance of health facilities, construction and maintenance of provincial roads and bridges, and the general improvement of socio-economic conditions of households and communities in the province.

6.7.8 Section 137 of the Constitution provides that the Premier by proclamation may transfer to a member of the Executive Council-

(a) the administration of any legislation entrusted to another member; or

(b) any power or function entrusted by legislation to another member.

Public Service Act, 1994 (PSA)

6.7.9 Section 3A of the PSA stipulates that the Premier of a province may-

(a) subject to the provisions of section 7(5), establish or abolish any department of the provincial administration concerned;

(b) make determinations regarding the allocation of any function to, or the abolition of any function of, any office or department of the provincial administration concerned or the transfer of any function from one such office or department to another or from such office
or department to anybody established by or under any law of the provincial legislature or from any such body to such office or department.

**Eastern Cape Land Disposal Act, 2000**

6.7.10 The Eastern Cape Land Disposal Act\(^{32}\) has been promulgated to provide for the acquisition and disposal of land owned by the Government of the EC province and for matters incidental thereto. This Act expressly includes the acquisition of land by the Premier of the Eastern Cape viz expropriation. Section 2(1) of the Eastern Cape Land Disposal Act states that the Premier may, on the terms and conditions as he or she deems fit acquire or dispose of provincial immovable property.

**Government Immovable Assets Management Act, 2007 (GIAMA)**

6.7.11 Government Immovable Assets Management Act\(^{33}\) (GIAMA) provides for the management of an immovable asset that is held or used by a national or provincial department; to ensure the co-ordination of the use of an immovable asset with the service delivery objectives of a national or provincial department.

6.7.12 Section 4(2) of GIAMA provides that:

“A custodian –

(a) acts as a caretaker in relation to an immovable asset of which it is the custodian;

(b) ...;”

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\(^{32}\) Act 7 of 2000.

\(^{33}\) Act 19 of 2007.
(c) is subject to section 18, liable for any action or omission in relation to an immovable asset of which it is the custodian, excluding an act or omission in good faith.”

6.7.13 Section 13(1)(d) of GIAMA provides as follows:

“ The accounting officer of a custodian must, for all immovable assets for which that custodian is responsible – ensure that all activities that are associated with common law ownership are executed including –

(i) managing an immovable asset throughout its life cycle;
(ii) assessing the performance of the immovable asset;
(iii) assessing the condition of the immovable asset at least every fifth year;
(iv) identifying the effect of the condition of the immovable asset on service delivery ability;
(v) determining the maintenance required to return the immovable asset to the state in which it would provide the most effective service;
(vi) estimating the cost of the maintenance activities identified…”

Responses to Notices issued in terms of section 7(9)(a) of the Public Protector Act

6.7.14 A Notice in terms of section 7(9)(a) of the Public Protector Act was issued to the ECDPWI, dated 12 June 2023. Mr S Zani, Director of Legal Services (Mr Zani) responded to the Notice on behalf of ECDPWI in an email dated 05 July 2023. Mr Zani responded inter alia as follows:

6.7.14.1 That ECDPWI confirms that in the years under review the ECDOE provided a projected budget of R 448,117,855 million for its
infrastructure projects as per IPMP. Further that the CFO of ECDPWI confirmed receipt of R 539,177,715.95, which reflects therefore that the projected budget was spent entirely.

6.7.14.2 That the records, which includes Service Delivery Agreements, Maintenance Plan and IPMP report (furnished to the Public Protector) in respect of the ECDOH will reflect that 90% of the budget was spent during the period under review.

6.7.14.3 Regarding the maintenance and upgrading of health facilities in the EC province, Mr Zani provided the same clarification previously given by HoD, Mr Manda to say that the funding for maintenance, upgrading and construction of all health facilities gets allocated to client department(s). The identification of facilities that either require repairs and renovations, refurbishments and alterations or upgrading is the responsibility of the client department(s).

6.7.14.4 Once the facility gets identified, it gets included in the planning document that is termed IPMP. The IPMP would contain projects that are funded over the MTEF period of three years. The IPMP would then be given to ECDPWI which comprise of the list of the identified projects. ECDPWI would then respond to the IPMP with Infrastructure Project Implementation Plan (IPIP), which shall detail its implantation approach.

6.7.14.5 ECDPWI shall only proceed with the implementation of each individual project once the initiation report from client department has been received. The maintenance budget for health facilities is also with ECDOH, however, ECDPWI regional offices across the province do provide technical support and skilled artisans to various districts to undertake maintenance. It should also be noted that the effectiveness
of this exercise depend on the ability of various Health Districts to procure the required material for such maintenance defects.

**Analysis**

6.7.15 The former Premier of EC province, Mr Phumulo Masualle, signed a Proclamation as per Provincial Notice 119 of 2017 to transfer the road function from the ECDPWI to the ECDoT with effect from 01 April 2018 and this has resulted in the ECDPWI having no role to play in the development of infrastructure such as roads and bridges in the EC province.

6.7.16 The legal prescripts extrapolated above, in particular GIAMA imposes a legal obligation on ECDPWI to assess the condition of the immovable assets continuously at least every fifth years and determine the maintenance requirements, and this includes health facilities, schools, police stations and other government immovable assets in the province of EC.

6.7.17 The ECDPWI is required to conduct a periodical assessment of the condition of the immovable asset at least every fifth year as contemplated in section 13(1) of GIAMA.

6.7.18 The ECDPWI has various existing Service Delivery Agreements (SDA) with client departments such ECDoH, ECDoE and Eastern Cape Department of Sports Recreation Arts and Culture (ECDSRAC). In terms of these SDA’s ECDPWI is an implementing agent for government infrastructure projects and the obligations of each party are explained and set out in the SDA’s.
6.7.19 Client departments must first give a mandate to ECDPWI in terms of the SDA’s, which outlines the obligations between the ECDPWI and the client department. The ECDoH\textsuperscript{34} and ECDoE\textsuperscript{35} have provided their funded IPMPs to ECDPWI, which indicate their respective Infrastructure Projects identified for upgrade, repairs or maintenance.

6.7.20 In terms of the IPMP for the ECDoE there were 298 active projects at the start of 2020/21. Of these projects, construction ceased on 110 projects due to contractor suspending work or contractor being terminated.\textsuperscript{36} The ECDPWI is the principal implementing agent in terms of the Provincial Executive Council of February 2008, however due to its limited capacity other implementing agents are used via ECDPWI.\textsuperscript{37}

6.7.21 In terms of the IPMP for the ECDoH the department delivers infrastructure through implementing agents namely; ECDPWI that was allocated a project portfolio of a budget of R\ 154\ 350\ 480 (R154 Million), CDC was allocated a project portfolio of a budget of R\ 445\ 289\ 971 (R 445 Million) over the 2018/19 MTEF, The remaining portfolio of a projects of a budget of R\ 4\ 139\ 081\ 322 (R 4.139 Billion) will be implemented internally by ECDoH over the 2018/19 MTEF. Due to capacity constraints within the ECDPWI, CDC was also appointed as the second implementing agent for health infrastructure projects in the province. However the two implementing agents have their own weaknesses that are beyond ECDoH’s resolve.\textsuperscript{38}

\textsuperscript{34} IPMP (2018-2020) dated 10 August 2017 and IPMP (2022-2025).
\textsuperscript{35} IPMP (2022-2023) dated 31 March 2022.
\textsuperscript{36} ECDoE’s IPMP (2022-2023) at page 8-9.
\textsuperscript{37} ECDoE’s IPMP (2022-2023) at page 17.
\textsuperscript{38} ECDoH’s IPMP (2018-2020) dated 10 August 2017, pages 16-17
6.7.22 The Public Protector has also noted demonstrable backlogs on the completion of certain infrastructure projects as lamented by ECDoH’s HoD, Dr Wagner in a letter dated 22 February 2022 addressed to the ECDPWI’s HoD, Mr Manda. According to the said letter from Dr Wagner, ECDPWI is an Implementing Agent to these delayed capital projects related to health facilities such as Lady Grey Hospital Improvement Project, Frontier Hospital Lilitha College Professional Accommodation Project and Butterworth Hospital Improvement Project.

6.7.23 Budget constraints were advanced by the ECDPWI as the biggest contributor to delays and backlog since the Client Departments get allocated far less funds than the challenges they face as far as infrastructure is concerned. ECDPWI contended that there is a study which can attest the issue of underfunding and indicate how much money should be allocated to each department as opposed to the actual allocation.

Conclusion

6.7.24 Based on the number of backlogs in the construction and maintenance of public facilities such as schools, healthcare facilities and police stations reflected on IPMPs in which ECDPWI is an Implementing Agent, the Public Protector concludes that the delivery of public infrastructure in the EC province, is inadequate and not in line with the dictates of the Constitution and the GIAMA.
FINDINGS

6.7.25 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether the management and/or the maintenance of the government immovable property by the Eastern Cape Department of Public Works and Infrastructure within certain villages in the Eastern Cape Province is rendered in a progressive and effective manner as contemplated in the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.7.25.1 The allegation that the management and/or the maintenance of the government immovable property by the ECDPWI within certain villages in the EC province is not rendered in a progressive and effective manner as contemplated in the law, is substantiated.

6.7.25.2 In terms of the evidence before the Public Protector, it was determined that Client Departments must first give a mandate to ECDPWI in terms of the SDA which set out the obligations for ECDPWI and those of a client department. The Public Protector has noted backlogs on the completion of certain infrastructure and capital projects in which ECDPWI is an implementing agent, especially those related to health facilities such as Lady Grey Hospital Improvement Project, Frontier Hospital, Lilitha College Professional Accommodation Project and Butterworth Hospital Improvement Project. The delays in connection with these projects were stated by ECDoH’s HoD, Dr Wagner in a letter addressed to ECDPWI’s HoD, Mr Manda dated 22 February 2022.
6.7.25.3 The Public Protector could not find evidence to indicate that ECDPWI is conducting a periodical assessment of the conditions of the immovable assets, at least every fifth year as contemplated in section 13(1) of GIAMA.

6.7.25.4 The budget constraints were advanced by the ECDPWI as the biggest contributor to delays and backlogs, since the client departments get allocated far less funds than the challenges they face as far as infrastructure is concerned. ECDPWI submitted that there is a study which can attest to the issue of underfunding and indicate how much money should be allocated to each department as opposed to the current actual allocation.

6.7.25.5 The backlogs in the area of construction, maintenance and upgrading of public facilities is inadequate and present a risk to a sustainable, progressive and reliable delivery of public services in the EC province.

6.7.25.6 The ECDPWI has accordingly not put sufficient measures in place as envisaged in sections 4(2) and 13(1) of GIAMA in order to ensure effective management of government immovable asset that is held or used by a provincial department(s); to ensure the co-ordination of the use of an immovable assets with the service delivery objectives of provincial department(s).

6.7.25.7 The conduct of the ECDPWI therefore constitutes improper conduct as envisaged in section 182(1) (a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.
REMEDIAL ACTION

6.7.26 Having regard to the evidence, the regulatory framework determining the standard that ECDPWI should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Head of Department of ECDPWI

6.7.26.1 Within sixty (60) calendar days of the date of this report and in line with the ECDPWI’s statutory obligations in terms of section 4(2) and 13(1) of GIAMA submit to the Public Protector a detailed ECDPWI’s medium to long term Infrastructure Plan with clear dates, turn around periods, targets and deliverables indicating how the backlogs on the infrastructure projects as reflected on IPMP in which ECDPWI is appointed as an implementing agent, in particular those related to public health, schools and police stations facilities would be addressed.

Eastern Cape Provincial Treasury (ECPT)

6.8 Whether the provision of the financial support by the Eastern Cape Provincial Treasury is rendered in an effective, efficient and economical manner as contemplated in the Constitution and the law, if not so, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act
Common cause

6.8.1 The ECPT is established in terms of Schedule 2, column 1 of the PSA. The mandate of the ECPT is to provide technical leadership to provincial departments, public entities and municipalities in the allocation of resources, ensure progressive utilisation of the resources, monitor and manage the resources.\(^{39}\)

6.8.2 ECPT has the administrative responsibility for the financial management of all government operations in the EC province. This involves amongst others, the preparation and planning of the provincial budget, monitoring the implementation of the budget to ensure the budget intent and that the outcome are congruent, controlling expenditure, and generally ensuring sound financial governance in the EC province.

6.8.3 This involves the need to ensure that cash is available for payment of expenditures in order to allow an orderly implementation of the government budget, and managing revenue (cash collection) and expenditure payment processes in such a manner that cash becomes available for short term investment purposes.\(^{40}\)

6.8.4 It is also the responsibility of the ECPT to implement effective and transparent financial management systems in the EC province, maintain and control associated systems in use by line departments, manage transversal supply chain management policies and systems, manage transversal financial information systems and assist in

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building financial management capacity in the provincial administration.\textsuperscript{41}

6.8.5 The ECPT is also responsible for the sound financial management of municipalities in the province and that involves the following:

(a) Monitoring the planning and preparation of budgets;
(b) Monitoring the in-year implementation of the budgets;
(c) Ensuring timely submission of Annual Financial Statements and Audit Reports;
(d) Instituting financial interventions, whenever necessary;
(e) Ensuring the implementation of a Supply Chain Management Framework;
(f) Assisting in the establishment of such structures as internal audit and budget offices;
(g) Assisting in building financial management capacity;
(h) Offering training in financial management; and
(i) Ensuring harmonization of Provincial Ordinances (if any) with the MFMA.\textsuperscript{42}

\textit{Issue in dispute}

6.8.6 The issue for Public Protector’s determination is whether the provision of financial support or resources to provincial departments, municipalities and public entities by the ECPT are delivered in a progressive and effective manner as contemplated in Constitution and the law.

\textsuperscript{41} Available at https://www.ectreasury.gov.za, accessed on 20 June 2022.
\textsuperscript{42} Available at https://www.ectreasury.gov.za, accessed on 20 June 2022.
On 14 February 2022, the Public Protector raised the allegations with ECPT as made by the Complainants in the EC province against the various government departments and municipalities in relation to the lack of essential services and basic infrastructure, to afford ECPT an opportunity to respond to complaints in line with its mandate and functions with the government scheme in the province.

On 31 May 2022, the Head of Department for ECPT, Mr D Majeke (Mr Majeke) responded and highlighted amongst other things the following:

That ECPT’s mandate as stipulated in the Constitution and section 18 of the PFMA, is to provide technical leadership to provincial departments, public entities and municipalities in the allocation of resources, ensure progressive utilisation of the resources, monitor and manage the resources to improve the quality of life of the citizenry;

Schedule four (4) and five (5) of the Constitution lists the key functions of concurrent and exclusive competencies of provinces. These would include the provision of adequate housing, proper infrastructure and sanitation in schools, proper maintenance of health facilities, construction and maintenance of provincial roads and bridges, and the general improvement of socio-economic conditions of households and communities in the province;

In order to address infrastructural challenges, ECPT continues to facilitate the institutionalisation of the Infrastructure Delivery Management System (IDMS), within the province and support departments in the implementation of Framework for Infrastructure Delivery and Procurement Management (FIDPM). A concerted effort is
being placed on ensuring alignment of infrastructure projects to the District Development Model to strengthen integrated infrastructure planning, procurement and delivery across the infrastructure value chain. That implementation of infrastructure projects and infrastructure grants spending is being closely monitored at both provincial and local spheres to ensure value for money;

6.8.8.4 The support given to the ECDoE and the ECDoH is yielding positive results in relation to incentives linked to the Infrastructure Performance Based System. In the period under consideration, the ECPT concluded a tender to support infrastructure departments in the planning and resourcing of projects as under performance is also related to inadequate upfront planning, which leads to significant underspending. The planning checklist will be applied to all projects to ensure that projects on the project list are indeed ready to utilise the funds and are climate resilient;

6.8.8.5 That the EC province has established a conditional infrastructure grant monitoring mechanism in a Provincial Multi-Sectoral Tactical Task Team (PMST3), which comprises sector departments such as Department of Co-operative Governance & Traditional Affairs (CoGTA), Department of Water & Sanitation (DWS), Department of Mineral Resources & Energy (DMRE), South African Local Government Association (SALGA) & Municipal Infrastructure Support Agency (MISA). The primary function of the PMST3 is to monitor the implementation of municipal infrastructure grants as per the Division of Revenue Act (DoRA) annually;

6.8.8.6 It would be appreciated that DoRA Frameworks, for each conditional municipal infrastructure, specify roles and conditions of the responsible Transferring Officer (Sector Department) and Receiving Officer
(municipality). All the listed municipalities are the recipients of the conditional infrastructure grants that are meant to deal with basic service delivery;

6.8.8.7 The National Treasury issues Division of Revenue Bill annually with MTEF allocations for municipalities to deal with basic service delivery, wherein municipal councils prioritises their projects as guided by the Integrated Development Plan (IDP), three-year capital plan and Service Delivery Budget Implementation Plans (SDBIP) accompanied by project implementation plans; and

6.8.8.8 The amount of backlogs in municipalities are still high, grant allocations are limited to cover all backlogs at once. Municipalities are also responsible for maintenance of infrastructure, in order to provide basic service effectively. The service delivery complaints raised by the Public Protector relate to various municipalities responsible for them, as mandated by the Municipal Systems Act 32 of 2000.

6.8.9 Mr Majekke responded to the allegations as follows:

(a) **Lack of water supply in most villages** – municipalities, which are Water Service Authorities (WSA’s) and Water Services Provision (WSP's) are responsible for water and sanitation provision. The national transferring department allocate grant funding through Regional Bulk Infrastructure Grant (RBIG), Water Services Infrastructure Grant (WSIG) and Municipal Infrastructure Grant (MIG). These three (03) conditional grants are managed by DWS and CoGTA, as per DoRA frameworks conditions;
(b) **Lack of proper roads in most villages** – Local municipalities are responsible for provision of access roads to the communities, through MIG, which is managed by CoGTA, as per DoRA frameworks conditions; and

(c) **Lack of pedestrian and motor vehicle bridges in most villages** - Local municipalities are responsible for provision of access roads to the community, through the MIG. The MIG conditional grant is managed by CoGTA, as per DoRA frameworks conditions.

6.8.10 Mr Majeke also furnished the Investigation Team with a table below, which lists the Medium Term Expenditure Framework (MTEF) budget for the listed municipalities with issues of municipal service delivery. The table specifies conditional grants that will be allocated to each listed municipality over the 3 years (from 2022/23 to 2024/25):

<table>
<thead>
<tr>
<th>Municipality</th>
<th>MTEF Allocation</th>
<th>Totals</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Conditional grant</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2022/23 R thousands</td>
<td>2023/24 R thousands</td>
</tr>
<tr>
<td>A BUF Buffalo City</td>
<td>Urban settlement development grant</td>
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<td></td>
<td>Neighbourhood development partnership grant (capital grant) SSB</td>
<td>40 581 000</td>
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<td></td>
<td>Metro informal settlements partnership grant SSB</td>
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<tr>
<td></td>
<td>MTEF Allocation</td>
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Provincial Equitable Share:

6.8.11 Mr Majeke further explained to the Investigation Team, the funding of government service across provinces and stated that:

6.8.11.1 The provincial equitable share (PES), is the main source of funding for provinces and aims to ensure fair and predictable revenue shares through a formula that reflects the demand for services across provinces. In terms of Sections 214 and 227 of the Constitution, the province receives an equitable share of nationally raised revenue to provide basic services and perform its allocated functions;

6.8.11.2 PES is made up of six (06) components namely, education, health, basic, institutional, poverty and economic activity. The census and other surveys and estimates such as the Mid-Year Population Estimates (MYPE) affect the PES formula, which is updated to reflect the shifts in provincial populations. As a result, provinces with increased populations will receive additional resources for their growing service-delivery responsibilities, while the provinces with decreasing populations receive reduced allocations.

6.8.12 Mr Majeke furnished the Investigation Team with the census data from Statistics South Africa indicating the EC provincial population over the
period from 2011 up to 2021. It was observed by the Investigation Team, from the census data provided for the given period, that the EC province has seen a reduction of two hundred and sixty seven, nine hundred and five (267 905), in the provincial population during the 2011 census and this was also coupled with a reduction of funds available to the EC province.

6.8.13 With the annual updates of the MYPE, the provincial population increased, but the EC province has lost significant numbers in 2017. The province has lost national funding from the PES from the 2013 MTEF to the 2021 MTEF at a cumulative amount of R54.4 billion, which was mainly due the reduction in provincial population, but also due to fiscal consolidation at a national level, which required provinces to contribute to the national fiscus.

6.8.14 It was indicated further by Mr Majeke that the adjustments to the provincial equitable share are provided in more detail in the six (06), PES components of the PES formula. He furnished the Investigation Team with a table below which reflects the 6 components of the equitable share and how they were distributed to provinces from the 2012/13 to the 2022/23 financial years, taking into consideration the census 2011 and budget cuts implemented at National Government:

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<td>2.2%</td>
<td>2.2%</td>
<td>2.0%</td>
<td>11.1%</td>
<td>2.6%</td>
</tr>
</tbody>
</table>
The table above shows the distribution of the equitable share by Province and the **EC Province receives the third largest share in 2022/23** (12.8%), behind Gauteng (21.5%) and Kwa-Zulu Natal (20.4%), as highlighted in yellow in the table.

Mr Majeke further provided the table below, which indicates the Provincial Fiscal Framework for the 2022/23 MTEF period for EC:

<table>
<thead>
<tr>
<th>R’00</th>
<th>Audited Outcome</th>
<th>Main Appropriation</th>
<th>Adjusted Appropriation</th>
<th>Revised Estimates</th>
<th>Medium Term Estimates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfers from national</td>
<td>77 043 951</td>
<td>81 557 388</td>
<td>81 036 689</td>
<td>81 356 521</td>
<td>84 359 145</td>
</tr>
<tr>
<td>Equitable share</td>
<td>65 499 660</td>
<td>68 824 353</td>
<td>69 195 253</td>
<td>68 060 484</td>
<td>70 949 697</td>
</tr>
<tr>
<td>Conditioning grants</td>
<td>11 544 291</td>
<td>12 733 035</td>
<td>11 843 416</td>
<td>13 296 037</td>
<td>13 409 448</td>
</tr>
<tr>
<td>Total receipts from National</td>
<td>77 043 951</td>
<td>81 557 388</td>
<td>81 036 689</td>
<td>81 356 521</td>
<td>84 359 145</td>
</tr>
<tr>
<td>Total provincial payments</td>
<td>79 046 652</td>
<td>83 598 003</td>
<td>83 548 486</td>
<td>82 608 175</td>
<td>86 401 747</td>
</tr>
<tr>
<td>Surplus/(deficit)</td>
<td>(2 002 701)</td>
<td>(2 040 615)</td>
<td>(2 509 817)</td>
<td>(1 251 654)</td>
<td>(2 042 602)</td>
</tr>
<tr>
<td>Provincial own source receipts</td>
<td>1 975 962</td>
<td>2 283 688</td>
<td>1 576 240</td>
<td>1 516 290</td>
<td>1 503 318</td>
</tr>
<tr>
<td>Less: Health CoE funding</td>
<td>(764 000)</td>
<td>(764 000)</td>
<td>(764 000)</td>
<td>(764 000)</td>
<td>(764 000)</td>
</tr>
<tr>
<td>Surplus/(deficit) before financing</td>
<td>(23 739)</td>
<td>243 073</td>
<td>(1 697 577)</td>
<td>(499 364)</td>
<td>(1 303 284)</td>
</tr>
</tbody>
</table>

**Source: Provincial Treasury Database**

The EC provincial government has consistently prioritized socio-economic interventions and programmes that seek to improve the lives of the people of the EC, as well as enhancing economic growth. With regard to access to water supply in the EC province, according to General Household Survey for 2019, the tap water inside dwellings, off-site or on-site was most common among households in the EC at
73, 9% as in the data provided to the Public Protector. He highlighted that since 2002, the percentage of households in EC province with access to water has increased by 17, 8%.

6.8.18 With regard to access to electricity, that according to the General Household Survey for 2019, adequate and affordable access to energy sources is important for alleviating poverty. In order to assess household access to energy, the main sources of energy used by households to satisfy basic human needs (cooking, lighting, heating water, space heating) is used as a measure. The percentage of South African households that were connected to the main electricity supply increased from 76, 7% in 2002 to 85, 0% in 2019 in terms of the infographic data provided to the Investigation Team. The largest increases between 2002 and 2019, as observed by the Investigation Team, was in the EC (+34, 0%).

6.8.19 With regard to households that lived in formal, informal and traditional dwellings in the EC, Mr Majeke furnished the Investigation Team with infographic data indicating that slightly more than eight-tenths (81,9%) of South African households lived in formal dwellings in 2019, followed by 12,7% in informal dwellings, and 5,1% in traditional dwellings.

6.8.20 In terms of the infographic data provided by Mr Majeke as per table below, it was noted by the Investigation Team that the households that lived in formal dwellings were most common in Limpopo (95, 2%) and Mpumalanga (89, 6%). Approximately one-fifth of households lived in informal dwellings in Gauteng and Western Cape (both 18, 7%) and North West (18, 4%). Traditional dwellings were most common in Eastern Cape (23, 0 per cent) and KwaZulu-Natal (13, 1%).
6.8.21 The issue of households that received a government-housing subsidy by gender of the household head, 2002–2019. The percentage of households that received some form of government housing subsidy increased from 5, 6% in 2002 to 18, 7% in 2019. A notably higher percentage of female-headed households (23, 1%) than male-headed household (15, 5%), received subsidies. This is in line with government policies that give preference to households headed by individuals from vulnerable groups, including females, and individuals with disabilities. Information in the table below, as furnished by Mr Majekete to the Investigation Team, highlights some of the progress achieved on key services delivered detailed by municipal regions and boundaries in the EC province:
6.8.22  EC has built the houses as per the table below together with medium term projections. He indicated that in respect to backlogs, the ECDHS reported to ECPT that it is approximately 3000 in houses, still to be built. The table below as furnished by Mr Majeke indicates the number of houses built and still to be built in the EC province:

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Expenditure/Budget (R’000)</th>
<th>No of houses built</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019/20</td>
<td>R1 851 729</td>
<td>8 582</td>
</tr>
<tr>
<td>2020/21</td>
<td>R1 200 180</td>
<td>5 338</td>
</tr>
<tr>
<td>2021/22</td>
<td>R1 761 713</td>
<td>7 442</td>
</tr>
<tr>
<td>2022/23</td>
<td>R1 542 022</td>
<td>7 696</td>
</tr>
<tr>
<td>2023/24</td>
<td>R1 608 515</td>
<td>5 850</td>
</tr>
<tr>
<td>2024/25</td>
<td>R1 608 752</td>
<td>5 850</td>
</tr>
</tbody>
</table>

Source: EC Department of Human Settlements (2019-2025)

6.8.23  With regard to complaints related to schools raised against the ECDoE, the existence of backlogs in the sector, cripples ECDoE’s efforts to improve the quality of teaching and learning and is partly responsible for the numerous court cases against the ECDoE. The ECDoE is not able to meet the norms and standards set by the sector, because of
the backlogs. The **annual budget allocation is insufficient** to address the quantum of pre-existing conditions, hence the need for extra budgetary allocation to significantly address the backlogs to enhance equity in service standards.

6.8.24 With regard to complaints related to health facilities raised against the ECDoH, the existence of backlogs in the sector not only deny the people of the province access to quality medical care, but also make the ECDoH prone to medico-legal claims, which currently amounts to billions of Rands.

6.8.25 With regard to complaints related to road infrastructure raised against the ECDoT, a total number of kilometres of road for which the ECDoT is responsible amounts to approximately forty three thousand and six hundred (43 600km). Of these, only about four thousand, two hundred and twenty four (4 224km) or 10% are surfaced and the remaining thirty seven thousand and ninety two (37 092 km) or 90% is gravel. The 10% surfaced network carries about 62% of the total five billion, five hundred million (5 500 000 000.00) billion annual vehicle-kilometres travelled in the EC.

6.8.26 On 07 March 2023, the Public Protector requested the following additional information and clarity from Mr Majeke:

6.8.26.1 Audited expenditure report (summary) for each department with an indication whether there was a surplus or deficit, for 2018/19, 2020/2021 and the 2021/22 financial years, to enable the Public Protector to compare and analyse with the data furnished;
6.8.26.2 Measures implemented by ECPT to ensure financial prudence or efficiency in government spending and measures taken to motivate for additional funding from National Treasury on behalf of EC province;

6.8.26.3 Steps taken by ECPT to address the infrastructure backlog in the EC province that was costed to the amount of one hundred and fifty one billion and one hundred million rand (R151 100 000 000.00), calculated from the time of democracy in 1994 up the 2014/15 financial year; and

6.8.26.4 Clarify on how this figure of one hundred and fifty one billion and one hundred million rand (R151 100 000 000.00), for infrastructure backlog was costed for EC province.

6.8.27 On 22 March 2023, Mr Majekè submitted an additional response to the Public Protector indicating *inter alia*:

6.8.27.1 A table showing Audited Expenditure Summary for each Department for 2018/19, 2019/20, 2020/21 and 2021/22 financial years;

6.8.27.2 That the expenditure is in line with the Audited Financial Statements for each year and there was a function shift where the Early Childhood Development function was transferred from the ECDSD to ECDoE from the 2022/23 financial year;

6.8.27.3 That the budget and corresponding expenditure has not been manually adjusted for the period 2018/19 – 2021/22, as reflected in the 2023 Estimates of Provincial Revenue and Expenditure;

6.8.27.4 In relation to measures implemented by ECPT to ensure financial prudence or efficiency in government spending and measures taken to
motivate for additional funding from National Treasury on behalf of the province, he indicated that ECPT ensures that departments comply with all SCM circulars. Quotations with the lowest price are awarded;

6.8.27.5 Tenders are awarded to the service provider with the lowest price that meets functionality. He also indicated that the following measures were undertaken to motivate for additional funding:

(a) On 04 February 2021, ECPT wrote to National Treasury to source additional funding for the ECDoH. On the submission to National Treasury it was indicated that the budget pressures that ECDoH is facing arise mainly from shortfalls due to budget cuts, increasing accruals and payables, an increase in the medico-legal claims and additional appointments to address Covid19 pandemic and ECPT was requesting National Treasury to support and assist in terms of the section 6(2)(d) PFMA and sections 214 (2)(d), (e) and (g) of the Constitution, and as such requests financial injection of five billion, nine hundred and sixty six million rand (R5 966 000 000.00), in the 2021 financial year;

(b) On 11 February 2021, ECPT wrote to National Treasury to source additional funding for the ECDoT. On the submission to National Treasury it was indicated that the letter is written in the spirit of strengthening co-operative governance between national and provincial government and informing national government of the unintended risk posed by budget reductions on the State’s obligations in so far as fulfilling section 29 of the Constitution is concerned. The request to National Treasury to provide assistance and support to the ECDoE, was made in terms of section 6(2)(d) of Public Finance Management Act, 1999, read with section 214 (2)(d), (e) and (g) of the Constitution of the Republic of South Africa; and
(c) On 12 April 2016, ECPT made a submission to the Financial and Fiscal Commission (FFC), on the Infrastructure Backlogs in the EC province to determine whether the EC province received its equitable share of the funding from the previously contained backlog component of the provincial equitable share.

6.8.27.6 Mr Majeke further submitted steps taken by ECPT to address infrastructure backlog in the province that was costed to one hundred and fifty one billion and one hundred million rand (R151 100 000 000.00). To address the maintenance of existing buildings, each infrastructure department is required to budget a minimum of 25% of their infrastructure budget towards maintenance of existing infrastructure assets. He indicated as per table below, the allocations for existing infrastructure assets exceeds the minimum of 25% of the total infrastructure allocations.

<table>
<thead>
<tr>
<th>Infrastructure allocations: 2019/20 – 2025/26</th>
</tr>
</thead>
<tbody>
<tr>
<td>---------------------------------------------</td>
</tr>
<tr>
<td>Existing Infrastructure Assets</td>
</tr>
<tr>
<td>New Infrastructure Assets</td>
</tr>
<tr>
<td>Infrastructure Transfers</td>
</tr>
<tr>
<td>Non-Infrastructure</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
<tr>
<td>Existing infrastructure as a percentage of total infrastructure</td>
</tr>
<tr>
<td>Total Provincial Spending</td>
</tr>
<tr>
<td>Infrastructure as a % of Total</td>
</tr>
</tbody>
</table>

Source: 2023 Estimates of Provincial Revenue and Expenditure

6.8.27.7 That for the period 2019/20 - 2022/23, infrastructure allocations average around 09% per annum of the total provincial spending. He
stated that for the period 2023/24 – 2025/26, infrastructure allocations averages around 10% per annum, showing an increase in infrastructure allocations.

6.8.27.8 In responding to how the figure of one hundred and fifty one billion and one hundred million rand (R151 100 000 000.00), for infrastructure backlog was costed, Mr Majeke indicated that the majority of departments made use of professional and other scientific methods to quantify backlogs. The ECDoH utilised conditions assessments, which were undertaken by professionals during 2012, to assess the physical and visual conditions of the built environment and the ECDSD has developed norms, standards and practice guidelines for all residential institutions.

6.8.27.9 The ECDPWI as the custodian of government property has appointed consultants to prepare condition assessment of buildings. The quantification of renovation and rehabilitation categories were conducted in-house by the ECDPWI officials. In total, the quantification of the backlogs are based on estimates by professional consultants.

Documentary Evidence received from ECPT

6.8.28 Mr Majeke furnished the Public Protector with plans, programmes, deliverables, budget allocation and timeframes received by ECPT from the respective District Municipalities, in response to various allegations of lack of provision of essential services and infrastructure.

6.8.29 It was noted by the Investigation Team, from the responses submitted by municipalities to ECPT that most of the programmes are already in place to address complaints of service delivery raised by communities.
However, some programmes are still ongoing while other projects are scheduled to take place over a period of three year capital plan.

Applicable law and legal prescripts


6.8.30 Section 214(1) of the Constitution provides that “an Act of Parliament must provide for -

(a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government;
(b) the determination of each province’s equitable share of the provincial share of that revenue; and
(c) any other allocations to provinces, local government or municipalities from the national government’s share of that revenue, and any conditions on which those allocations may be made.”

The Division of Revenue Act, 2023

6.8.31 Urban Settlements Development Grant is described in Section 1 of DoRA as the Grant referred to in Part B of Schedule 4 to the Act. The Grant is meant for Implementation of infrastructure projects.

6.8.32 Section 2(a) of the DoRA provides that the objects of this Act are as required by section 214(1) of the Constitution to provide for—

(i) the equitable division of revenue raised nationally among the three spheres of government;
(ii) the determination of each province’s equitable share of the provincial share of that revenue; and

(iii) other allocations to provinces, local government or municipalities from the national government’s share of that revenue and conditions on which those allocations are made;

(b) to promote predictability and certainty in respect of all allocations to provinces and municipalities, in order that provinces and municipalities may plan their budgets over a multi-year period and thereby promote better coordination between policy, planning and budgeting; and

(c) to promote transparency and accountability in the resource allocation process, by ensuring that all allocations, except Schedule 6 allocations, are reflected on the budgets of provinces and municipalities and the expenditure of conditional allocations is reported on the receiving provincial departments and municipalities.

**The Public Finance Management Act, 1999**

6.8.33 Section 18(2)(e)(f) of the PFMA states the following with regard to Provincial Treasury:

“A Provincial Treasury-

(e) may assist provincial departments and provincial public entities in building their capacity for progressive, effective and transparent financial management;
(f) may investigate any system of financial management and internal
control applied by a provincial department or a provincial public
entity”

6.8.34 Section 6(2)(d) of the PFMA stipulates that National Treasury (NT) may
assist departments and constitutional institutions in building their
capacity for progressive, effective and transparent financial
management.

Municipal Finance Management Act, 2003 (MFMA)

6.8.35 Section 5(2) of the MFMA provides inter alia that:

“To the extent necessary to comply with subsection (1), the National
Treasury may-

(a) monitor the budgets of municipalities to establish whether they-
   (i) are consistent with the national government's fiscal and
   macro-economic policy;
   (ii) comply with Chapter 4;

(b) promote good budget and fiscal management by municipalities
   and for this purpose monitor the implementation of municipal
   budgets including their expenditure, revenue collection and
   borrowing;

(c) monitor and assess compliance by municipalities and municipal
   entities with-
   (i) this Act: and
(ii) any applicable standards of generally recognised accounting practice and uniform expenditure and revenue classification systems;

(d) investigate any system of financial management and internal control in any municipality or municipal entity and recommend improvements;

(e) take appropriate steps if a municipality or municipal entity commits a breach of this Act, including the stopping of funds to a municipality in term of section 216(2) of the Constitution if the municipality or a municipal entity under the sole or shared control of that municipality, commits a serious or persistent material breach of any measures referred to in that section; and

(f) take any other appropriate steps necessary to perform its functions effectively.”

6.8.36 Section 36(1) of the MFMA indicates amongst other things that in order to provide predictability and certainty about the sources and levels of intergovernmental funding for municipalities, the accounting officer of a national or provincial department responsible for the transfer of any proposed allocations to a municipality, must by no later than 20 January of each year notify the National Treasury or the relevant provincial treasury, of all proposed allocations, and the projected amounts of those allocations to be transferred to each municipality during each of the next three years.

6.8.37 Section 37(1)(b) states that municipalities must provide budgetary and other financial information to relevant national and provincial organs of state.
6.8.38 Section 71(1) stipulates that the accounting officer of a municipality must by no later than 10 working days after the end of each month submit to the mayor of the municipality and the relevant provincial treasury a statement in the prescribed format on the state of the municipality’s budget reflecting the following particulars for that month and for the financial year up to the end of that month:

(a) actual revenue, per revenue source;
(b) actual borrowings;
(c) actual expenditure per vote;
(d) actual capital expenditure, per vote;
(e) the amount of any allocations received;
(f) actual expenditure on those allocations, excluding expenditure on-
   (i) its share of the local government equitable share: and
   (ii) allocations exempted by the annual Division of Revenue Act from compliance with this paragraph 3
(g) when necessary, an explanation of-
   (i) any material variances from the municipality’s projected revenue by source, and from the municipality’s expenditure projections per vote;
   (ii) any material variances from the service delivery and budget implementation plan; and
   (iii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the municipality’s approved budget.

6.8.39 Section 74(1) states that the accounting officer of a municipality must submit to the National Treasury or the Provincial Treasury, to the department for local government in the province or to the Auditor-
General such information, returns, documents, explanations and motivations as may be prescribed or as may be required.

Response to the notice in terms of section 7(9)(a) of the Public Protector Act

6.8.40 A Notice in terms of section 7(9)(a) of the Public Protector Act, dated 02 June 2023 was issued and sent to all ECPT. The HOD for ECPT, Mr Majekoe responded to a Notice on 16 June 2023 as follows:

6.8.40.1 That the preliminary report has been noted with appreciation. Moreover, the report is the true reflection of the responses that were provided by ECPT;

6.8.40.2 The EC province appreciates that the infrastructure backlogs needs to be addressed, thus a need to prioritise and maximise financial support is crucial. It was this appreciation that informed the submission of an infrastructure backlog funding request of R151 billion submitted to Financial and Fiscal Commission (FFC) in 2016. The EC province has continued in raising this matter in the forums, including Legislature when the FFC visits the province. The backlog component was replaced with the poverty component and subsequently the FFC requested ECPT to quantify the infrastructure backlogs for review and for potential funding from a national level. However, the FFC has not recommended funding for the infrastructure backlogs that was submitted in 2016 by the EC province;

6.8.40.3 That the EC province will continue to maximise financial support by using existing intergovernmental relations forums to lobby funds, including the DoRA funding, as well as lobby funding from the Budget Facility for Infrastructure (BFI);
6.8.40.4 The EC province had applied for additional funding from National Treasury for infrastructure through their BFI facility and through utilising provincial entity COEGA who were appointed to be a single point of project packaging in order to access funding from the BFI;

6.8.40.5 The funding received from the BFI over the 2023 MTEF is as follows R1.778 billion (R298 million in 2023/24, R632 million in 2024/25 and R848 million in 2025/26) for the construction of a new bulk sewer connection pipeline; the upgrading of bulk infrastructure to accommodate the expected increase in demand; and construction of critical bulk water (return effluent) infrastructure to support economic growth and enable a human settlement development in Motherwell township;

6.8.40.6 The province is further aligning itself to National Treasury infrastructure proposals which seeks to access alternative funding options to finance provincial infrastructure. The table below reflects the provincial infrastructure allocation/budget per district municipality for 2023 MTEF which encompasses infrastructure maintenance, rehabilitation, as well as new works, and thus not entirely for backlogs;

<table>
<thead>
<tr>
<th>Infrastructure Budget per District Municipality</th>
<th>2023/24</th>
<th>2024/25</th>
<th>2025/26</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfred Nzo District Municipality</td>
<td>634 324 896</td>
<td>532 624 091</td>
<td>565 151 903</td>
</tr>
<tr>
<td>Amathole District Municipality</td>
<td>760 034 278</td>
<td>948 719 844</td>
<td>986 617 622</td>
</tr>
<tr>
<td>Buffalo City Municipality</td>
<td>1 507 120 531</td>
<td>1 411 649 341</td>
<td>1 290 761 892</td>
</tr>
<tr>
<td>Chris Hani District Municipality</td>
<td>1 048 350 981</td>
<td>955 582 423</td>
<td>922 638 119</td>
</tr>
<tr>
<td>Joe Gqabi District Municipality</td>
<td>500 195 047</td>
<td>489 638 796</td>
<td>500 334 635</td>
</tr>
<tr>
<td>Nelson Mandela Bay</td>
<td>362 753 044</td>
<td>512 808 850</td>
<td>482 450 947</td>
</tr>
<tr>
<td>OR Tambo District Municipality</td>
<td>953 027 685</td>
<td>869 827 240</td>
<td>1 134 679 176</td>
</tr>
<tr>
<td>Sarah Baartman District Municipality</td>
<td>338 994 979</td>
<td>387 370 398</td>
<td>326 681 883</td>
</tr>
<tr>
<td>Blank</td>
<td>3 351 051 751</td>
<td>3 044 461 017</td>
<td>3 557 936 500</td>
</tr>
<tr>
<td>Total Infrastructure Budget Per DM</td>
<td>9 355 853 092</td>
<td>9 152 382 000</td>
<td>9 767 232 677</td>
</tr>
</tbody>
</table>
6.8.40.7 The EC province also appreciates that the country is faced with a constrained fiscal environment due to the poor performance of the economy resulting in low tax revenue collections. This is in spite of the rising expectations from communities for government to deliver more services such as health, education and jobs. ECPT is on a monthly basis currently participating in the Technical Committee on Finance (coordinated by National Treasury) that discusses amongst other things the current funding envelope and the state of the economy; and

6.8.40.8 That having noted the current state of the economy, the province initiated and completed a revenue study which identifies opportunities to increase provincial own revenue from sources such as the lease of government owned properties, health patient fees, vehicle licenses, traffic fines, and gambling revenue.

*Analysis*

6.8.41 The legal provisions stated above magnifies the need for equitable revenue allocation referred to in section 214 of the Constitution and in Section 2 of DoRA. Equitable allocation of revenues is necessary to enable the EC province to deliver essential basic services and infrastructure. The EC province is regarded as the poorest province in terms of Gross Domestic Product *per capita*. It is clear that due to its economic situation, the province finds itself in worse situation than most other provinces due to historical underdevelopment.

6.8.42 PFMA further enjoins ECPT and NT to assist provincial departments and municipalities with financial support to build their capacity for a progressive and reliable delivery of services and to improve the quality of life of the citizens in the province of EC.
6.8.43 In the context of the facts before the Public Protector, it is obvious that the amount of infrastructure backlogs in municipalities and provincial departments are relatively high in the EC province. Grants allocation is not enough to cover all backlogs at once. The budget and fund allocation contributes to delays and backlog since departments and municipalities get allocated far less funds than the challenges they face as far as infrastructure is concerned.

6.8.44 ECPT indicated that the EC province’s infrastructure backlogs is costed or calculated at an amount of one hundred and fifty one billion and one hundred million rand (R151 100 000 000.00) for eight (08) of the fourteen (14) provincial departments that are responsible for infrastructure in the province. The costs were derived for infrastructure departments and calculated at the time of democracy in 1994 and the costs accumulated since 1994 up the 2014/15 financial year.

6.8.45 The ECPT confirmed that the Audited Expenditure Summary for each Department for 2018/19, 2019/20, 2020/21 and 2021/22 financial years as elaborated in a table furnished to the Public Protector is in line with the Audited Financial Statements for each year.

6.8.46 Efforts made by ECPT to receive additional funding from the BFI over the 2023 MTEF and to identify opportunities to increase provincial own revenue from other sources such as the lease of government owned properties, are noted. These forms of capital injection should assist the EC province in the construction and the upgrading of bulk infrastructure to accommodate the expected increase in demand for basic services.
Conclusion

6.8.47 Based on the evidence furnished the Public Protector concludes that the ECPT has taken appropriate measures to write to National Treasury and to Financial and Fiscal Commission (FFC) in 2016 to source additional funding for EC provincial government, albeit not yet successful in getting extra funding. This step was informed by the need to assist departments to fulfil their constitutional obligations in connection with service delivery.

6.8.48 The request to National Treasury was done by ECPT to seek assistance and support in terms of section 6(2)(d) of Public Finance Management Act, 1999, read with section 214 (2)(d), (e) and (g) of the Constitution.

6.8.49 Whilst the issue of budget constraints and underfunding contribute to delays in service delivery and infrastructure backlog, since departments and municipalities get allocated far less funds than the challenges they face as far as infrastructure is concerned, this can neither be attributed nor can it blame the ECPT per se, since the main source of funding is National Treasury.

FINDINGS

6.8.50 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether the provision of the financial support by the Eastern Cape Provincial Treasury is rendered in an effective, efficient and economical manner as contemplated in the Constitution and the
law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration as well as improper prejudice in terms of section 6(4)(a)(i) and (v) of the Public Protector Act

6.8.50.1 The allegation that the provision of the financial support by the ECPT in not effective is substantiated, however, the ECPT relies on National Treasury for additional funding.

6.8.50.2 In terms of the evidence before the Public Protector, the amount of infrastructure backlogs in municipalities and provincial departments are relatively high in the EC province.

6.8.50.3 From the information at the Public Protector’s disposal, the Grants Allocation is not enough to cover all backlogs at once. The budget and fund allocation contributes to delays and infrastructure backlogs since departments and municipalities get allocated far less funds than the challenges they face as far as infrastructure is concerned.

6.8.50.4 The EC province remains the poorest province in terms of Gross Domestic Product per capita. Due to its economic situation, the EC province finds itself in worse situation than most other provinces due to historical underdevelopment. As a result, the delivery of essential services to the residents of EC remains constantly at risk due to budgetary limitations facing the EC province.

6.8.50.5 The ECPT has indicated that the EC province’s infrastructure backlog is costed or calculated at an amount of one hundred and fifty one billion and one hundred million rand (R151 100 000 000), for eight (8) of the fourteen (14) provincial departments that are responsible for infrastructure in the province. The costs were calculated from the time
of democracy in 1994 and the costs accumulated up the 2014/15 financial year.

6.8.50.6 The ECPT confirmed that the Audited Expenditure Summary for each Department for 2018/19, 2019/20, 2020/21 and 2021/22 financial years as elaborated in a table furnished to the Public Protector is in line with the Audited Financial Statements for each year.

6.8.50.7 Evidence before the Public Protector further indicates that the ECPT has already taken measures to write to National Treasury and to Financial and Fiscal Commission (FFC) in 2016 to source additional funding for the EC provincial government, in order to enable departments to fulfill their Constitutional obligations in various areas of service delivery. The request to National Treasury was done in terms of section 6(2)(d) of Public Finance Management Act, 1999, read with section 214 (2)(d), (e) and (g) of the Constitution.

6.8.50.8 The issue of budget constraints and underfunding contribute to delays in service delivery and infrastructure backlog, since departments and municipalities get allocated far less funds than the challenges they face as far as infrastructure is concerned.

6.8.50.9 While budgetary constraints and underfunding contribute to backlogs in the completion of government capital projects and prejudice to the EC communities, this is not attributable to ECPT. Accordingly, it cannot be held in this regard that the conduct of the ECPT constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution and maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
REMEDIAL ACTION

6.8.51 Having regard to the evidence, the regulatory framework determining the standard that ECPT should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Head of ECPT

6.8.51.1 Within sixty (60) calendar days of the date of this report and in line with the ECPT’s statutory obligations envisaged in section 214, 195(1)(b) of the Constitution, section 18(2)(e)(f) and 6(2)(d) of the PFMA, submit to the Public Protector a detailed ECPT’s Project Plan with clear dates, grant allocations and deliverables indicating how the ECPT shall prioritise and maximise its financial support in order to address the EC provincial and local government’s infrastructure backlogs and to assist in accelerating the delivery of basic services;

6.8.51.2 Within sixty (60) calendar days of the date of this report, provide the Public Protector with an indication of oversight measures to be put in place to ensure proper procurement processes within organs of state, to avoid or minimise cancellation of contracts mid-stream, to prevent wasteful and fruitless expenditure and to ensure efficient use of available financial resources as envisaged in terms of section 195(1)(b) of the Constitution and section 18(1)(c) of the PFMA; and

6.8.51.3 Within sixty (60) calendar days of the date of this report provide a plan indicating measures to be taken in order to source or motivate for additional funding from National Treasury in terms of section 18(2)(i) of the PFMA.
MUNICIPALITIES

Alfred Nzo District Municipality

6.9 Whether municipal services by the Alfred Nzo District Municipality, Matatiele, Umzimvubu, Ntabankulu and Winnie Madikizela-Mandela Local Municipalities within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

Common cause

6.9.1 Alfred Nzo District Municipality (ANDM) is a duly constituted municipality in terms of the Local Government Municipal Structures Act,\(^{43}\) as amended (Municipal Structures Act). The ANDM is one of the six district municipalities in the EC province and it is located on the north-eastern side of the EC province.\(^{44}\) The following local municipalities fall within ANDM:

6.9.1.1 Umzimvubu Local Municipality;
6.9.1.2 Matatiele Local Municipality;
6.9.1.3 Ntabankulu Local Municipality; and
6.9.1.4 Winnie Madikizela-Mandela Local Municipality (formerly Mbizana Local Municipality).

\(^{43}\) Act 117 of 1998.

6.9.2 As a district municipality, ANDM is a Water Service Authority with an overarching jurisdiction to service local municipalities with water within its area, ANDM has a duty to respond to the water needs within local municipalities and to play a role in the provision of water services in respect of each local municipality in the district.

Issue in dispute

6.9.3 The issue for the Public Protector’s determination is whether the provision of municipal services by the ANDM, Matatiele, Umzimvubu, Ntabankulu and Winnie Madikizela- Mandela Local Municipalities within certain villages in the EC province are delivered in a progressive and effective manner as contemplated in the Constitution and the law.

Ms Tsese’s version (Complainant)

6.9.4 On 18 May 2021, the Investigation Team met with Ms Tsese, who indicated that in January 2021, they submitted a collective petition of their complaints to the Matatiele Local Municipality in the office of the Municipal Manager to seek responses and/or clarity on steps taken or to be undertaken to address the issues complained about.

6.9.5 Amongst the issues raised in the petition, the following fall under the district jurisdiction of the ANDM:

6.9.5.1 Ms Tsese alleged that Matatiele as a whole has a huge water crisis in that, some areas have taps but there is no water, whereas in other areas, there is absolutely no water and as a result people still share water with animals. She further highlighted a number of locations that are affected by the water crisis and the following are some of those areas she specified:
(a) Mpharane Location: the location has no water at all and the community still draws water from the streams and fountains;

(b) Cebe, Ramohlakoane, and Ha-Mzongwane locations: there are communal taps but there is no water, as a result, residents draw water from the nearby river;

(c) Mvenyane Administrative Area has no water and residents are sharing water with animals;

(d) St Paul: there is an incomplete project of water tanks where millions of Rands were spent, at the present moment, there is no water for the residents;

(e) Botsola Location (Ha-Khoapa Administrative Area): the community relies on one borehole for washing clothes and drinking. The water from the said borehole flows continuously as the borehole does not have a valve, as a result thereof, large quantities of water get wasted and the ANDM has not done anything to preserve the water.

6.9.6 Ms Tsese further led the Investigation Team around Matatiele to conduct an inspection in-loco, where it was observed amongst other things that there were dry communal taps, a borehole with no valve, resulting in water flowing continuously.

*Mr Mgquba’s version (Complainant)*

6.9.7 Mr Mgquba alleged that the toilets project in Winnie Madikizela-Mandela Municipality, Mphetshwa Location, Ward 9, started in 2009
and toilets were built in other neighbouring locations like Mplisweni, Bonda, Tshuze, and Gwabeni, all within Ward 9. He alleged that Mphetshwa, Envis and Nqabeni locations respectively, were omitted from the project without any explanation, as a result, residents in these areas do not have toilets and have to either go to the bushes or to their own pit toilets when nature calls. Mr Mgquba contended that residents escalated their complaint to the Ward Councillor of the Local Municipality and ultimately to the ANDM for assistance, but no delivery is happening.

6.9.8 Mr Mgquba further alleged that communal taps at Mphetshwa were installed by the ANDM during the 2018/2019 financial year, however, those taps ran dry within three (03) to four (04) months of installation. He further alleged that those communal taps are like decorations and most are vandalized due to non-usage, and people are sharing water with animals from the nearby stream. He further contended that the issue of lack of access to clean water was also raised with the ANDM but nothing changed.

6.9.9 Mr Mgquba together with other residents further led the Investigation Team during the inspection in-loco within the Mphetshwa location, where the following, amongst others, were observed:

6.9.9.1 The stream/river is used as the source of water for domestic consumption;
6.9.9.2 Dry communal taps along the streets within the location; and
6.9.9.3 Lack of toilets and the abysmal conditions of those available.
Mr Dlabitshe’s version (Complainant)

6.9.10 On 03 November 2021 the Public Protector received another complaint from Mr Zanelakhe Dlabitshe (Mr Dlabitshe) of Mxinga location, Ward 30 of Winnie Madikizela-Mandela Local Municipality, with allegations of lack of delivery of basic services, more especially water in his area. Mr Dlabitshe alleged that in his area they do not have access to clean and safe running water as guaranteed by the Constitution. He further alleged that they share water with the animals and the worst part is that sometimes when they get to the river/stream to fetch water they would find pigs swimming and would have to chase them away before drawing water from the same source.

6.9.11 Mr Dlabitshe alleged further that even when the budget is made, his area does not get services like other neighbouring communities. It is his submission that they have since established a committee to help deal with the situation. He stated that in October 2021, the committee visited the ANDM regarding the water crisis and was informed that there were no funds to build a water supply infrastructure in their area.

Ms Mbanga’s version (Complainant)

6.9.12 On 20 May 2021, the Investigation Team met with Ms Mbanga and other residents of Hofisi location under Ward 23, of Umzimvubu Local Municipality in Mount Frere regarding a complaint of the lack of access to clean water. Ms Mbanga and other residents alleged that there are communal taps in the Hofisi location, which are mostly dry and the community uses Cancele and Njjini Rivers as source of water for domestic use.

6.9.13 She alleged that water remains a big challenge even for school children at the two local schools in the area namely, Cancele Primary
School and Loyiso Secondary School. According to Ms Mbanga attempts have been made by the community to get the necessary intervention from authorities, but there is no delivery from the government.

*Mr Makhalima’s version (Complainant)*

6.9.14 On the same day of 20 May 2021, the Investigation Team also met with the Complainant by the name of Mr Makhalima and other residents of Moyeni Location under Ward 16, of Umzimvubu Local Municipality, who complained about the poor water infrastructure in their location. Mr Makhalima alleged that Moyeni location gets water from Ntenetyane Dam, which is not far off, but the community struggles to get supply due to poor water infrastructure with no proper gravitation force or pressure for water to reach other areas.

6.9.15 He stated that taps are often dry, and this would last up to more than three (03) months and as a result, the community members who can afford to buy the water do so, while those less fortunate rely on a nearby stream/river for water to either cook, drink, and/or for domestic usage. It is also the version of Mr Makhalima and other residents that the ANDM has failed to come up with measures to improve the water infrastructure, or alternatively to provide temporary relief in a form of water tankers to provide water to the community when taps are dry.

*Mr Zakhabana’s version (Complainant)*

6.9.16 On 21 May 2021, the Investigation Team met with the Complainant by the name of Mr Avela Zakhabana (Mr Zakhabana) and other residents, whose complaint also related to lack of access to clean water as well
as poor water infrastructure in their area called Ndakeni Location in Ntabankulu.

6.9.17 Mr Zakhabana alleged that on 09 June 2020, they were visited by the former Executive Mayor of ANDM, Mr Mehlomakhulu during a handover and/or introduction of a service provider namely, Giligali (Pty) Ltd, allegedly appointed to dig a borehole for the benefit of the community on a tender allegedly worth three million rand (R3 000 000.00). Mr Zakhabana alleged that indeed they saw people working on site for some time, but they disappeared without an explanation. He further stated that after two (02) to three (03) months of nothing happening, they learnt that the borehole was actually dug in another Ward not far from them.

6.9.18 Mr Zakhabana submitted further that the community protested and closed all roads in the area, in an effort to compel the ANDM to act on their water service needs, but police were deployed to quell the protest. He also indicated that at that stage, there was a makeshift water pump station made up of corrugated iron, however, it was not yet operational and therefore the water crisis continued.

6.9.19 According to Mr Zakhabana, Ndakeni location in Ntabankulu has no water and the residents use donkeys to carry water from the nearby Mngciphongo River, which they share with animals. Mr Zakhabana together with other residents further took the Investigation Team around the Ndakeni location. During the site inspection, the Investigation Team observed amongst other things, Mngciphongo River, where the community members were fetching water for domestic consumption, using donkeys as the mode of transport.
Media Reports

6.9.20  In January 2022, the Investigation Team became aware of the headline story, which was widely reported in the media spectrum throughout the country regarding Mount Ayliff, eMaxesibeni. Pictures and videos of residents crossing a rickety wooden bridge outside eMaxesibeni were widely publicised. It was alleged in the media that residents in neighbouring villages have no option but to use the poorly constructed and unstable bridge to access supplies and medical care at clinics and hospitals.

6.9.21  These media report showed a bereaved family transporting a coffin of a deceased relative across an unstable wooden bridge over the Mzintlava River, and thus risking their lives to bury their loved ones. Various local residents were interviewed by media and were captured complaining and alleging that democracy has not reached them yet. Residents alleged on media platforms that they have no option but to use the poorly constructed bridge. It was further alleged in the media that this bridge was built in 2001 as a donation from missionaries and was supposed to be a temporary measure to assist villagers across, stopping them from using ropes as they previously did.

6.9.22  The Public Protector further became aware from the news, of a disturbing service delivery related headline story in the EC at Ntabankulu. The story showed desperate residents of Sdikidikini Village at Ntabankulu crossing a river in a locked blue drum, risking

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their lives in the process. The headline story stated that those who are brave enough, allegedly swim across the river. The residents, interviewed by media, alleged that they are forced to resort to these extreme measures, because government has forgotten them. The drum operators also acknowledged that they are doing a risky exercise but held that they have no choice but to do what they can to assist fellow residents. They further alleged that they also carry groceries across the river.48

Response by the ANDM

6.9.23 On 18 February 2022, in line with the principle of audi alteram partem enunciated in Mdwaba Mthunzi v Nonxuba Zuko49, the Public Protector raised all the above allegations with the ANDM and shared with affected local municipalities, thereby giving them an opportunity to respond to the service delivery issues alleged to be affecting the communities.

6.9.24 In the allegations letter of the Public Protector, dated 18 February 2022, the ANDM was requested to make its submission or response to specific complaints outlined therein, including the media reports which came to the attention of the Public Protector.

6.9.25 On 22 March 2022, the Public Protector sent another allegations letter to Ntabankulu Local Municipality, in order to give them an opportunity to respond to the allegations. The Public Protector did not send


49 [2018] ZAGPJHC 44 (9 March 2018) where the court held that, the “audi alteram partem” rule is a fundamental principle of our law which is enshrined under the bill of rights in the Constitution of the Republic of South Africa, 1996” at Paragraph 1.
allegations letters to Umzimvubu Local Municipality and Winnie Madikizela-Mandela, because the complaints raised in their areas relate to water, rural roads and housing services, which are provided by the District Municipality and ECDHS.

6.9.26 On 17 May 2022, Mr Zamile Sikhundla (Mr Sikhundla), the Municipal Manager of ANDM responded to the Public Protector. In his response, Mr Sikhundla gave background information on the challenges faced by the ANDM and stated inter alia that:

6.9.26.1 The current water services backlogs of the ANDM are at 49% for water and 37% for sanitation. In terms of the Water Services Master Plan that was developed in 2017, the ANDM requires an amount of twenty billion, nine hundred million rand (R20 900 000 000), to eradicate its backlogs. The current allocation for Municipal Infrastructure Grant (MIG) is less than four hundred million rand (R400 000 000) per financial year;

6.9.26.2 With the stream of funding the ANDM is receiving, it will take the district not less than twenty (20) years to eradicate the infrastructure backlogs within the district, unless there can be additional capital funding injection to the ANDM. As a Water Services Authority, the ANDM was planning studies (feasibility) for four (04) dams that will address water backlogs within the district, and those dams are as follows:

(a) Kinira Dam for Matatiele and parts of KwaBhaca;
(b) Ntabankulu Regional Bulk Water Supply Scheme (NRBWSS);
(c) Mkemane Dam for the Northern part of KwaBhaca and Ntabankulu; and
(d) Nkani/Sirhoqobeni Dam for EmaXesibeni.
6.9.26.3 The ANDM was unable to attend to and deal with these backlogs, due to funding constraints and as such, only the Kinira and NRBWSS studies are continuing. For the Winnie Madikizela Mandela Local Municipality, the Ludeke Dam, was constructed and it is servicing most of the rural villages in Mbizana and the town and is functioning well. The only challenge that ANDM has is the disruption in Eskom electricity supply as well as unauthorised household connections, which result in communities with household connection suffering. The ANDM is currently developing By-Laws to deal with the issue of unauthorised connections;

6.9.26.4 The ANDM, is only responsible for Rural Roads Asset Management System (RRAMS) and that the ANDM developed the District Integrated Transport Plan and Rural Maintenance Plans for each local municipality. The plan will assist local municipalities in budgeting for rural roads requiring maintenance;

6.9.26.5 In Matatiele Local Municipality, a feasibility study for Kinira Dam is in progress and it will address water shortages in Matatiele as a whole and parts of KwaBhaca. Mpharane village falls under old George Moshesh Water Supply and the village does have taps and that the challenge that causes erratic or insufficient supply is unauthorised connections on the network, which put a huge strain on the supply;

6.9.26.6 Cebe is an Administrative Area with several villages namely Outspan, Hebron, Magema, Madimomg, Tipping, Rantsiki, Bethel, Zwelitsha, Zikhalini, Maphokong etc. The villages are supplied by a number of boreholes equipped with both diesel & electric driven pumps, of which some are not operating fully. Most of these villages do have water supply schemes, but they are mostly affected by unauthorised connections from the pumping mainstream;
6.9.26.7 In Ramohlakoana, there is a water scheme in the area which is supplied from five (05) electric operated boreholes, feeding into a 2ML reservoir on top of Ramohlakoana Village, and that the scheme also supplies Maluti Township;

6.9.26.8 Ha-Mzongwane is also a very vast area with several villages, with two (02) water schemes, Matatiele Ward 5 and Matatiele Ward 7, which have been implemented in the two (02) Wards, with Ward 5 project already operational through a spring protection. The infrastructure that was installed for the Ward 7 water scheme has not been used as the project is yet to be completed;

6.9.26.9 The ANDM implemented a borehole water supply scheme in the Mvenyane Administrative Area, which is run on a diesel engine. This scheme covers the Nkawulweni, Rasheni, Ntlola, Tyiweni, Msukeni, Magxeni, Mabheleni, Sithiyweni, Gwadane, Machi and Mdeni. The area also receives supply from water springs. In St Paul, a new scheme was constructed under WSIG programme in 2019/20, but could not accommodate the entire village, due to budget constraints. A portion of the village does have water supply where communities receive clean water and as such, an extension of the water infrastructure is required to service the remaining portion of the village. An investigation is being conducted to stop the water loss in the area, and the village scheme operator together with ANDM plumbing team has been attending to the issue of the replacement of fittings;

6.9.26.10 At Winnie Madikizela-Mandela Local Municipality, the main challenge is the eradication of sanitation backlogs due to funding shortfall plus the in-fields that are resulting into a moving target when it comes to eradicating the backlog. With regards to the water challenges in the
Winnie Madikizela-Mandela Local Municipality, the ANDM implemented a project during the 2018/19 financial year and was partially completed on 15 May 2019;

6.9.26.11 There were challenges that the contractor had to address before completion was achieved, after the site inspection by municipal officials. This resulted in the project not being completed as anticipated, due to some challenges list that had to be attended to. Pressure testing was done by the contractor in preparation for the completion and the hand-over of the water scheme to the community which was estimated in three (03) months from May 2022. The water taps that were not functional would be in operation after testing has been completed;

6.9.26.12 Regarding issues of the Mxinga Village, on 15 September 2021, petitioners visited ANDM offices following up on the petition they submitted on the 31 of August 2021. A community meeting was arranged on 22 September 2021, to discuss the water challenges in the area of Mxinga village. A resolution was taken for the supply of new 4x10kl tanks that will be installed and water carting will be done by having a week cool-off in between while planning for the water scheme is underway. The community currently has water supply through water carting to the tanks. The feasibility study for Ward 29 & 30 is on hold due to funding constraints and because of over-commitment on MIG, the study was stopped;

6.9.26.13 With regard to Umzimvubu Local Municipality, Cancele has a regional water spring scheme, which serves a number of villages including Hofisi. In Hofisi, there is a borehole that was drilled, but it is not reliable due to its low yielding capacity. Cancele and Hofisi do not get water at
times in high lying areas due to illegal connections done in low lying areas. The issue of illegal connections is being addressed;

6.9.26.14 Moyeni location and Mvuzi areas are both served under Qumrha borehole and currently the borehole also have a low yielding capacity and a mechanical challenge on the pump. The scheme is operational, but the challenge is the illegal connections, which causes the pump to fail due to high demand that it is not designed for. They have a plan of drilling another borehole to alternate the existing one in the 2022/23 financial year; and

6.9.26.15 With regards to Ntabankulu Local Municipality, the scheme is serviced from a “weir”, which is constructed in the Ntabankulu Mountain. The primary storage reservoir is located in the Ndakeni village. The scheme then gravitates to further service the villages of Matshona, Maqoyini, Thaleni/Siqithini and due to the high water demand, an extra spring was protected to augment the existing water source. A borehole was drilled and equipped with a diesel powered generator in the lower parts of Ndakeni to augment the supply to Ndakeni & Mngcipongweni areas. A Rising Main Pipe to a new SBS Reservoir was installed as part of the project and completed in 2021.

Response by the Ntabankulu Local Municipality

6.9.27 On 22 April 2022, the former Municipal Manager of Ntabankulu LM, Ms L Nonyongo (Ms Nonyongo) responded to the Public Protector. In her response, Ms Nonyongo stated inter alia that:
6.9.27.1 Ntabankulu LM services a population of 126 476 and an estimated 27 701 households. Ntabankulu LM was allocated an amount of R 30, 576,000.00 through the MIG for 2022/23 financial year to implement projects meant to eradicate basic municipal infrastructure backlog. The three-year-capital plan of 2021/2022-2023/2024, which includes amongst other things Roads Maintenance Plan with prioritised projects was adopted by Council. This three-year-capital plan prioritised the construction of Dikidikini Bridge. To this extent a sum of R 6 000 000 was set aside in the 2021/2022 financial year to construct a modular-bridge technology, considered durable, cost effective and easy to build;

6.9.27.2 A tender was advertised for construction purposes, after which the municipality could not proceed with appointment of the contractor. This was due to the response of bidders, which far exceeded the estimated budgeted amount to an average of R15 000 000. Council therefore decided that the project as not viable to proceed, as the total allocation of MIG for three years is R28 524 000, R30 576 000 and R31 802 000 respectively. Sum amount of R15 million as per bid responses was going to take half of the amount of the MIG allocated grant and thus disadvantaging 126 476 population, which the Council had already made commitments to and begun planning and implementation processes;

6.9.27.3 The MIG allocation of three years has been fully committed to reduce the infrastructure backlog estimated at 70% whilst access to social facilities such as community halls, sport facilities and pre-schools remain inadequate. However, Ntabankulu LM has taken strides to request intervention from EC COGTA and ECDPWI to construct the same bridge with an intention of providing access. The correspondences of Ntabankulu LM have been acknowledged by the
two said departments and commitment to prioritise and construct the same bridge has been received from the ECDoT as at March 2022;

6.9.27.4 Planning and feasibility study of the same bridge is what Ntabankulu LM has budgeted for in the reviewed three-year-capital plan of 2021/2022 to a total amount of R500 000. The planning and feasibility study is aimed at availing detailed designs with construction and professional costs of the same bridge. The designs are thus available for institutions such as ECDoT, ECDPWI and EC COGTA, costing a sum of amount of R20 000 000;

6.9.27.5 Ntabankulu LM has to date electrified 96% of its villages and has been allocated an amount of R7 026 000 through Integrated National Electrification Program (INEP) for provision of electrification infrastructure to infills and extensions. Ntabankulu LM provides indigent households with alternative energy in line with Council approved Indigent Register. Housing demand survey was conducted, developed a Housing Plan and entered into a memorandum of agreement with ECDHS as an implementing agent and was allocated a budget of R5 500 000 in 2021/22 for construction of Bomvini 32 houses, which construction is in progress; and

6.9.27.6 All matters relating to water and sanitation were referred to ANDM for their attention and complaints related to overcrowded and dilapidated schools and clinics were referred to ECDoH and ECDoE respectively.

Responses to the Notice in terms of section 7(9)(a) of the Public Protector Act

6.9.28 The Notice dated 02 June 2023 was issued to ANDM and affected local municipalities. On 18 July 2023, the Investigation Team further held a
meeting to communicate and discuss the Notice with ANDM, Matatiele, Umzimvubu, Ntabankulu and Winnie Madikizela-Mandela Local Municipalities.

*Matatiele LM*

6.9.29 The Municipal Manager of Matatiele Local Municipality, Mr L. Matiwane (Mr Matiwane) responded to the Notice in an email dated 22 June 2023 and stated *inter alia* that:

6.9.29.1 With regards to incomplete RDP houses in Ward 2, 3, 4 and 6, the ECDoH appointed Cort and Fred/Sivivane Consults for Maritseng one thousand five hundred (1500) units in 2012, whereby one thousand (1000) units were completed and handed over to the beneficiaries by ECDHS. The incomplete five hundred (500) units were left in various stages (foundation, wall-plates) in 2015 when the project ceased. The project was fully under ECDHS and Matatiele LM was only a project proposer by then; and

6.9.29.2 The project stopped due to financial issues in 2015 and resumed in 2022, but due to the price rise and the years lost, the available budget could only construct one hundred and thirty one (131) units that were on wall plates only. To date 32 houses have been completed. In May 2023, the project stopped again due to financial issues. A total of one thousand and thirty two (1032) units have been completed leaving four hundred and sixty eight (468) units incomplete.
Umzimvubu LM

6.9.30 The Municipal Manager of Umzimvubu LM, Mr G.P.T. Nota, (Mr Nota) responded to the Notice in an email dated 26 June 2023 and stated *inter alia* that:

6.9.30.1 With regards to electrification of villages under Umzimvubu, Mxhutha, Skolweni, Hofisi and Siqhingeni were all electrified in 2020/21 and 2021/22 financial year. Huku High School and Ward 25 have also been electrified and all the defects that were identified by the Eskom Clerk have been rectified. The Mnxekazi village is the only village with a certain area without electricity, however Umzimvubu Local Municipality and Eskom are in the process of energising this part of Mnxekazi;

6.9.30.2 Regarding the RDP houses, the backlog in terms of housing is still high, however, the ECDHS has appointed the Umzimvubu LM and COEGA as implementing agencies to assist in expediting the implementation of human settlement projects. Umzimvubu LM together with the ECDHS is busy finalising a three (3) year plan, which would include all the villages that have not yet benefited from RDP houses. The ECDHS has appointed Umzimvubu LM as an implementing agent to construct 30 houses for Cancele village. The project has been advertised, closed, and the SCM processes are unfolding for the appointment of the service provider;

6.9.30.3 Regarding the maintenance of access roads in Ward 25 of Umzimvubu LM, the following roads have been maintained:

(a) In 2020/21 FY, Baphathe Mthonjeni AR;
(b) In 2021/22 FY, Mthombokazi to Mguga AR;
(c) In 2022/23 FY, Maphakama AR; and
(d) In 2022/23 FY, through the disaster funding, Matyholweni to Osborn School road and Mkhiwa Nolangeni to Galile access road.

6.9.30.4 Umzimvubu LM is in the process of employing services of a plant hire for the maintenance contract for a period of three (3) years.

Ntabankulu LM

6.9.31 The Acting Municipal Manager of Ntabankulu LM, Mr M. Pinyana, (Mr Pinyana) responded to the Notice in an email dated 21 July 2023 and stated *inter alia* that:

6.9.31.1 Ntabankulu LM is prioritising the construction of Dikidikini Bridge and 29.2km access roads in the 2023/24 financial year. Ntabankulu LM is also rehabilitating 24.4km of gravel access roads in various wards, included is the 4.6km of Ndakeni Location access road and the budget allocated for the said work is R 48 565 000;

6.9.31.2 Ntabankulu LM is upgrading some streets in the urban area from gravel roads to an asphalt paved standard, and the budget allocated for this work is R 47 000 000, the project started in April 2021 and is projected to be finalised in March 2024.

6.9.32 On 14 September 2023, Mr LP Mpendulo (Mr Mpendulo), Director Technical Services for Ntabankulu Municipality provided further progress to the Investigation Team through an email regarding the construction of Dikidikini bridge and stated the following:

6.9.32.1 The specification and the draft tender document is in place. The implementing agent is the Development Bank of Southern Africa (DBSA). This is in line with a Memorandum of Agreement between the
Department of Agriculture, Land Reform and Rural Development (DALRRD), who are now the co-funders for the project, together with DBSA;

6.9.32.2 The survey and designs for the project are in place. Hence project implementation is now at procurement stage. The DBSA is anticipating the tender to be advertised by end of September 2023; and

6.9.32.3 Delays have been experienced in the application for the Water Use License Authorization (WULA). Progress has been realised in the month of October after interventions by the Office of the Premier’s and Eastern Cape CoGTA. The complete application is due for submission to the DWS on 14 September 2023, after which follow up will be done with the DWS regarding the approval.

ANDM

6.9.33 The Municipal Manager of ANDM, Mr Sikhundla responded to the Notice in emails dated 21 June 2023 and 26 July 2023 respectively and stated *inter alia* that:

6.9.33.1 There are nineteen (19) taps in Mphetshwa that are fully functional, however, two (02) taps are not working due to levels which do not correspond with the tank level hence water is not coming from the two (02) taps. Several meetings were held with community to explain the challenge with the two (02) taps. The ANDM will elevate the tanks so that the two outstanding taps will work as well. The scheme is currently functional;

6.9.33.2 The ANDM has appointed a contractor for Sanitation toilets at Ward 12 Ntlanazwe Village Nqabeni with a value of R 768 498,59. The hand over was done in June 2023. The number of sanitation toilets to be
6.9.33.3 In Ward 30, there is Mxingwa water supply to be implemented for the value of R 15 000 000 for the 2023/24 financial year;

6.9.33.4 This financial year of 2023/24, ANDM will provide VIP toilets in Zanokhanyo and Envis in Ward 9 at a value of R 2 809 701,30;

6.9.33.5 Moyeni and Mvuzi are both served under Qumrha borehole. Currently the borehole also has a low yielding capacity and a mechanical challenge on the pump. Pumps have been taken for repairs and should be brought back and installed by 28 July 2023. The scheme is operational, but the challenge is the illegal connections which cause the pump to fail due to high demand that is not designed for. An additional borehole with a good yield has been drilled, it requires funding to equip and install pumping main pipes to the reservoir. The additional borehole is expected to be completed in this financial year being 2023/24;

6.9.33.6 In Botsola (Ha-Khoapa) an investigation of the reported problem was done and issue was resolved. Water is available and the scheme is fully functional;

6.9.33.7 St Paul village has two boreholes, one next to the Dipping tank and the other next to St. Paul community hall. The scheme is currently functional, there is currently installation of air-valves to enhance the functionality of the scheme;

6.9.33.8 The Ndakeni village scheme is serviced from a Weir, which is constructed in the Ntabankulu Mountain. The primary storage reservoir is located in the Ndakeni village. The scheme then gravitates to further
service the villages of Matshona, Maqoyini, Thaleni/Siqithini. Due to the high water demand an extra spring was protected to augment the existing water source. A borehole was drilled and equipped with a diesel powered generator in the lower parts of Ndakeni to augment the supply to Ndakeni & Mngcipongweni. A rising main pipe to a new SBS reservoir was installed as part of the project and completed in 2021. The scheme is operational, however, water does not reach all the villages due to a high demand and illegal connections; and

6.9.33.9 ANDM has decided to have Water and Sanitation By-Law as a way to deal with illegal connections of water. The By-Law has gone to all stages such as departmental standing committee, Mayoral committee and Council for noting and approval of public participation. After the public participation process has been completed, ANDM will consider the comments made by the communities and thereafter take the By-Law to the Council for approval. The By-Law will then be gazetted and be operational.

Winnie Madikizela-Mandela LM

6.9.34 The Municipal Manager of Winnie Madikizela-Mandela LM, Mr M. Mahlaka (Mr Mahlaka) responded to the Notice in email dated and 25 July 2023 and stated inter alia that:

6.9.34.1 The Winnie Madikizela-Mandela LM, does recognise that there are challenges relating to service delivery issues due to inadequate funding, however with the limited funds Winnie Madikizela-Mandela LM is receiving, it endeavours to spread the funds across all wards within its jurisdiction for an equitable distribution of municipal services;
6.9.34.2 Challenges raised relating to Winnie Madikizela-Mandela LM are at Mphetshwa administrative area, on issues around housing, access roads and sanitation (toilets). Winnie Madikizela-Mandela LM will only respond and to the challenge of the access roads, as other issues pertaining to water, sanitation and housing will be responded to by the relevant stakeholders;

6.9.34.3 At the time when the complaint was lodged with the Public Protector in 2021, the road in Mphetshwa village was not yet constructed. The construction was completed on the gravel road in the 2020/21 financial year; and

6.9.34.4 Winnie Madikizela-Mandela LM has further provided to the Investigation Team of the Public Protector for noting, a comprehensive list of its service delivery projects indicating work already completed as well as work on progress from 2013/14 financial year.

Applicable law and legal prescripts


6.9.35 Section 27(1)(b) of the Constitution states that everyone has the right to have access to sufficient food and water. In terms of section 27(2) of the Constitution the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of these rights.

6.9.36 Section 151 of the Constitution states *inter alia* that:

1. *The local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic.*
2. The executive and legislative authority of a municipality is vested in its Municipal Council.

3. A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in the Constitution…

6.9.37 Section 152(1) of the Constitution mandates the municipalities to strive to achieve the following objectives:

(a) To provide democratic and accountable government for local communities;

(b) To ensure the provision of services to communities in a sustainable manner;

(c) To promote a safe and healthy environment…”

6.9.38 Section 153 of the Constitution provides that municipalities have a developmental duty which entails:

“(a) To structure and manage their budget, administration and planning processes in a manner that prioritizes the basic needs of their communities whilst promoting social and economic development within their communities; and

(b) To participate in national and provincial development programmes.”
In terms of section 239 of the Constitution an ‘organ of state’ means—

“(a) Any department of state or administration in the national, provincial or local sphere of government50…”

Section 195(1) of the Constitution provides, *inter alia* that:

“Public Administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:

(a) …
(b) Efficient and economic use of resources must be promoted;
(c) Public administration must development-oriented;
(d) Services must be provided impartially, fairly, equitably and without bias;
(e) People’s needs must be responded to…;
(f) Public administration must be accountable; and
(g) Transparency must be fostered.”

Section 41 of the Constitution is titled “Principles of Co-operative Government and Intergovernmental Relations” and states *inter alia*:

“(1) All spheres of government and all organs of state within each sphere must—

(a) preserve the peace, national unity and the indivisibility of the Republic;
(b) secure the well-being of the people of the Republic;

50 Own underlining.
(c) provide effective, transparent, accountable and coherent government for the Republic as a whole;

(d) be loyal to the Constitution, the Republic and its people….”

(e) …;

(f) …;

(g) …;

(h) cooperate with one another in mutual trust and good faith by-

   (i) fostering friendly relations;
   (ii) assisting and supporting one another;
   (iii) informing one another of and consulting one another on matters of common interest; and
   (iv) coordinating their actions…;

6.9.42 Schedule 4, Part B and Schedule 5 Part B of the Constitution highlight and further entrenches the Municipality’s areas of legislative competence and functions to the extent set out therein. The functions listed under these Schedules include health services, municipal public works, municipal planning, municipal public transport, local amenities, and municipal roads, refuse removal and solid waste disposal.

6.9.43 Section 237 of the Constitution provides that all constitutional obligations must be performed diligently and without delay.

Local Government Municipal Systems Act, 2000

6.9.44 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 and environmentally sustainable manner.

(e) ...

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

(g) ...

(h) ...

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

(j) Contribute, together with other organs of state, to the progressive realisation of the fundamental rights contained in sections 24, 25, 26, 27 and 29 of the Constitution”

**Local Government Municipal Structures Act, 1998**

6.9.45 Section 83(3) of the Local Government Municipal Structures Act, 1998, provides that a district municipality must seek to achieve the integrated, sustainable and equitable social and economic development of its area as a whole by-

(a) ensuring integrated development planning for the district as a whole;

(b) promoting bulk infrastructural development and services for the district as a whole;

(c) building the capacity of local municipalities in its area to perform their functions and exercise their powers where such capacity is lacking; and
(d) promoting the equitable distribution of resources between the local municipalities in its area to ensure appropriate levels of municipal services within the area.

**The National Water Act, 1998**

6.9.46 Section 2(2) of the National Water Act (Water Act), provides that the purpose of the Act is to ensure that the nation and water resources are protected, used, developed, conserved, managed and controlled in ways which take into account amongst other factors:

(a) Meeting the basic human needs of present and future generations;
(b) Promoting equitable access to water;
(c) Redressing the results of past racial and gender discrimination;
(d) Promoting the progressive, sustainable and beneficial use of water in the public interest;
(e) Facilitating social and economic development;
(f) Providing for growing demand for water use;
(g) Protecting aquatic and associated ecosystems and their biological diversity;
(h) Reducing and preventing pollution and degradation of water resources;
(i) Meeting international obligations…

6.9.47 Section 3(1) of the Water Act states *inter alia* that “as the public trustee of the nation’s water resources the National Government acting through the Minister must ensure that water is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with its constitutional mandate”. In terms of section 3(2), the Minister is
ultimately responsible to ensure that water is allocated equitably and used beneficially in the public interest, while promoting environmental values.

6.9.48 Section 3(3) of the Water Act states that the National Government acting through the Minister, has the power to regulate the use, flow and control of all water in the Republic.

The Water Services Act, 1997

6.9.49 Section 2 of the Water Services Act provides *inter alia* that the main objects of the Act are to provide for:

(a) The right of access to basic water supply and the right to basic sanitation necessary to secure sufficient water and an environment not harmful to human health or well-being;

(b) The setting of national standards and norms and standards for tariffs in respect of water services;

(c) The preparation and adoption of water services development plans by water services authorities;

(d) A regulatory framework for water services institutions and water services intermediaries;

(e) The establishment and disestablishment of water boards and water services committees and their duties and powers;

(f) The monitoring of water services and intervention by the Minister or by the relevant province;

(g) Financial assistance to water services institutions;

(h) The gathering of information in a national information system and the distribution of that information;

(i) The accountability of water services providers, and
(j) The promotion of effective water resource management and conservation.

6.9.50 Section 3 of the Water Services Act provides *inter alia* that:

1. *Everyone has the right of access to basic water supply and basic sanitation*;
2. *Every water services institution must take reasonable measures to realise these rights*;
3. *Every water services authority must, in its water services development plan provide for measures to realise these rights*…

6.9.51 According to section 11(1) of the Water Services Act every Water Service Authority\(^5\) has a duty to all consumers or potential consumers in its area of jurisdiction to progressively ensure, affordable, economical and sustainable access to water services. In terms of section 11(2) of the Water Services Act the duty is subject to the following factors:

(a) The availability of resources;

(b) The need for equitable allocation of resources to all consumers and potential consumers within the authority’s area of jurisdiction;

(c) The need to regulate access to water services in an equitable way;

(d) The duty of consumers to pay reasonable charges, which must be in accordance with any prescribed norms and standards for tariffs for water services;

(e) The duty to conserve water resources;

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\(^5\) *Water Services Authority* means any municipality, including a district or rural council as defined in the Local Government Transition Act, 1993 (Act No. 209 of 1993) responsible for ensuring access to water services.
(f) The nature, topography, zoning and situation of the land in question, and

(g) The right of the relevant water services authority to limit or discontinue the provision of water services if there is a failure to comply with reasonable conditions set for the provision of such services.

6.9.52 Section 62 of the Water Services Act deals with the monitoring of water services institutions and provides that:

(1) The Minister and any relevant province must monitor the performance of every water services institution in order to ensure:

(a) Compliance with all applicable national standards prescribed under this Act;
(b) Compliance with all norms and standards for tariffs prescribed under this Act, and
(c) Compliance with every applicable development plan, policy statement or business plan adopted in terms of this Act…

6.9.53 Section 63(1) of the Water Services Act states that if a water services authority has not effectively performed any function imposed on it by or under this Act, the Minister may, in consultation with the Minister for Provincial Affairs and Constitutional Development (now COGTA), request the relevant province to intervene in terms of section 139 of the Constitution.
Analysis

6.9.54 Based on section 239 of the Constitutional, it is submitted that municipalities are organs of state constituted at a local sphere of government as contemplated above.

6.9.55 In terms of the above stated provisions of the Constitution, Local Government Municipal Systems Act and Municipal Structures Act, municipalities have a legal duty to provide basic services to communities in a sustainable manner.

6.9.56 The ANDM, Matatiele LM, Umzimvubu LM, Ntabankulu LM and Winnie Madikizela-Mandela LM are public administration authorities envisaged in section 195 of the Constitution and are expected to foster transparency, be accountable and impartial when engaging administrative processes such as delivery of municipal services to their communities.

6.9.57 In line with the principles of cooperative governance enunciated under Section 41 of the Constitution, Local Government is expected to cooperate with other spheres and levels of government in order to ensure effective delivery of municipal services.

6.9.58 In terms of the section 83(3) of the Municipal Structures Act, it is incumbent upon the ANDM as a district municipality to give members of the local communities equitable access to the municipal services to which they are entitled and to ensure integrated development planning for the district as a whole, promote bulk infrastructural development
and services for the district as a whole and building the capacity of local municipalities in its area.

6.9.59 While it is evident that ANDM together with its local municipalities namely, Matatiele LM, Umzimvubu LM, Ntabankulu LM and Winnie Madikizela-Mandela LM are striving to the extent permitted by their financial means to address service delivery issues in their area of jurisdiction. However, the investigation has revealed that there is still inadequate provision of basic services and infrastructural backlog within certain villages, which impact negatively on the livelihood of community members in the Alfred Nzo district.

6.9.60 Areas of concern, as observed during the site inspections, include lack of access to clean water and proper sanitation, lack or poor maintenance of access roads within villages, lack of pedestrian bridges to enable the community to cross rivers, failure or undue delay to provide toilets in some villages, failure or undue delay to provide housing or shelter in collaboration with the provincial Department of Human Settlements for deserving beneficiaries in some rural communities as well as delay to provide electricity in collaboration with Eskom, in certain villages.

6.9.61 The ANDM estimated that its current water and sanitation backlogs are at 49% and 37% respectively. In terms of the Water Services Master Plan that was developed in 2017, the ANDM requires an amount of twenty billion, nine hundred million rand (R20, 900 000 000), to eradicate its backlogs. The ANDM submitted that the current allocation for Municipal Infrastructure Grant is less than four million rand (R400 000 000) per financial year. The ANDM further estimated that with the current stream of funding ANDM is getting, it will take the
district not less than twenty (20) years to eradicate the infrastructure backlogs within the district unless there can be additional capital funding injection to the ANDM.

6.9.62 It is the legislative and constitutional responsibility of the ANDM and its local municipalities namely, Matatiele LM, Umzimvubu LM, Ntabankulu LM and Winnie Madikizela-Mandela LM to ensure the needs of the people within the district are responded to through the provision of municipal services to the community in a progressive and sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

Conclusion

6.9.63 Based on the information and evidence revealed during investigation, the Public Protector concludes that there is inadequate delivery of municipal services including reliable supply of water by ANDM and its local municipalities, which prejudices the community members within the Alfred Nzo district. This inadequacy in basic municipal services such as water and sanitation is not in line with the legal obligations of the municipalities.

FINDINGS

6.9.64 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether municipal services by the Alfred Nzo District Municipality, Matatiele Local Municipality, Umzimvubu Local Municipality, Ntabankulu Local Municipality and Winnie
Madikizela-Mandela Local Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.9.64.1 The allegation that municipal services by the Alfred Nzo District Municipality, Matatiele, Umzimvubu, Ntabankulu and Winnie Madikizela-Mandela Local Municipalities within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

6.9.64.2 Evidence at the disposal of the Public Protector revealed that the ANDM together with its local municipalities are striving to the extent permitted by their financial means to address service delivery issues in its area of jurisdiction. This is evidenced by amongst other things, the construction of the Ludeke Dam for the Winnie Madikizela Mandela Local Municipality which services most of the rural villages in Mbizana and the town and is functioning well.

6.9.64.3 However, the investigation has equally found that there is still a lack of supply of basic essential services as well as infrastructural backlogs within certain villages falling under ANDM, which impact negatively on the community or residents. Areas of concern relate to lack of access to clean and reliable water supply, which include villages such as Ndakeni in Ntabankulu, Mphetshwa location in Mbizana.

6.9.64.4 Residents in these areas were witnessed by the Investigation Team during site inspection fetching unhygienic water from the nearby rivers/streams for domestic use, thereby being exposed to waterborne
diseases and other associated health hazards. Furthermore, it was noted in some instances that taps were installed, however, there is no running water and the taps are dry in areas like Mphetshwa and Ramohlakoane locations.

6.9.64.5 Information gathered during the investigation also revealed a lack of or poor maintenance of access roads within villages under Umzimvubu Local Municipality such as Hofisi as well as lack of pedestrian bridges to enable the community members to cross a raging Mzintlava River in villages such as EmaXesibeni at Mount Ayliff and along Ntabankulu Local Municipality.

6.9.64.6 The investigation further revealed that there is a failure and/or undue delay to provide toilets to ensure proper sanitation in some villages such as Mphetshwa location under Winnie Madikizela-Mandela Local Municipality, which has adverse health implications on the community and further infringes on their right to human dignity.

6.9.64.7 The ANDM estimated that its current water and sanitation backlogs are at 49% and 37% respectively. In terms of the Water Services Master Plan that was developed in 2017, the ANDM requires an estimate amount of twenty billion, nine hundred million rand (R20,900,000,000), to eradicate its backlogs.

6.9.64.8 The ANDM submitted that the current allocation for the Municipal Infrastructure Grant is less than four hundred million rand (R400,000,000), per financial year. ANDM estimated that with the current stream of funding ANDM is getting, it will take the district not less than twenty (20) years to eradicate the infrastructure backlogs within the district unless there can be additional capital funding injection to the ANDM.
6.9.64.9 The inadequate delivery of essential municipal services such as water, access roads, pedestrian bridges, toilets on the part of ANDM and its affected local municipalities poses a threat to community within the district. These deficiencies in municipal service delivery are incompatible with Schedule 4, Part B and Schedule 5 Part B, sections 27(1)(b), 237, 152 and 153 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, section 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.

6.9.64.10 Accordingly, the conduct of the ANDM and its Local Municipalities constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice as contemplated in terms of section 6(4)(a)(v) of the Public Protector Act.

REMEDIAL ACTION

6.9.65 Having regard to the evidence, the regulatory framework determining the standard that ANDM, Matatiele, Winnie Madikizela-Mandela; Umzimvubu and Ntabankulu Local Municipalities should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Municipal Managers for ANDM, Matatiele, Winnie Madikizela-Mandela; Umzimvubu and Ntabankulu Local Municipalities respectively

6.9.65.1 Within ninety (90) calendar days, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal service requirements in all affected areas within ANDM, Matatiele, Winnie
Madikizela-Mandela; Umzimvubu and Ntabankulu Local Municipalities respectively, such as water and sanitation, access roads, bridges, toilets and other essential services;

6.9.65.2 Within **ninety (90) calendar days** to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the ANDM, Matatiele, Winnie Madikizela-Mandela; Umzimvubu and Ntabankulu Local Municipalities. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

**The Executive Mayors for ANDM, Matatiele, Winnie Madikizela-Mandela; Umzimvubu and Ntabankulu Local Municipalities respectively**

6.9.65.3 Within **sixty (60) calendar days** of the date of the final report, table a copy thereof before their respective Municipal Councils for discussion in line with the powers and functions of the Executive Mayors in terms of section 56 of the Municipal Structures Act. The Municipal Councils for ANDM, Matatiele, Winnie Madikizela-Mandela; Umzimvubu and Ntabankulu Local Municipalities respectively, are to thereafter consider the Implementation Plan developed by their respective Municipal Managers, setting out steps/measures to be taken to address shortcomings on municipal services related to the provision of water and sanitation, access roads, bridges, toilets and other essential services identified in this report, in line with the obligations of municipalities contemplated in section 152(1)(b) of the Constitution; and
6.9.65.4 Within **thirty (30) calendar days** of the submission of the Implementation Plan by their respective Municipal Managers, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address all the service delivery concerns of the communities within their respective areas of jurisdiction, as identified in this report.

**AMATHOLE DISTRICT MUNICIPALITY (ADM)**

6.10 Whether the municipal services by the Amathole District Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

*Common cause*

6.10.1 Amathole District Municipality (ADM) is a category C municipality situated in the central part of the EC province. The ADM is comprised of six local municipalities namely, Mbhashe, Mnquma, Great Kei, Amahlathi, Ngqushwa, and Raymond Mhlaba.

6.10.2 As a district municipality, ADM is a Water Service Authority with an overarching jurisdiction to service local municipalities with water within its area. ADM has a duty to respond to the water service needs within local municipalities and to play a role in the provision of water services in respect of each local municipality in the district.
Issue in dispute

6.10.3 The issue for the Public Protector’s determination is whether the provision of water services is undertaken in a progressive and effective manner as contemplated in the Constitution and the law.

Mr Soga’s version (the Complainant)

6.10.4 On 26 July 2021, the Investigation Team met with Mr Victor Soga (Mr Soga), at Cebe Administrative Area, Ward 27, in Centane. Mr Soga alleged that the community of Cebe feels neglected due to the lack of development as well as poor delivery of basic services such as water and housing.

6.10.5 Mr Soga further alleged that the Cebe is predominantly comprised of elderly people, who are dependent on social grants. He further alleged that at Cebe, there are no taps at all and that the primary source of water is Nxaxho River and streams in the area. Mr Soga further contended that the water they use is unhealthy and dirty, as they share it with animals.

6.10.6 Mr Soga further submitted that in 2014, they reported the water challenges at Mnquma Local Municipality and later to ADM, and were promised that the issue of water would be addressed, but that nothing has happened as at July 2021, when the Investigation Team met with him. Mr Soga also informed the Investigation Team that people have to wake up early in the morning to go and fetch water before the animals come out to drink.
Ms Mahlatshana’s version (the Complainant)

6.10.7 On 27 July 2021, the Investigation Team met with the Complainant, Ms Nomakholwa Mahlatshana (Ms Mahlatshana), of Extension 15 Msobomvu Township, Ward 4, Butterworth, a few community members, as well as the Ward Councillor, Ms Yoliswa Ngonyama (Ms Ngonyama), and Ward Committee members. The most prominent complaint raised by Ms Mahlatshana was the lack of access to clean water.

6.10.8 Ms Mahlatshana indicated that the town of Butterworth gets its water supply from Gcuwa and Xilinxa Dams in Ngqamakwe. Furthermore, that Extension 15 started experiencing water challenges in 2016, which became more severe by the end of that year, such that the community no longer had water and resorted to going to the neighbouring areas to fetch water using wheel barrows.

6.10.9 Ms Mahlatshana further alleged that in 2018, they engaged their Ward Councillor and a meeting was organised with the management of Mnquma Local Municipality (MLM), in trying to understand the problem of lack of water supply. She stated that since the neighbouring areas within Ward 4 have water, but they were referred to the ADM. Ms Mahlatshana submitted that, a scourge of drought hit Butterworth in 2019, which prompted the intervention of the Department of Water and Sanitation (DWS). She indicated that, because of the intervention of the DWS, boreholes were dug and water tanks installed for communities as a temporary solution. She stated that the dams were also upgraded after it was discovered that they were silted with sand.
6.10.10 Ms Mahlatshana further submitted that when things went back to normal and dams filled with water, other communities benefitted, except Extension 15, where the situation remained unchanged. Ms Mahlatshana contended that further engagements were made with the ADM and ultimately, they were informed that the reason they were struggling to get running water was because they were staying too close to the reservoir tanks and that there was a problem with an “Airlock”.

6.10.11 Ms Mahlatshana alleged that residents have now resorted to other alternative measures to get water, and as such, bought Jojo tanks and are now relying on rainwater for consumption and washing clothes. Furthermore, Ms Mahlatshana alleged that despite having no consistent water supply, the MLM keeps on billing them for water even when they are not getting any.

6.10.12 Ms Mahlatshana alleged that they have been receiving threatening letters from the lawyers representing MLM informing them to pay for water. She indicated that, the Ward Councillor, Ms Ngonyama wrote a letter to MLM in 2018, requesting that the water bills for Extension 15, be cancelled until the water crisis is sorted.

Mr Manyinyi’s version (Complainant)

6.10.13 On 27 July 2021, the Investigation Team met with Mr Manyinyi of Upper Gwadu location, Willowvale and a few community members. Mr Manyinyi alleged that at Upper Gwadu there are communal taps, which ran dry around 2008. He further alleged that there are no boreholes and the community still shares water with animals. It was further submitted by Mr Manyinyi that community members are forced to walk approximately five (05kms) to the Nqabarha River to fetch water.
Mr Manyinyi indicated that in 2020, an official from Water Works, namely Mr Maqanda, visited Upper Gwadu and conducted interviews with the community members regarding the water crisis. He left promising that ADM will address the water challenge, but nothing has changed.

Mr Mtyi’s version (Complainant)

On 27 August 2021, the Investigation Team visited the Rabula Administrative Area, Ward 11 in Keiskammahoek, to meet with the Complainant Mr Lamla Mtyi (Mr Mtyi). Mr Mtyi indicated that, the Rabula Administrative Area is made up of twelve (12) locations and that the water challenge is the primary issue affecting this area. Mr Mtyi alleged that there are communal taps in some of the locations installed between 2005 and 2006, however, they ran dry a while ago and the community fetches water from Rabula River for domestic consumption.

Mr Mtyi alleged that the Rabula Administrative Area gets its water supply from Sandile Dam, which is then pumped into a bigger reservoir tank at Debe-Nek. Further, that there are other small reservoir tanks in the three locations, namely, Madotyeni, Sinyanduleni, and New Rest. Mr Mtyi further alleged that the following locations do not have communal taps:

(a) Ngqeqe;
(b) Mabheleni;
(c) Newrest (KwaGubesa);
(d) Trust Twenty (Kwesaba); and
(e) Magcumeni.
Mr Mtyi further alleged that the community, from time to time, gets water supplied by trucks to the Jojo tanks installed in strategic areas during the drought season. He, however, indicated that the problem with these is that they are not reliable, in that sometimes a week passes without any water supply. Mr Mtyi further stated that water issues were reported to the ADM and that, during the month of August 2021, an inspection was done at Madotyeni Reservoir Tank in an effort to address the crisis, but the inspection never yielded any positive results as the problem persists.

Ms Jack's version (Complainant)

On 14 December 2022, the Investigation Team met with Ms N Jack (Ms Jack) and Mr O Sogayise (Mr Sogayise), the residents of Qeqe village, under Ward 5 of Mbashe Local Municipality on behalf of Mr Y Sogayise (the Complainant), who was not available on the day due to work commitments.

Ms Jack alleged that Qeqe village had a crisis of lack of drinking water for more than a year and that the community relied on water streams and shared water with animals. Ms Jack further alleged that on 01 June 2022 a delegation from Ward 5 accompanied by the late Ward Councillor (Mr Sisulu), had a meeting with ADM requesting the fixing of the borehole, however, it was never fixed.

Ms Jack indicated that it had been raining in other areas but Qeqe village is not getting any rain, they are therefore struggling. She submitted that those who can afford resort to buying water. She further indicated that, where the water generator is stored it is not safe, it can be easily vandalised, and ADM should also consider and address that.
Response by ADM

6.10.21 On 18 February 2022, the Public Protector raised all the above allegations with the ADM, thereby giving the municipality an opportunity to respond to the service delivery issues alleged to be affecting the communities in its area of jurisdiction.

6.10.22 On 14 July 2022, ADM responded to the allegations through its attorneys, namely, Lionel Trichardt & Associate Attorneys, stating the following:

6.10.22.1 With regards to the Cebe Administrative Area, Mr Trichardt stated that currently there was no infrastructure in the area of Cebe. Further that the ADM was currently implementing a long term plan (Nxaxo and Cebe Water Supply), of which Phase 1 (bulk supply), construction was already done. Mr Trichardt indicated that the ADM is currently busy with the appointment of a new service provider and that the process was currently at procurement stage;

6.10.22.2 Mr Trichardt indicated that Extension 15, Msobomvu Township was negatively affected by the recent drought conditions that resulted in the Xilinxa Dam and Gcuwa Dam, which supply the area, running dry. He, however, stated that since the drought has eased, water supply in the area has improved. Mr Trichardt further indicated that going forward, the area will benefit from the long term plan (Tsomo/Ndabakazi/Butterworth Pipeline Project), which is currently at construction stage;

6.10.22.3 With regards to Upper Gwadu location, Mr Trichardt indicated that the area was also affected by the recent drought. He further submitted that the Municipal Infrastructure Support Agent (MISA) initiated a plan of
drilling and equipping a borehole water system and this work was at construction stage at the time. Mr Trichardt added that the long term plan is the rolling out of the Sundwane Regional Water Scheme, which is one of the priorities of the ADM;

6.10.22.4 According to Mr Trichardt, regarding the Rabula Administrative Area, ADM has prepared and submitted a Business Plan targeting WSIG funding of sixteen million rand (R16 000 000), for the relocation of the existing Rabula Pump Station to a lower position, closer to the R63 road. Mr Trichardt further submitted that the rationale for this was to allow water to gravitate to a lower position and then pump into the Rabula Command Reservoir; and

6.10.22.5 According to Mr Trichardt, the ADM aims to upgrade the rising main to meet the current and expansion needs of the Rabula Administrative Area. He further indicated that there was a plan to implement a separate pump station and rising main from Sandile WTW to the Burnshill Reservoir as this will relieve up to 1, 5 Mℓ/d, making it available for several downstream areas that are currently suffering from the starving effect in the British Ridge to Debe-Nek spine. He stated that this was planned for 2022/23 financial year.

Additional Response by ADM

6.10.23 In addition to its initial response dated 14 July 2022, the ADM submitted supporting records to the Investigation Team through an email dated 15 July 2022. The aforesaid submission was sent by the ADM, through its official, Papama Bikitsha, who copied Mr Trichardt and Mr Sikhumbuzo Yoko, who is Senior Manager for Engineering. The submission related to inter alia the long term projects of the ADM.
6.10.24 With regards to the Cebe Administrative Area, Mr Trichardt submitted that in 2011, a company trading by the name of Ubuhle Bempisi Consulting Engineers was appointed to undertake the Engineering Design and Implementation of the Xanxo and Cebe Water Supply Scheme. He further stated that a Design Report was issued in June 2014 and furnished a copy thereof to the Investigation Team. In terms of the conclusion and the recommendation of the Design Report, the following was recorded:

(a) The communities of Nxaxo and Cebe do not have reliable water supply. These communities rely on unprotected springs, water holes, nearby rivers and rain water harvesting for drinking water;

(b) Investigations were done and three options were identified and analysed for the development of a reliable source of water supply to these communities. The options analysed were:

(i) Borehole development scheme;
(ii) River abstraction from the Qora river and construction of WTW; and
(iii) Supply from the Ibika Scheme.

(c) The borehole development scheme proved to be the most viable option, due to the fact that it meets the required demand for the Nxaxo and Cebe areas with an extra supply of 86% at a consumption rate of 25 l/cap/day. Geo-hydrological investigations were performed by specialist consultants SRK and three (03), boreholes were identified as having sufficient yield for equipping and to provide the communities with water at a consumption of 25l/cap/day;
(d) The design report recommended that the project be implemented to provide water services to the communities, using the development of ground water to supply the communities at a demand of 25l/cap/day and at a total capital cost of two hundred and nineteen million, three hundred and fifty eight thousand rand (R 219 358 000.00) starting in the 2014/15 financial year.

6.10.25 ADM also indicated that with regard to the Msobomvu Area, on 03 January 2022, the ADM appointed LMPK/MBSA Joint Venture for the provision of consultancy services on Ngqamakhwe Regional Water Scheme: Phase 5C: Ndabakazi to Butterworth Bulk Pipeline Project.

6.10.26 With regards to the Upper Gwadu/Willowvale area, ADM submitted that the ADM concluded a Memorandum of Agreement with MISA for the implementation of the Hogsback-Boldpoint Village Borehole Water Supply and Fort Malan Village Borehole Water Supply in October 2021.

6.10.27 As for the Rabula Administrative Area, Mr Trichardt indicated that in June 2022, ADM appointed a Consulting company trading by the name Ages Omega (Pty) Ltd, for the Ground Water Development Programme-Drilling and Equipping of Boreholes in Rabula.

Meeting between ADM and the Investigation Team held at Idutywa on 12 December 2022

6.10.28 Mr Xolile Gazi (Mr Gazi), the Senior Manager at ADM responsible for Idutywa, indicated that ADM was at that stage prioritising fixing the Qeqe village borehole and that quotations had been sourced to procure a missing apparatus of the borehole, as it was vandalised. Mr Gazi further submitted that ADM plans to replenish the Qeqe Reservoir
from the water works in Idutywa as the water works in Mbashe North is not pumping water and that would be done by no later than 16 December 2022.

6.10.29 Mr Gazi further indicated that ADM inspectors would visit Qeqe village to assess the conditions of the taps, by no later than 14 December 2022. He further indicated that Mbashe North water works was awaiting the replacements for malfunctioning parts, which had been procured and would be replaced as soon as possible. The replacement of malfunctioning parts would bring a permanent solution to the challenge of Qeqe village.

Response to the notice in terms of section 7(9)(a) of the Public Protector Act

6.10.30 A notice in terms of section 7(9)(a) of the Public Protector Act, dated 02 June 2023 was issued to ADM. The Municipal Manager of ADM, Dr B.J. Mthembu (Dr Mthembu) responded to the Notice on 21 July 2023 and stated *inter alia* that:

6.10.30.1 The ADM acknowledges the challenges with water supply to some of the communities within different local municipal areas. Over the years several attempts have been made to monitor and report on water schemes’ functionality. However, monitoring is haphazard. In order to ensure that ADM is more responsive to its consumers, this needs to change and monitoring functionality and responding quickly to incidents should be a priority;

6.10.30.2 The legacy of poor access to services in the former homelands, has resulted in massive water and sanitation backlogs for the ADM. ADM is working towards meeting the national water service delivery targets
of adequate potable and effective supply of safe water, adequate and sustainable sanitation for all. As the WSA ADM is facing enormous water and sanitation services backlogs;

6.10.30.3 Given the historical underdevelopment in the rural areas, ADM has made strides in pushing the frontiers of poverty backwards. ADM is however aware that the greater part of restoring the dignity of its people and providing them with sustainable and efficient municipal services remains a fundamental task in the new dispensation;

The status of Water and Sanitation Services in ADM

6.10.30.4 The Mbashe water treatment facilities are particularly prone to electricity challenges and there have been continuous engagements with Eskom to resolve the issues, in particular the phase imbalances at Mbashe North and Mncwasa. The main concern about Wastewater Facilities in Mbashe is the lack of sewer systems at Elliotdale and Willowvale and these projects need to be prioritised;

6.10.30.5 The Mnquma area is well serviced with water supply, it should be remembered that there is still a fairly large backlog of unserviced areas. There are also several schemes under construction which have taken years to complete and are not yet functional. In other words, there are still considerable water supply challenges in Mnquma;

6.10.30.6 Maintenance of sewer pump stations is an ongoing challenge, which needs to be better resourced if ADM is to get on top of its sewer challenges. Ongoing challenges with vandalism and illegal electrical connections remain a problem in Butterworth;
6.10.30.7 The towns of Ngqamakhwe and Centane do not have formal sewer systems and are in desperate need of them in order to reduce the health and environmental risk of raw sewage overflowing from septic tanks and conservancy tanks into the environment;

6.10.30.8 The Great Kei is relatively stable, however, the Kei Bridge water treatment works does not have sufficient capacity to meet the full demand in Qumrha and a large part of Siviwe location is dependent on water tankers and that the entire sewer system in Qumrha requires an upgrade;

6.10.30.9 In Amahlathi, despite the good rainfall this year (2023), areas supplied by groundwater continue to struggle with adequate supply. The ongoing vandalism of the Keiskammahoek sewer pump station is making it very difficult to treat the sewage generated in Keiskammahoek as all sewage must be pumped through this pump station to reach the works. A service provider has been appointed to repair both the sewer pump station as well as the Wastewater Treatment Works in Keiskammahoek and work as already begun;

6.10.30.10 Attention needs to be given to addressing the water source issues for Bedford and Adelaide. If this can be addressed, it will significantly improve the level of service provided in these towns. The completion/installation of a roof on the reservoir at the Bedford Water Treatment Works requires urgent attention as this will alleviate many of the problems experienced in Bedford;

6.10.30.11 Maintenance of sewer pump stations is an ongoing challenge, which needs to be better resourced if ADM is to manage its sewer challenges, once the operations and maintenance of the sewer pump station is
addressed ADM will be able to manage the ongoing sewage spillages in Fort Beaufort;

6.10.30.12 Despite all the treatment facilities in Ngqushwa being fully functional, many of the villages struggle to get a reliable water supply. This is owing to the large number of illegal connections, vandalism of the scheme as well as the treatment facilities being under capacitated;

6.10.30.13 The implementation of a wastewater treatment upgrade for Peddie is long overdue and the existing works cannot adequately treat the effluent flowing to it;

6.10.30.14 The inability to provide some of the communities with a consistent supply of water is attributed to several factors, including:

(a) Firstly, the load shedding experienced across the country has put enormous pressure on all ADM water treatment facilities. Many systems were already struggling to meet the demand before load shedding due to increase on the number of households to be served thus resulting in water schemes not coping with the demand, as such it is extremely difficult to provide a reliable supply.

(b) Climate change is also one of the contributing factors as water sources that were initially used to supply the communities have since dried up due to drought, as such it makes the existing schemes redundant until alternative water sources are identified.
(c) ADM’s financial constraints, which have resulted in a shortage of staff and fleet influences timeous response to water and sanitation incidents.

(d) Each year, as more backlogs are eradicated, additional infrastructure is handed over to the Water Service Provider Division to operate and maintain, but in real terms, the Operation and Maintenance budget has been decreasing each year.

(e) There is no budget for sanitation maintenance in rural areas (for emptying of full pits).

(f) Water schemes only designed for supply through communal standpipes, but communities aspire to higher level of service.

(g) Old infrastructure in old parts of towns (e.g. asbestos pipe and cast-iron pipes, which burst frequently and are difficult to repair especially house connections) and vandalism as well as illegal connections.

6.10.30.15 There are short term interventions that ADM is embarking on to minimise the impact of these water challenges such as carting water in trucks whilst looking for other alternatives, but this is a costly exercise and is not sustainable. The high number of incidents have been logged to appoint service providers to cart water. This raises two issues. Firstly, it suggests that there are numerous schemes that are not functional and that it is taking a long time to respond to the issues. The second issue relates to the sustainability of water carting and the high cost of hiring tankers;
The tables below indicate the number of tankers which have been hired since December 2022 and the cost to date (it should be noted that the costs are only reflected for invoices received and there may still be others, which have not been processed as yet);

The table below: Number of Hired Water Tankers Requested Dec-May 2023

<table>
<thead>
<tr>
<th>Local Municipality</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMAHLATHI</td>
<td>5</td>
<td>1</td>
<td>5</td>
<td>3</td>
<td>5</td>
<td>19</td>
</tr>
<tr>
<td>GREAT KEI</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>4</td>
<td>10</td>
</tr>
<tr>
<td>MBHASHE</td>
<td>5</td>
<td></td>
<td>6</td>
<td>4</td>
<td></td>
<td>15</td>
</tr>
<tr>
<td>MNQUMA</td>
<td>5</td>
<td>6</td>
<td>1</td>
<td>7</td>
<td>5</td>
<td>24</td>
</tr>
<tr>
<td>NGQUSHWA</td>
<td>4</td>
<td>2</td>
<td></td>
<td></td>
<td>2</td>
<td>8</td>
</tr>
<tr>
<td>RAYMOND MHLABA</td>
<td>9</td>
<td>9</td>
<td>4</td>
<td>8</td>
<td>6</td>
<td>36</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td>30</td>
<td>20</td>
<td>10</td>
<td>28</td>
<td>24</td>
<td><strong>112</strong></td>
</tr>
</tbody>
</table>

The table below: Invoices received for Water Carting to date (Dec - May 2023)

<table>
<thead>
<tr>
<th>Amount Paid for Water Carting Dec - May 2023</th>
<th>Dec</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount Paid</td>
<td>R 890,860</td>
<td>R 1,283,518</td>
<td>R 1,242,043</td>
<td>R 2,656,967</td>
<td>R 1,394,347</td>
<td>R 479,100</td>
<td>R 7,946,835</td>
</tr>
</tbody>
</table>

The original WSIG budget of R86 000 000 was reduced to R38 000 000 owing to slow expenditure during the 2022/23 financial year. The table below summarises WSIG expenditure to date:
6.10.30.20 The following table summarises the projects for the 2023/24 financial year. These projects are all continuations of projects currently being implemented, so expenditure should not be a problem in the following financial year. The target will be to complete as many projects as possible by December 2023, with the hope of then benefitting from unspent funds from other municipalities;
The table below: WSIG Projects to be implemented in the 2023/24 financial year:

<table>
<thead>
<tr>
<th>Project Name</th>
<th>23/24 Projects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refurbishment of Sewage Systems in ADM</td>
<td>R 5,000,000</td>
</tr>
<tr>
<td>Districtwide Refurbishment of Water Retaining Structures</td>
<td>R 4,200,000</td>
</tr>
<tr>
<td>Refurbishment of Mncwasa Water Scheme</td>
<td>R 6,000,000</td>
</tr>
<tr>
<td>Refurbishment of Adelajde Canal</td>
<td>R 5,000,000</td>
</tr>
<tr>
<td>Cintsa Dam Refurbishment</td>
<td>R 5,110,963</td>
</tr>
<tr>
<td>Equipping of Adelaide and Bedford Boreholes</td>
<td>R 7,800,000</td>
</tr>
<tr>
<td>Non-Revenue Water Loss Control Project: Fort Beaufort WSS</td>
<td>R 4,500,000</td>
</tr>
<tr>
<td>Donetsa Water Supply</td>
<td>R 10,000,000</td>
</tr>
<tr>
<td>Non-Revenue Water Loss Control Project: Alice WSS</td>
<td>R 4,500,000</td>
</tr>
<tr>
<td>Rabula Drought Relief</td>
<td>R 5,000,000</td>
</tr>
<tr>
<td>Mnquma Ward 28-Drought Relief</td>
<td>R 3,789,037</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>R 60,900,000</strong></td>
</tr>
</tbody>
</table>

A provision on 2023/24 financial year budget for additional staff and fleet has been made. This should assist in improving the management of the supply and response time to the challenges reported. ADM remains committed to its constitutional mandate to provide water services. The ADM operates and maintains more treatment facilities than any other municipal entity in the country. Schemes are in rural areas and serve mainly indigent consumers; and

Cost recovery is poor and proper financing of operations and maintenance is difficult. Illegal yard and house connections on rural schemes that have been designed for communal standpipes puts severe strain on these systems. Infrastructure, particularly in the older
parts of the towns has reached its design life and requires urgent replacement. Load shedding has now placed an additional strain on the provision of services. Nevertheless, every effort is being made to restore services as well as eradicating water services backlog by implementing new water and sanitation projects.

Applicable law and legal prescripts

6.10.31 The relevant provisions of the applicable legal framework referred to in paragraphs under ANDM above apply *mutatis mutandis* to the situation at the ADM.

Analysis

6.10.32 It is the constitutional and the legislative responsibility of the ADM to ensure that the water service needs of the people within its district are responded to by providing this municipal service to the community in a progressive and sustainable manner as envisaged by the Constitution, Local Government Municipal Systems Act and other laws.

6.10.33 From the facts before the Public Protector, the ADM is striving to the extent permitted by its financial means to address service delivery issues in its area of jurisdiction. The Public Protector has observed from the reports provided by the ADM that some boreholes have been installed as per the recommendations of the Engineering Design and Implementation Report. However, during follow up consultations with the community, it was established that these boreholes facilities were malfunctioning and lacked the necessary pumping capacity, as a result the communities remain without reliable water supply.
Furthermore, it is obvious from the response to the Notice received from Dr Mthembu on 21 July 2023, that Mbashe water treatment facilities are still experiencing water challenges due to unreliable supply of electricity. Dr Mthembu further indicated that Mnquma is another area with a considerable backlog of unserviced areas when it comes to water supply, however there are also several schemes under construction which have taken years to complete and are not yet functional.

According to Dr Mthembu, they have continuous engagements with Eskom to resolve the issues, in particular the phase imbalances at Mbashe North and Mncwasa. Dr Mthembu conceded that ongoing challenges with vandalism, illegal connections, load shedding, climate change, financial constraints, historical backlogs and old infrastructure all hamper the ability of ADM to provide some of communities with a consistent supply of water.

The Public Protector acknowledges the short-term interventions that ADM is embarking on to minimise and eradicate the impact of these water challenges such as carting water in trucks whilst exploring other alternatives.

Conclusion

Based on the evidence at hand, the Public Protector concludes that, despite all the efforts and planning for the future, there is inadequate delivery of water supply by ADM within the district, which prejudices the community members in the area. Water is an essential and a basic human need, therefore, this insufficient service delivery is not compatible with the legal obligations of the ADM.
FINDINGS

6.10.38 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether municipal services by the Amathole District Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.10.38.1 The allegation that municipal services by the Amathole District Municipality within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

6.10.38.2 Evidence at the disposal of the Public Protector has revealed that ADM is striving to the extent permitted by its financial means to address water services in its area of jurisdiction. This was evidenced by the recent construction of borehole facilities and the construction of pipeline projects in various areas such Mbashe and Ngqushwa within the district.

6.10.38.3 However, the investigation has revealed that there is still inadequate provision of water services and related infrastructure, specifically in areas reported to the Public Protector, namely, the Cebe Administrative area, Qeqe village, Msobomvu Township, Upper
Gwadu location, and Rabula Administrative Area. It was noted during the site inspection that, Cebe Administrative Area in particular is without taps and the community drink unhealthy and dirty water, which they share it with animals. The residents rely on the nearby rivers and streams as a source of water for domestic consumption.

6.10.38.4 It was further conceded in a response to the Notice received from the Municipal Manager of ADM, Dr Mthembu on 21 July 2023, that the district is still experiencing water problems due to ongoing challenges such as vandalism, illegal connections, load shedding, climate change, financial constraints, historical backlogs and old infrastructure, which all hamper the ability of ADM to provide some of the communities with a consistent supply of water. However, there are short term interventions noted by the Public Protector, which ADM is embarking on to minimise the impact of these water challenges such as carting water in trucks whilst looking for other alternatives and long-term solutions.

6.10.38.5 It is the legislative and constitutional responsibility of the ADM to ensure that the water needs of the people within its district are responded to by providing reliable and clean water to the community in a progressive and sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

6.10.38.6 The inadequate delivery of water supply and related infrastructure on the part of ADM poses a health risk to the communities within its district. This service deficit also remains incompatible with sections 27(1)(b), 152(1), 153 and 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.
6.10.38.7 The conduct of the ADM accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

REMEDIAL ACTION

6.10.39 Having regard to the evidence, the regulatory framework determining the standard that ADM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Municipal Manager for ADM

6.10.39.1 Within **ninety (90) calendar days** of the date of this report, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the requirements for provision of clean and potable water services for domestic use in all affected areas within ADM;

6.10.39.2 Within **ninety (90) calendar days** to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the ADM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;
The Executive Mayor for ADM

6.10.39.3 Within **sixty (60) calendar days** of the date of this report, table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Executive Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council is to thereafter consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by ADM to address shortcomings on municipal services related to provision of water within the district, in line with the obligations of the municipality contemplated in section 152(1)(b) of the Constitution; and

6.10.39.4 Within **thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address the water service delivery concerns of the communities within ADM, as identified in this report.

BUFFALO CITY METRO MUNICIPALITY (BCMM)

6.11 Whether the municipal services by the Buffalo City Metropolitan Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act
Common cause

6.11.1 Buffalo City Metropolitan Municipality (BCMM) is a metropolitan municipality situated on the east coast of the EC province and it includes the towns of East London, Bisho, Qonce, Mdantsane and Zwelitsha.  

Issue in dispute

6.11.2 The issue for the Public Protector’s determination is whether the provision of municipal services by the BCMM within certain villages in the EC province are delivered in a progressive and effective manner, as contemplated in the Constitution and the law.

Mr Magqaza’s version (Complainant)

6.11.3 On 10 October 2021, the Investigation Team visited Tyutyu Village, King William’s Town to meet with Mr Simphiwe Magqaza (Mr Magqaza), on behalf of Mr Vika (the Complainant) who could not attend the meeting due to work commitments. Mr Magqaza raised the following issues as the main challenges facing the community:

a) Lack of access to clean water;
b) No proper access roads;
c) Lack of RDP houses;
d) Lack of electricity; and
e) Lack of toilets, sporting facilities and fencing of the cemetery.

6.11.4 That since 2018, Tyutyu village has been experiencing challenges with the provisioning of water, whereby some sections would have water whilst others did not have any. At Tyutyu village, they have both the communal and yard taps, however, the communal taps were no longer working and have since been vandalised. During 2020, the whole Tyutyu did not have water at all and the matter was reported to Water Works (Amatola Water), a team was dispatched to investigate the cause, but the report and/or outcome was never communicated to the community.

6.11.5 The condition of the main road in Tyutyu village has deteriorated and needs to be properly maintained. The main road was last maintained in 2012 and several requests were made for the road to be better maintained, because motorists were struggling to drive when it is raining. At Tyutyu village, there is no proper drainage system to channel water during rainy seasons and as such, when there are heavy rains, houses near the main road become waterlogged.

6.11.6 The challenges pertaining to both the main as well as access roads of Tyutyu were reported to the BCMM and such item was even included in the Integrated Development Planning (IDP) for the 2016/17 financial year for maintenance, however, nothing was done during that period and no one cared to explain what happened.

6.11.7 When people were moved from Bisho to Tyutyu village in 1987, the then government of Ciskei built them two-roomed houses to stay in and over the years no RDP houses were built for the community, except for those people who benefited from the two-roomed houses. On 14 August 2013, people from the ECDHS together with municipal officials visited Tyutyu village calling community members to register for RDP houses. After registering, community members were given cards to
produce when checking for progress at the municipal offices. However, when people went to check their names at the BCMM's offices, their names could not be found on the list and since then there has been no feedback from either stakeholder.

6.11.8 The Ward Committee members have a list of all destitute people in need of houses and at the time of this complaint only two temporary structures were built in the village. Furthermore, in 2013 there was a tornado, which destroyed people’s houses. Subsequent to this, an additional list was created, however, only five (05) RDP houses have been built, many people are still waiting for houses.

6.11.9 Tyutyu village was provided with electricity in 1998, however, there are still some parts of the village as at the time of this complaint that did not have electricity and these are; Kwa-Boucher and Eluxolweni. A list of these households was sent to BCMM requesting assistance with electricity. In September 2021, an official from Eskom visited the area to verify the information on the list, however, they were still waiting for an update as the date of this complaint. There is a high rate of criminal activities happening at Tyutyu village, because there are no high-mast lights and as such, the community would be grateful if high mast lights can be installed for illumination at night.

6.11.10 That in 2015, toilets were built at Tyutyu village, however, new households did not benefit. As a result thereof, a list was provided to the BCMM with a request that these new households also be provided with toilets. There has been no response from BCMM.
6.11.11 The sporting fields in Tyutyu village need to be upgraded and fenced. There is no secured children’s park and no community hall. Furthermore, the cemetery is also not fenced and tombstones were exposed and could be stolen or be destroyed. Like all other community issues, these were reported to the Ward Councillor, but nothing has been done to assist the community.

Response by the BCMM

6.11.12 On 18 February 2022, the Public Protector raised all the above allegations with the BCMM, thereby extending an opportunity to BCMM to respond to the service delivery issues alleged to be affecting the communities in its area. On 14 June 2022, the BCMM responded to the Public Protector through a letter signed by Mr S Mashalaba (Mr Mashalaba), the Manager in the office of the Executive Mayor, who stated that:

6.11.12.1 According to their records, the BCMM can report that the percentage of households with access to a basic level of water supply is 98%. Further, that the BCMM has invested an amount of three hundred and forty million rand (R340 000 000), for water projects with an additional budget of forty one million rand (R 41 000 000), for the current financial year (2021/22);

6.11.12.2 BCMM has erected communal water points for informal settlements and in rural areas giving water supply access to two thousand five hundred (2500) households and with the assistance of the DWS are continuing to deliver water through water tankers to those communities that do not have water supply. BCMM has made significant improvements in the quality of basic services and built roads and infrastructure. The BCMM was hard at work, more especially in the
provisioning of adequate infrastructure, and as such, has turned the City into a construction site;

6.11.12.3 BCMM has surfaced internal roads as part of the four hundred and forty four million rand (R 444 000 000), roads upgrade project and this work was continuing. BCMM has purchased its own road construction plant in order to build internal capacity and to consistently maintain the rural roads. Since 2016 BCMM has spent two hundred and ninety million rand (R290 000 000), re-gravelling rural roads through the hiring of plant equipment and maintaining storm water infrastructure.

6.11.12.4 BCMM has been rehabilitating bridges and storm water systems in various villages within its boundaries. Since 2016, an amount of thirty six million rand (R 36 000 000), has been spent upgrading fifteen (15) bridge structures across BCMM. Furthermore, that in the next financial year an amount of three hundred and sixty three million rand (R363 000 000), will be spent on upgrading roads, storm water drainage, and bridges in the BCMM areas;

6.11.12.5 BCMM has spent six hundred and thirty million rand (R630 000 000), on electricity which has seen the electrification of around three thousand, two hundred (3200) households and two thousand, six hundred and twenty nine (2629) informal dwellings. The bulk of the capital expenditure on electricity has gone towards the maintenance, upgrading and refurbishment of the electricity infrastructure to ensure reliability and consistency of supply. An additional eighteen million rand (R 18 000 000), will be spent in the next financial year to electrify an additional four hundred (400) formal households and six hundred (600), informal dwellings; and

6.11.12.6 That BCMM has installed twenty one thousand, three hundred and seventy (21 370), VIP toilets in rural areas spending an amount of two
hundred and fifty million rand (R250 000 000). Further BCMM has completed one hundred and fifty (150), seats of new ablution facilities in informal settlements and has employed five hundred and forty (540), caretakers under EPWP for these toilets. From the numerous public consultations held with communities, they have established the fact that there was generally agreement that BCMM has done good work in creating socio-economic infrastructure for the communities. In general, the BCMM has been involved on construction of roads, houses, bridges, taxi ranks, water and sanitation infrastructure and many other socio-economic infrastructure projects.

Response to the notice in terms of section 7(9)(a) of the Public Protector Act

6.11.13 A Notice in terms of section 7(9)(a) of the Public Protector Act, dated 02 June 2023 was issued to BCMM. The Head of Legal Services and Municipal Courts, Mr M Zenzile (Mr Zenzile) responded to the Notice on behalf of BCMM in an email dated 06 July 2023 and acknowledged receipt of the Notice and the paragraphs pertaining to BCMM. Further that he confirms the findings as they stand and that BCMM agrees with them.

Applicable law and legal prescripts

6.11.14 The relevant provisions of the applicable legal framework are referred to under paragraphs ANDM above apply mutatis mutandis to the situation at the BCMM.
Analysis

6.11.15 From the submissions made, it is clear that the BCMM is striving to the extent permitted by its resources and financial means to eradicate service delivery issues in its area of jurisdiction. However, there are still areas of concern within the community, especially issues relating to lack or poor maintenance of access roads, unreliable supply of water, lack of toilets, sporting facilities, lack of fencing of the cemetery and lack of housing assistance53 to deserving families and those affected by floods within Tyutyu village.

6.11.16 The Public Protector noted the submission by Mr Mashalaba that according to their records households with access to a basic level of water supply is 98%. However, the remaining 2% is significant considering that water is a basic necessity. In addition, the investigation has established that at Tyutyu village there are new stands and the population continues to grow, these areas will also require municipal services.

6.11.17 The existence of these complaints denotes that some work and improved planning still needs to be done, to allow the communities to enjoy essential municipal services adequately, as envisaged by the Constitution and Local Government Municipal Systems Act.

Conclusion

6.11.18 Based on the evidence at hand, the Public Protector concludes that there is inadequate delivery of municipal services by BCMM, which

53 In collaboration with ECDHS.
prejudices the community members within its district, in particular the new extensions in Tyutyu village.

6.11.19 The Investigation Team observed poor conditions of access roads, dry communal taps, lack of toilets within some households, lack of sporting facilities and lack of fencing of the cemetery within Tyutyu village and insufficient housing assistance to indigent and deserving families. These identified gaps and lapses in the municipal services at Tyutyu village are not compatible with the legal obligations imposed on BCMM.

FINDINGS

6.11.20 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether municipal services by the Buffalo City Metropolitan Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.11.20.1 The allegation that municipal services by the Buffalo City Metropolitan Municipality within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.
Evidence at the disposal of the Public Protector reveals that BCMM is striving to the extent permitted by its financial means to address service delivery issues in its area of jurisdiction. In this regard, it was observed by the Investigation Team that there were communal taps and electricity within Tyutyu village. However, complaints regarding the inadequacy of basic services, especially on issues relating to lack or poor maintenance of access roads and lack of support for provisioning of housing to poor families within Tyutyu village were reported to the Public Protector against BCMM.

As at the time of site inspections by the Investigation Team, the Public Protector confirmed the following:

(a) Tyutyu village has water challenges since 2018, certain sections of the village do not have water, taps ran dry and some taps were vandalised;

(b) Tyutyu village has no proper storm water drainage system and this causes damage to access roads and houses;

(c) Lack and/or poor maintenance of some access roads in Tyutyu village, which were allegedly last maintained in 2012;

(d) Failure to keep proper records relating to applications for RDP houses and lack of feedback to people in the village;

(e) Non provision of temporary structures for flood related disaster victims;

(f) Cemetery is not fenced and the tombstones get vandalised by animals;
(g) Tyutyu village has no secure children's park;

(h) No high mast lights in Eluxolweni Village;

(i) No electricity in Eluxolweni Village; and

(j) New stands in Tyutyu village continue to be without basic municipal services and the population is growing.

6.11.20.4 The existence of the above service delivery complaints indicates that some work and better planning still needs to be done, to allow the communities to enjoy essential municipal services. It is the legislative and constitutional responsibility of the BCMM to ensure the basic municipal services to the people within its jurisdiction are responded to by providing same to the community in a progressive and sustainable manner, as envisaged by the Constitution and Local Government Municipal Systems Act.

6.11.20.5 The current inadequate delivery of municipal services, the necessary infrastructure and public facilities on the part of BCMM prejudices the citizens within its district and remains incompatible with Schedule 4, Part B and Schedule 5 Part B, sections 27(1)(b), 152(1), 153, and 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.

6.11.20.6 The conduct of the BCMM accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.
REMEDIAL ACTION

6.11.21 Having regard to the evidence, the regulatory framework determining the standard that BCMM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Municipal Manager for BCMM

6.11.21.1 Within ninety (90) calendar days, of the date of this report in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal service requirements in all affected areas within BCMM, such as water and sanitation, access roads and other municipal services;

6.11.21.2 Within ninety (90) calendar days to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the BCMM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

The Executive Mayor for BCMM

6.11.21.3 Within sixty (60) calendar days of the date of the final report, table a copy thereof before the Municipal Council for discussion in line with the
powers and functions of the Executive Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council is to thereafter consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by BCMM to address shortcomings on municipal services within its area of jurisdiction, in line with the obligations of the municipality contemplated in section 152(1)(b) of the Constitution; and

6.11.21.4 Within **thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address the municipal service delivery concerns of the communities within BCMM, as identified in this report.

**SARAH BAARTMAN DISTRICT MUNICIPALITY (SBDM)**

6.12 Whether municipal services by the Sarah Baartman District Municipality and Ndlambe Local Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

*Common cause*

6.12.1 SBDM is one of forty six (46) district municipalities in South Africa. Covering 34% of the entire EC province’s geographical footprint, the SBDM is the geographically largest of the district municipalities in the
Eastern Cape. The SBDM assists seven (7) local municipalities in providing the services needed by their communities.\(^{54}\)

6.12.2 SBDM encompasses seven local municipalities namely, Dr Beyers Naudé; Blue Crane Route; Makana; Ndlambe; Sundays River Valley; Kouga; and Koukamma Local Municipalities.

**Issue in dispute**

6.12.3 The issue for the Public Protector’s determination is whether municipal services by the SBDM and Ndlambe LM within certain villages in the EC province are delivered in a progressive and effective manner as contemplated in the Constitution and the law.

**Mr Lindi’s version (Complainant)**

6.12.4 On 10 February 2021, the Public Protector received a complaint from Mr Zandile Lindi (Mr Lindi), a resident of Kwanonkqubela location in Alexandria, under Ndlambe Local Municipality (NLM). Mr Lindi alleged that Kwanonkqubela location has been experiencing a water crisis and that a period of seven (7) years has since lapsed, without water in the area. Mr Lindi further alleged that taps ran dry and the matter was brought to the attention of the NLM, however, the community was informed that the issue falls under the scope of the SBDM.

6.12.5 Mr Lindi’s further stated that when enquiring at the SBDM, they were informed that the problem was with the water pumps. He further alleged that as of the year 2016, three (3) companies have been

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\(^{54}\) Available at [https://www.sarahbaartman.co.za](https://www.sarahbaartman.co.za) accessed 15 March 2023.
awarded tenders to deal with the situation by purifying water from the sea, but all of them failed to perform the work. Mr Lindi also alleged that in 2021, during the Mayoral Imbizo, the then MEC for Transport Ms Weziwe Gxothiwe-Tikana promised residents that by the end of October 2021, their water crisis would be over, but that never happened as they still do not have water.

6.12.6 With regard to the issue of lack of adequate housing at KwaNonkqubela location, Mr Lindi alleged that there are RDP houses, but they were poorly built and now require renovations because walls have cracks, the roofs are leaking and that the NLM was also notified or informed of these challenges, but there has been no action taken to address these matters.

Response by SBDM

6.12.7 On 17 February 2022, the Public Protector raised the allegations with the SBDM, affording them an opportunity to respond to the allegations. In her capacity as the Municipal Manager of SBDM, Ms Unati Daniels (Ms Daniels), stated as follows:

6.12.7.1 SBDM is neither a Water Services Authority (WSA) nor a provider of water services, the latter function was given to the seven (7) Local Municipalities and this decision was taken a long time ago by the municipal council of that time. Ms Daniels submitted that SBDM provides grants to the local municipalities to render services on its behalf on an agency basis;

6.12.7.2 A decision was taken in 2020, to return the function back to SBDM. Out of the seven (7) local municipalities, it is only NLM and Kouga municipalities that still perform the function, due to the amount of work
involved and financial constraints. SBDM tried to be the WSA and held two meetings with the Minister of Water and Sanitation in September 2021 and later in March 2022, where SBDM was informed that before taking over the function, the local municipalities needed to take Council Resolutions to handover the function of being a WSA. Unfortunately, the handover never happened, because the local municipalities are reluctant to handover the services. This is due to the fact that they would also lose the grants they receive from MIG;

6.12.7.3 SBDM still employs engineers in line with their commitment to provide support to the local municipalities, not as a WSA or a provider. SBDM was not negating its responsibility of providing support to the local municipalities, hence they still have engineers to make sure that good services are provided. SBDM is assisting the Local Municipalities (LM) with water related issues as well as doing studies for them to help with capacity, providing grants and also helping with water leaks;

6.12.7.4 They are aware of the problems of water at NLM and that NLM encountered some problems with the Desalination Plant, which it was building, relating to its capacity. Unfortunately, the efforts of the NLM have not satisfied the communities in terms of providing water;

6.12.7.5 The service providers mentioned by the Complainant were not appointed by the SBDM, but rather it was DWS that appointed Amatola Water Board to undertake some projects on behalf of NLM and the projects were undertaken to alleviate the situation;

6.12.7.6 The following interventions and strides have been made by SBDM to assist the local municipalities during the 2021/22 financial year:

(a) A service provider was appointed for the development of Water Services Development Plans for all seven (7) local municipalities.
The Water Service Development Plans (WSDP) are a legal requirement and a critical development tool for the planning, provision and management of water services. The successful development of these plans would enable these municipalities to unlock the development potential of the municipality, achieve a cost effective, integrated and sustainable infrastructure development. In addition, the WSDP provides a clear business model providing strategically focused actions for implementing the key infrastructure initiatives budgeted for in the IDP, while addressing both financial, inherent risks, institutional requirements and sustainability.

(b) There is funding of the Kowie River to Sarel Hayward Pumping Mainline and associated works project. Port Alfred, the main town in the Ndlambe Local Municipality extracts the bulk of its raw water from the Kowie River and this is pumped to a dam called Sarel Hayward Dam. This project seeks to add the pumping capacity from the Kowie River to the Sarel Hayward Dam by constructing a second dedicated pumping mainline from the river to the dam.

(c) There was also funding for the Completion of the Rhodes Package Plant in the Makana Local Municipality, which allowed the connection of three boreholes to the Makhanda reticulation system.

(d) There was also funding for the Refurbishment of the Chlorine System in Joubertina in Kou-Kamma Local Municipality, which enables the municipality to safely disinfect the water for the town of Jourbertina.
(e) There was funding for the Refurbishment of Pumps at the Enon-Bersheba in Sunday River Local Municipality, allowing the municipality to have stand-by pumping capacity at the Enon-Bersheba Water Treatment Works.

(f) Lastly, SBDM assisted with the application for funding, for drought relief under the Municipal Disaster Relief Grant, resulting in the disbursement of forty nine million rand (R 49 000 000), to the Local Municipalities for various drought relief interventions.

Engagement with the SBDM Officials

6.12.8 On 02 June 2022, the Public Protector held a stakeholder engagement with the SBDM at Orient Theatre East London, to reflect further on the allegations raised by Mr Lindi. During this session the SBDM was requested to provide supplementary information on challenges experienced by the municipality in relation to the provisioning of basic services and infrastructure development, including plans in place to deal with those challenges that have been identified.

6.12.9 During the engagement, SBDM took the Investigation Team through the submission previously provided, also expanding further on its contents. Following the Stakeholder engagement held on 02 June 2022, the Public Protector received an additional submission on 01 July 2022. In terms of this submission, Ms Daniels and her team elaborated on the status of the delivery of services by NLM, touching on the key aspects of service delivery and development of infrastructure, indicating that:

6.12.9.1 NLM covers an area of about one thousand, eight hundred and forty one (1,841), square kilometres and constitutes 3.2% of the SBDM
geographical area. It encompasses the towns of Kenton-on-Sea, Boknes, Bathurst, Boesmansriviermond, Alexandria, Port Alfred and Cannon Rocks;

**Water Provision**

6.12.9.2 NLM operates and maintains all water supply systems within both Water Services Authority and Water Services Provider functions, except for the Amatola Water Board supply footprint, where bulk water is supplied by the Amatola Water Board;

6.12.9.3 There are six (6) local water supply schemes which service the main settlements within the NLM. The towns of Port Alfred, Seafield and Bathurst are all fed mainly from surface water schemes whilst Boesmansriviermond, Kenton-On-Sea, Alexandria, Boknestrand and Cannon Rocks are supplied from ground water schemes. Boesmansriviermond and Kenton-On-Sea augment their groundwater supplies with desalinated water through the Reverse Osmosis Plant situated at Boesmansriviermond whereas, Cannon Rocks and Boknes receive Reverse Osmosis processed water from saline borehole sources;

6.12.9.4 Potable treated water is piped to all formal urban communities within the NLM and is available to most households, however, in some parts of the Bathurst and Trappesvalley, communities still rely on rainwater and private boreholes. NLM is endowed with aquatic features and ecosystems such as rivers, natural estuaries and wetlands, aquifers, and artificial water bodies. There are ten (10) rivers and estuaries within NLM namely, Boknes, Bushmans, Kariega, Kasouha, Kowie, Riet, West Kleinemonde, Kap River, (a tributary of the Great Fish) and the Great Fish;
The protection and management of the water resources and river sources is critical to the future development of the municipality. The below Table illustrates Water Supply Schemes for NLM:

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<tr>
<th>Water supply scheme</th>
<th>Settlements supplied</th>
<th>Source water</th>
<th>WTW’S</th>
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</thead>
<tbody>
<tr>
<td>Alexandria</td>
<td>Fishkraal, Cape Padrone, Alexandra Town Centre, Wentzelspark, Kwanonqubela</td>
<td>GW: Coastal Springs &amp; 2 Well Points Desalination: Seawater</td>
<td>Alexandria WTW’S (2ML/d)</td>
</tr>
<tr>
<td>Bathurst</td>
<td>Nolukhanyo, Freestone, Bathurst proper</td>
<td>GW: Municipal Boreholes</td>
<td>Bathrust WTW’S (1.08ML/d)</td>
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<td></td>
<td></td>
<td>Bulk Purchase: Private Desalination Plant in Port Alfred</td>
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<td>GW: 4 Boreholes</td>
<td>Cannon Rocks WTW’S (0.75ML/d), Reverse Osmosis Plant (N/av)</td>
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<tr>
<td></td>
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<td>Desalination: Seawater</td>
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<td></td>
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<td>GW: Dias Cross BH’s &amp; Freshwater BH’s near Water Board Offices</td>
<td>ACWB Reverse Osmosis Plant (N/av),</td>
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<td></td>
<td></td>
<td>Desalination: Seawater BH’s</td>
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## Housing

6.12.9.6 The NLM plays a very limited role in the delivery of housing and as such, relies on ECDHS to carry out the responsibilities of housing development. The 2009 Housing Settlement Plan (HSP) identified the lack of institutional capacity as a major obstacle to progressive and effective housing delivery in the municipality. In view of the above, the following issues have been identified as negatively impeding on the housing delivery process:

(a) Local municipality personnel, contractors and other stakeholders are under capacitated;
(b) Poor project management;
(c) Lack of compliance with contractual agreements;
(d) Lack of municipal representation/consistent monitoring on construction site(s);
(e) Lack of civil and social infrastructure (Roads, Water and Sewerage reticulation) to address housing demand both in urban and rural areas;

(f) Lack of potable water which has been the main hindrance for the past three years; and

(g) Project data capture which is not progressive.

**Access Roads**

**6.12.9.7** NLM developed a Comprehensive Infrastructure Plan (CIP), which looked at infrastructural development and maintenance in a holistic manner. The problem encountered is the lack of the much needed funding for its implementation. It was found that the municipal road networks are in need of routine and periodic maintenance (reseal or regravel), including those which require reconstruction. The following typical defects were noted throughout the NLM for both bitumen and gravel roads:

(a) Surface cracking on bitumen roads, mainly due to the age and brittleness of the seal;

(b) Potholes, which develop due to serious cracking or due to failure in the base course;

(c) Edge break, which occurs at the edge of seal and progressively worsens if not treated;

(d) Shear failures of the pavement layers, resulting in deformations, particularly on the outside wheel paths;
(e) Deformations due to deep seated pavement failures, often caused by soft material below the pavement or by the ingress of water;

(f) Vegetation growth encroaching onto the sealed width;

(g) Corrugated or deformed surface due to infrequent maintenance blading;

(h) Loss of gravel and loss of shape; and

(i) Erosion of surface and adjacent side drains on steep sections.

6.12.9.8 Lastly, the range of defects, road types, traffic loading and traffic flows mean that a variety of remedial measures will be required. The condition of the surfaced and gravel roads need rehabilitation because they are operating beyond their design lifespan.

Responses to the Notice in terms of section 7(9)(a) of the Public Protector Act

6.12.10 A Notice in terms of section 7(9)(a) of the Public Protector Act, dated 02 June 2023 was issued to SBDM and NLM. The Municipal Manager for SBDM, Ms Daniels and Municipal Manager for NLM, Adv. R. Dumezweni (Adv Dumezweni) responded to the Notice per emails dated 24 July 2023 and 11 July 2023 respectively and stated inter alia that:
SBDM

6.12.10.1 SBDM is neither a WSA nor a WSP. These functions are performed by the local municipalities. The following are the interventions done by SBDM to assist NLM in this financial year (2023):

(a) Appointment of a service provider for the development of Water Services Development Plans for all seven (7) Local Municipalities, including NLM. Water Service Development Plans (WSDPs) are a legal requirement and a critical development tool for the planning, provision and management of water services. The successful development of these plans will enable these municipalities to unlock the development potential of the municipality, achieve a cost effective, integrated and sustainable infrastructure development. In addition, the WSDPs will provide a clear business model providing strategically focused actions for implementing the key infrastructure initiatives budgeted for in the IDP, while addressing both financial, inherent risks, institutional requirements and sustainability.

(b) Funding of the Kowie River to Sarel Hayward Pumping Mainline and associated works project. Port Alfred which is the main town in the NLM abstracts the bulk of its raw water from the Kowie River and this is pumped to a dam called Sarel Hayward Dam. This project seeks to add the pumping capacity from the Kowie River to the Sarel Hayward Dam by constructing a second dedicated pumping mainline from the river to the dam.

6.12.10.2 SBDM is well aware that the local municipalities have been voicing their dissatisfaction regarding the non-performance of Amatola Water Board and has requested DWS to consider them as an implementing agent for the RBIG.
Adv Dumezweni indicated the following with regards to Alexandria water shortages and lack of housing:

(a) The construction of the Brackish Water RO Plant and commissioning of five additional boreholes at Boknesstrand and Cannon Rocks has been completed. This project will augment an additional amount of 1.0 ML/day for the Alexandria Community. However, contract 14 & 15 needs to be completed in order to allow for water to be pumped to Alexandria;

(b) The DWS has handed over contract 14 & 15 pipeline project from Amatola Water Board to NLM in May 2023, the municipality is currently busy with the design specifications to complete this project. Once the project is completed, it will enable the municipality to pump the additional 1.0 ML/day of water from the newly constructed Brackish Water RO Plant;

(c) The refurbishment of the coastal resources; Fish Kraals & Cape Padrone sea wells has been completed and has unlocked additional 0.4 ML/day for the community of Alexandria;

(d) The NLM has signed an SLA with a local commercial farmer to drill boreholes to augment water for the Alexandria community, these boreholes have now been commissioned and are now producing an additional 150 Kilolitres/day;

(e) The NLM has drilled additional boreholes at the Kruisfontein farm with the aim to augment additional water for the community of Alexandria. The municipality is planning to equip the boreholes in the next financial year; and
(f) The rectification of houses is within the competence of the ECDHS, as mentioned on the previous letter, ECDHS has approved the rectification project in Alexandria, Kwanonkqubela (Mandela) and it is currently underway on design phase.

Applicable law and legal prescripts

6.12.11 The relevant provisions of the applicable legal framework referred to under ANDM above apply *mutatis mutandis* to the situation at the SBDM.

Analysis

6.12.12 The facts before the Public Protector indicate that SBDM together with NLM are striving to the extent permitted by their resources and financial means to address service delivery issues in their area of jurisdiction. However, SBDM’s challenges resonate with those of other district municipalities in terms of insufficient funding, backlog, lack of capacity, old infrastructure and poor maintenance. Insufficient funding remains the main stumbling block towards the provisioning of services by SBDM, more especially in the NLM, where there are major challenges with the water supply and the work that still needs to be done.

6.12.13 Areas of concern relate to lack of access to clean water, lack or poor maintenance of access roads within villages, and poor conditions of RDP houses built in collaboration with ECDHS. All these shortcomings contribute to the lack of service delivery to the communities within SBDM.
6.12.14 The Public Protector acknowledges the efforts, steps and latest developments taken by SBDM and NLM as set out in their responses to the Notice, which are intended to eradicate service delivery complaints raised by community.

6.12.15 It is the legislative and constitutional responsibility of the SBDM and NLM to ensure the needs of the people within their jurisdiction are responded to by providing municipal services to the community in a progressive and sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

Conclusion

6.12.16 Based on the evidence at hand, the Public Protector concludes that there is inadequate delivery of municipal services within SBDM and NLM, which prejudices the community members within the district, especially water challenges in NLM. These identified gaps and lapses in the municipal services at Alexandria are not compatible with the legal obligations imposed on SBDM and NLM.

FINDINGS

6.12.17 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether municipal services by the Sarah Baartman District Municipality and Ndlambe Local Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes
improper conduct as envisaged in section 182(1)(a) of the Constitution and as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.12.17.1 The allegation that municipal services by the Sarah Baartman District Municipality and Ndlambe Local Municipality within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

6.12.17.2 Evidence at the disposal of the Public Protector indicates that SBDM is not a WSA on its own, however its local municipalities, including NLM are WSA and are striving to the extent permitted by their financial means to address water and other service delivery issues within the district.

6.12.17.3 In terms of the facts before the Public Protector there are identifiable service delivery challenges in Alexandria, which is under NLM, such as the following:

(a) Water supply deficiencies and the ageing water infrastructure, which pose a health hazard as the community depend primarily on untreated and untested rain water;

(b) Lack or poor maintenance of access roads in villages within NLM and SBDM, which has the potential to affect economic activity in the area; and

(c) Poor conditions of RDP houses within the district under NLM that were poorly built and require renovations as the walls have cracks and the roofs are leaking, in this regard the conditions of
the houses have the potential to collapse and result in injuries or loss of lives.

6.12.17.4 It was also conceded in the responses to the Notice received from the Municipal Manager of SBDM, Ms Daniels on 24 July 2023 that the district is still experiencing water problems and they are aware that the local municipalities have been voicing their dissatisfaction regarding the non-performance of Amatola Water Board and has requested the DWS to consider local municipalities as implementing agents for the RBIG.

6.12.17.5 The Public Protector further noted from the response of Municipal Manager for NLM, Adv. Dumezweni on 11 July 2023 that the DWS has handed over contract 14 & 15 pipeline projects from Amatola Water Board to NLM in May 2023. The NLM is currently busy with the design specifications to complete this project. Once the project is completed, it will enable the NLM to pump the additional 1.0 ML/day water from the newly constructed Brackish Water RO Plant.

6.12.17.6 There are short-term interventions measures noted by the Public Protector, which NLM has undertaken to minimise the impact of water challenges such as the signing of an SLA with a local commercial farmer to drill boreholes to augment water for the Alexandria community. These boreholes have now been commissioned and are now producing an additional 150 kilolitres/day and NLM is planning to equip the boreholes in the next financial year.

6.12.17.7 It is the legislative and constitutional responsibility of the SBDM together with its local municipalities, including NLM to ensure that the basic needs of the people within their jurisdiction are responded to, by providing municipal services to the community in a progressive and
sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

6.12.17.8 The noted lapses and deficiencies in the delivery of municipal services, especially inadequate water supply and the ageing water infrastructure within NLM, which is under SBDM, cause prejudice and health hazards to the community within their district and remains incompatible with, sections 27(1)(b), 152(1), 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.

6.12.17.9 The conduct of the SBDM and NLM accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

REMEDIAL ACTION

6.12.18 Having regard to the evidence, the regulatory framework determining the standard that SBDM and NLM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Municipal Manager for SBDM and NLM respectively

6.12.18.1 Within ninety (90) calendar days, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal services requirements in all affected areas within SBDM and NLM, such as water and sanitation, access roads and bridges;
6.12.18.2 Within ninety (90) calendar days to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the SBDM and NLM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

The Executive Mayors for SBDM and NLM respectively

6.12.18.3 Within sixty (60) calendar days of the date of the final report, table a copy thereof before their respective Municipal Councils for discussion in line with the powers and functions of the Executive Mayors in terms of section 56 of the Municipal Structures Act. The Municipal Councils for SBDM and NLM are to thereafter consider the Implementation Plan developed by their respective Municipal Managers, setting out steps/measures to be taken to address shortcomings on municipal services related to provision of water and other essential municipal services within the district, in line with the obligations of the municipality contemplated in Section 152(1)(b) of the Constitution; and

6.12.18.4 Within thirty (30) calendar days of the submission of the Implementation Plan by their respective Municipal Managers, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address all the service delivery concerns of the communities within the district, as identified in this report.
JOE GQABI DISTRICT MUNICIPALITY (JGDM)

6.13 Whether municipal services by Joe Gqabi District Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

Common cause

6.13.1 Joe Gqabi lies approximately thirty four kilometres (34km) north of Komani (Queenstown) and its northern border is formed by the Orange River, which also forms the southern boundary of the Free State. JGDM is made up of three (03), local municipalities namely, Elundini, Walter Sisulu and Senqu Local Municipalities.55

Issue in dispute

6.13.2 The issue for Public Protector’s determination is whether the provision of water municipal services by the JGDM, within certain villages in the EC province are delivered in a progressive and effective manner as contemplated in the Constitution and the law.

Ms Makaba’s Version (Complainant)

6.13.3 On 29 July 2021, the Investigation Team visited Ndofela Administrative Area, Ward 1 in Sterkspruit to meet with Ms S Makaba (Ms Makaba), on behalf of the Complainant Mr Kenneth Segalo, who was unavailable to attend the meeting due to work commitments.

6.13.4 Ms Makaba was accompanied by community members, who took the Investigation Team for an inspection in loco, focusing on areas with minimum service delivery. Ms Makaba informed the Investigation Team that Ndofela Administrative Area is made up of three (03), locations namely, Walaza, Ndofela, which is subdivided into three (03) sections (Mfici, Mbobo, and Bikizana), and Qhimira.

6.13.5 Amongst the issues raised by Ms Makaba were the following:

6.13.5.1 The lack of access to clean water, which is the responsibility of the JGDM. The primary source of water for the town of Sterkspruit is Jozana Dam and that in the Ndofela Administrative Area, most households have taps but with no water since February 2020;

6.13.5.2 JGDM provided and installed, as a temporary measure, one (01) Jojo water tank for drinking water to the community at each location and municipal water tankers transported water to the communities on a weekly basis. However, this temporary provision did not cater for the needs of the communities;

6.13.5.3 From February 2021, the municipal water tankers stopped providing water without any explanation. As a result, most community members had to utilize water from streams and fountains, whilst others had to
pay approximately one thousand, two hundred rand (R1 200.00), per
tank to private water suppliers; and

6.13.5.4 Four (04) boreholes were drilled by JGDM assisted by the DWS to
alleviate the water crisis, however, none were functioning.

Response by JGDM

6.13.6 On 15 February 2022, the Public Protector raised all the above
allegations with the JGDM, thereby extending an opportunity to
respond to the service delivery issues alleged to be affecting the
communities. Accordingly, on 16 March 2022, the JGDM responded to
Public Protector through a letter signed by the then Municipal Manager
Mr Zolile Williams (Mr Williams) stating amongst other things that:

6.13.6.1 Ndofela Administrative Area is in Ward 1, of Senqu Local Municipality,
and engagements regarding the state of water services in Ndofela
admin area started in January 2019, involving the Provincial as well as
the National Department of Water & Sanitation (DWS), the South
African Human Rights Commission (SAHRC), and the Public
Protector;

6.13.6.2 The area of Ndofela receives its water from the Sterkspruit Water
Treatment Works. The elevated geographical location and an increase
in demand for water upstream, because of sporadic settlements, has
created water shortages in the area of Ndofela;

6.13.6.3 The growing economy and the migration of people from nearby rural
areas and neighbouring Lesotho into Sterkspruit, has a negative
impact on water supply, increasing the demand for water around the
town and creating less water supply to outlying rural villages;
6.13.6.4 The Zastron pipeline that supplies amongst others, the Ndofela Administrative Area, was designed for the basic Water Supply Service Level and consists of several communal standpipes. However, with the growth of the population and the villages, the JGDM noticed a considerable number of households that illegally connected to the rising main pipeline, resulting in reduced volumes of potable water reaching the intended communities/villages;

6.13.6.5 To ensure water supply to all the villages served from the pipeline, JGDM developed a programme that entailed the rotational closing-off of other areas in the supply network, which was unsustainable owing to growing demands and illegal connections. The plan was to make sure that water supply continued to be alternated between the villages in the proximity due to the capacity of the existing infrastructure, whilst also dealing with the issue of illegal connections. Accordingly, the communities were also encouraged to report extended water supply disruptions/shortages to the Sterkspruit Water Management team;

6.13.6.6 The JGDM also planned to conduct awareness in the Macacuma and Makhetheng villages on issues of water services provision and Sanitation By-Laws (2015), with emphasis on drinking water supply, illegal connections, application for connection, re-connection fee, process for the installation of prepaid meters and enforcement. In addition to the above, the JGDM also contemplated developing a system for issuing non-compliance letters, issuing fines and disconnection to households that have not applied for official connection of their water supply;

6.13.6.7 JGDM was also considering developing a bulk water supply from the Telle River to enable a sustainable water supply to the Northern
settlement of Sterkspruit as a long-term intervention. The Development Bank of Southern Africa (DBSA) would further refine this intervention on the JGDM’s Integrated Water and Sanitation Master Plan for assistance;

6.13.6.8 The DBSA is there to support and assist the South African Government to eradicate water, sanitation, roads, and electricity infrastructure backlogs through the implementation of the Infrastructure Conditional Grant (e.g. Municipal Infrastructure Grant, the Integrated National Electrification Programme, etc.), in various municipalities;

6.13.6.9 The JGDM’s Integrated Water and Sanitation Master Plan was compiled in December 2019, highlighting the demands and interventions needed to address the water and sanitation challenges. The Infrastructure lay-out plans for Water and Sanitation were compiled and updated for all the towns and rural areas of JGDM;

6.13.6.10 The fourteen (14), Master plans of the Towns and Rural Areas of JGDM compiled included the following:

(a) Development of the Situation Assessment Demands;
(b) Demand Models (current (2019) and future (2040));
(c) Future Demand Requirements (current (2019) and future (2040));
(d) Conceptualize the Needs into Projects and Associated costing;
(e) The Total Functionality Requirements;
(f) Functionality Requirements into Projects; and
(g) Existing and Future Project Needs Integration.

6.13.6.11 The Master Plan of JGDM provided to the Investigation Team depicts *inter alia* the following:
(a) Demographics indicating the population figures for 2019 and the projected population figures by 2040;
(b) Water demands indicating the gross average annual daily demand and the summer average annual daily demand per area under JGDM;
(c) Sources of water as well as indicating the sustainability and estimated yield thereof per area;
(d) Water Treatment Works indicating the capacity as well as the condition of each plant per area;
(e) Water Reservoirs indicating the available water storage capacity as well as the projected storage capacity requirement by 2040, per area;
(f) Bulk Pipelines and the condition thereof as well as the nature of the repairs required on each, per area;
(g) The Reticulation Networks, reflecting the condition of each per area as well as the nature of repairs required;
(h) The Water Pump Stations per area reflecting the current conditions and the nature of the repairs required;
(i) The Sanitation Sewer Flow, Waste Water Treatment and Sanitation Pump Stations, for the whole JGDM, indicating the current capacity as well as the projected capacity as at the year 2040; and
(j) A Summary of the Cost implications of all the interventions relating to the above, was also provided.

6.13.6.12 An implementation plan to tackle the water challenges in Ndofela Administrative Area is depicted as per the table below:
<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>ACTIVITY DESCRIPTION</th>
<th>RESPONSIBLE PERSON</th>
<th>STATUS</th>
<th>DATE STARTED</th>
<th>TARGET COMPLETION DATE</th>
<th>BUDGET</th>
<th>OUTSTANDING INFORMATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improved and proactive communication from DWS regarding the trucks, MIG projects (Package 1 &amp; 3) and other water related matters through the established Water Committees.</td>
<td>Three Water Committees established in Bikizana, Ndofela &amp; Walaza Compilation and submission of MIG project summary to the community including timeframes</td>
<td>WSP</td>
<td>Completed</td>
<td>4/11/2021</td>
<td>31/12/2021</td>
<td>R0</td>
<td>None</td>
</tr>
<tr>
<td>Provision of interim water supply</td>
<td>Investigation and implementation of immediate and/or short term water supply intervention to the Ndofela Villages</td>
<td>WSP</td>
<td>In process</td>
<td>01/01/2022</td>
<td>30/04/2022</td>
<td>R0</td>
<td>Consider the cost effective measures.</td>
</tr>
<tr>
<td>JGDM assistance with the testing of the water quality of the private (individual) borehole that the community uses at the moment.</td>
<td>Sampling of the private boreholes next to Ndofela Clinic &amp; Bikizana</td>
<td>WSA</td>
<td>In Process</td>
<td>4/11/2021</td>
<td>31/12/2021</td>
<td>R0</td>
<td>DWS EC team visited the village but the community blocked the sampling team. A follow-up sampling visit to be undertaken.</td>
</tr>
<tr>
<td>Community of Bikizana Village will allow the JGDM personnel to assist with the Operations &amp; Maintenance of the &quot;donated&quot; Roundabout Borehole.</td>
<td>JGDM Technical Repair the broken water supply pipeline in Bikizana Village</td>
<td>WSP</td>
<td>Completed</td>
<td>4/11/2021</td>
<td>30/11/2021</td>
<td>R0</td>
<td>N/A</td>
</tr>
</tbody>
</table>
6.13.7 The Public Protector invited the JGDM to an investigative interview and the session was held at Orient Theatre, East London, on 02 June 2022. During the session the JGDM was represented by Mr Pongoma, the Manager for Water Services. During the session he stated the following:

6.13.7.1 JGDM is the WSA as well as the WSP to the communities under its jurisdiction and stated further that, there is about 74% of the communities within the JGDM that have access to water, with a backlog of 26%. Furthermore, 96% communities have access to sanitation facilities;
6.13.7.2 The areas of Burgersdorp, Lady Grey and Sterkspruit were drought prone and as such, the JGDM installed about two hundred and seventy four (274), Jojo tanks in the areas of Sterkspruit and Mt Fletcher with the assistance of the DWS;

6.13.7.3 The JGDM also faced a challenge with some of the dams, for example, the Burgersdorp dam broke, whereas the one in Mt Fletcher was silted with sand and as an interim intervention, boreholes were drilled to assist with supply of water. In terms of the projects currently being undertaken, the Elundini Rural Water Supply, with a budget of one hundred and forty three million (R143 000 000.00), was established to benefit one hundred and two (102) locations. The JGDM secured funding for the Senqu Rural Water Supply, as well as the two MIG projects for Ndofela and Bikizana and the projects will commence during the 2022/23 financial year; and

6.13.7.4 In the interim, at Bikizana location, four (4), boreholes were installed to assist the community. The Municipal Council was requested to intervene after social upheaval resulted in blocked entrances to Mfinci village, resulting in municipal workers being denied entry into the village to deliver water.

6.13.8 After the session, the JGDM was requested to provide supplementary information into the issue of service delivery. The latter information was provided to the Public Protector through a letter, dated 29 June 2022 and signed by the Municipal Manager, Mr PM Nonjola (Mr Nonjola). In his response, Mr Nonjola stated as follows:
(a) Bikizana sub-village does have a sustainable groundwater supply source in a form of a borehole and applicable water network including a stand pipe;

(b) The interim measure of water carting to the Mfinci and Mbobo sub-villages is currently not financially feasible, due to the associated high costs and the financial situation of the municipality. The option is also not advisable due to threats to municipal personnel and assets;

(c) The construction phase of the Municipal Infrastructure Grant (MIG): Package 3 Project in Bikizana sub-village has commenced and the contractors are on site; and

(d) The MIG Package 1 project in Mbobô, Mfinci and Ndofela sub-villages is at a final planning stage with environmental authorisation and Eskom application for electricity connection.

Response to the notice in terms of section 7(9)(a) of the Public Protector Act

6.13.9 A Notice in terms of section 7(9)(a) of the Public Protector Act, dated 02 June 2023 was issued to JGDM. The Municipal Manager of JGDM, Mr Nonjola responded to the Notice in an email dated 26 July 2023 and stated inter alia that:

6.13.9.1 As per the meeting held between the JGDM and the Public Protector’s Team, on 19 July 2023, he would like to submit the following:

(a) The JGDM notes and agrees with the proposed findings and the suggested remedial measures as outlined in the section 7(9)
Notice and will await the final report in order to implement the proposed remedial measures.

Applicable law and legal prescripts

6.13.10 The relevant provisions of the applicable legal framework are referred to under ANDM above apply mutatis mutandis to the situation at the JGDM.

Analysis

6.13.11 The evidence at the Public Protector's disposal indicates that the JGDM is striving to the extent permitted by its available resources and financial means to address service delivery issues related to water in its area of jurisdiction. The JGDM provided the Public Protector with its Integrated Water and Sanitation Master Plan indicating how they intend to tackle the water and sanitation challenges.

6.13.12 The investigation, however, has revealed that there is still a lack of reliable supply of water and related infrastructure within certain villages such as Ndofela, which impact negatively on the community. The submission by JGDM indicates that 74% of the communities within its area have access to water, with a backlog of 26%. The JGDM also submitted that 96% communities have access to sanitation facilities with a backlog of only 4%.

Conclusion

6.13.13 Based on the evidence at hand, the Public Protector concludes that there is inadequate delivery of water services by JGDM, which prejudices the community members within its district. This deficiency
in the provision of an essential basic need such as water is not in line with the legal obligations of the JGDM.

FINDINGS

6.13.14 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

Whether municipal services by the Joe Gqabi District Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act

6.13.14.1 The allegation that municipal services by the JGDM within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

6.13.14.2 The investigation has revealed that strides are being made in the provision of basic municipal services and infrastructure within JGDM, however, there are still service delivery challenges affecting the communities, within the JGDM, which manifest in the following challenges:

(a) Inadequate access to clean reliable supply of water and proper sanitation; and
(b) Failure and/or delay to enforce the by-laws against illegal water connections.

6.13.14.3 The JGDM indicated during the course of the investigation that 74% of the communities within the JGDM have access to water, with a backlog of 26% and that 96% of communities have access to sanitation facilities, with a backlog of only 4%.

6.13.14.4 JGDM provided the Public Protector with an Integrated Water and Sanitation Master Plan indicating how they intend to tackle the water challenges within the district, including Ndofela. Notwithstanding the existence of this Plan, these challenges remain in place and shall continue to prejudice the community within JGDM until the plan is fully executed or implemented.

6.13.14.5 It is the legislative and constitutional responsibility of the JGDM to ensure the needs of the people within its district are responded to by providing water to the community in a progressive and sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

6.13.14.6 The inadequate provision of water and the necessary infrastructure on the part of JGDM prejudices the community and poses a health hazard. This service deficit also remains incompatible with sections 27(1)(b), 152(1), 153, 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.
6.13.14.7 The conduct of the JGDM accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

REMEDIAL ACTION

6.13.15 Having regard to the evidence, the regulatory framework determining the standard that JGDM should have complied with, the Public Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

The Municipal Manager for JGDM

6.13.15.1 Within ninety (90) calendar days, from the date of this report in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal services requirements in all affected areas within JGDM, related to provision of water and sanitation;

6.13.15.2 Within ninety (90) calendar days to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the JGDM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;
The Executive Mayor for JGDM

6.13.15.3 Within **sixty (60) calendar days** of the date of this report, table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Executive Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council is to thereafter consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by JGDM to address shortcomings on municipal services related to provision of clean and potable water services for domestic use in all affected areas within JGDM, in line with the obligations of the municipality contemplated in section 152(1)(b) of the Constitution; and

6.13.15.4 Within **thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address the water service delivery concerns of the communities within JGDM, as identified in this report.

CHRIS HANI DISTRICT MUNICIPALITY (CHDM)

6.14 Whether municipal services by the Chris Hani District Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act
Common cause

6.14.1 The Chris Hani District Municipality was established in terms of the provisions contained in Chapter 1 of the Local Government, Municipal Structures Act, 1998. In terms of these provisions, the Chris Hani District Municipality is a category C municipality (District Municipality).\(^{56}\)

6.14.2 The following local municipalities fall within CHDM namely, Inxuba Yethemba, Enoch Mgijima, Intsika Yethu, Engcobo, Sakhisizwe and EMalahleni Local Municipalities.

Issue in dispute

6.14.3 The issue for the Public Protector’s determination is whether water municipal services by the CHDM within certain villages in the EC province are delivered in a progressive and effective manner as contemplated in the Constitution and the law.

Mr Gqoboka’s version (Complainant)

6.14.4 On 17 January 2022, the Investigation Team met with the Complainant, Mr Gqoboka and a group of 12 community members, who were concerned about the lack of basic infrastructure and services within Fani Administrative Area, Ward 15, which was established in 2014.

6.14.5 Mr Gqoboka indicated that in July 2019, the community members of the Fani Administrative Area approached the Office of the Executive Mayor of Enoch Mgijima Local Municipality to address their service delivery complaints and stated the following:

6.14.5.1 The residents of Fani Administrative Area are comprised mostly of pensioners with households without access to water. The community’s main source of water supply is through the periodical supply of water by CHDM water trucks, which is only available for an amount of five hundred rand (R500), or more depending on the size of the tank;

6.14.5.2 The water truck drivers from CHDM were taking advantage of the desperate situation of the community by demanding bribes for the delivery of water and in order to store the water, residents have to buy Jojo tanks;

6.14.5.3 There is an incomplete project of a borehole, which commenced at the beginning of October 2021 in the Fani Administrative Area, which remains incomplete without any explanation to the cause of the delay by CHDM;

6.14.5.4 During a meeting with the Executive Mayor of Enoch Mgijima Municipality to address grievances, the community was promised to be provided with water tanks for free, as a temporary relief to deal with the water crisis but the promise was never fulfilled; and

6.14.5.5 At Fani Administrative Area, there is only one (1) household with a toilet, which was built during July 2019. The community was promised that they would be provided temporary toilets, whilst waiting for proper toilets to be built but the promise was never fulfilled.
6.14.6 On the same day of 17 January 2022, Mr Gqoboka led the Investigation Team to conduct an *inspection in-loco*, within the village of Fani, which revealed amongst other things, open trench excavations related to the incomplete borehole water project.

*Mr Mfeki’s version (Complainant)*

6.14.7 On 19 January 2022, the Investigation Team met with Mr Mfeki, the current Ward Councillor of Ward 13, on behalf of the Complainant, Mr P Mqikela, to discuss the poor municipal services and the lack of basic infrastructure and services in Ward 13, of Engcobo Local Municipality. During the meeting Mr Mfeki stated the following:

6.14.7.1 Households have taps, but they ran dry a while ago. There are no reservoir tanks for storing water and residents collect water from a stream situated on the mountain. Qutubeni and Silindini locations experience water challenges, because of old infrastructure;

6.14.7.2 The community of Ward 13 have been requesting assistance with service delivery issues from Engcobo Local Municipality, without success and are frustrated by the slow pace of transformation and development. There are water projects currently undertaken at the Marheleni location and the community hopes that this will ease the water challenges; and

6.14.7.3 There were no toilets in Tsalaba, Tholeni, and Qebe villages and people have to dig their own pit latrines to use as toilets.
Response by the CHDM

6.14.8 On 15 February 2022, the Public Protector raised all the above allegations with CHDM, thereby extending an opportunity to the CHDM to respond to the service delivery issues raised by the Complainants. On 23 March 2022, a supplementary letter was sent by the Public Protector, wherein the Investigation Team sought further clarity on the issues in question from the CHDM and to make its submission.

6.14.9 On 05 May 2022, the CHDM provided a response to the Public Protector in a letter, dated 07 March 2022, signed by the Municipal Manager, Mr G Mashiyi (Mr Mashiyi), wherein he indicated the following:

6.14.9.1 The CHDM takes service delivery in the context of a clean and healthy environment very seriously, however there are challenges. The Action Plan below outlines how the CHDM intends to address these specific challenges:

<table>
<thead>
<tr>
<th>IDENTIFIED CHALLENGE</th>
<th>ACTION(S) REQUIRED</th>
<th>RESPONSIBLE OFFICIAL AND/OR SERVICE PROVIDER (SP)</th>
<th>ESTIMATED COMPLETION DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whittlesea: Fani Location</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Lack of access to water</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>No taps and therefore no water.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Immediate</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Water carting done twice (2) a week.</td>
<td>Civil Technician</td>
<td>Weekly</td>
</tr>
<tr>
<td></td>
<td>Short to long term</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Add village in priority list of next financial year (2022/23)</td>
<td>PMU Area Manager</td>
<td>FY (2022/23)</td>
</tr>
<tr>
<td></td>
<td>Implementation planned for financial year (2023/24) depending on the availability of budget</td>
<td>PMU Area Manager</td>
<td>FY (2023/24)</td>
</tr>
<tr>
<td>CHDM</td>
<td>CHDM</td>
<td>CHDM</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Forced to buy water from truck drivers of the CHDM for R500 or more depending on the size of the tank. CHDM truck drivers demand bribe before delivering the water.</td>
<td>Community needs to produce evidence such as slips, date of the incident and photo of the truck registration number.</td>
<td>Community</td>
<td></td>
</tr>
<tr>
<td>Incomplete borehole project, which started around October 2021.</td>
<td>SCM processes to be followed for equipping, testing and positioning of existing reservoirs.</td>
<td>Civil Technician</td>
<td></td>
</tr>
<tr>
<td>Enoch Mgijima Municipality promised the community water tanks.</td>
<td>Tanks were delivered on 22 February 2021 to be filled by water cart.</td>
<td>Civil Technician</td>
<td></td>
</tr>
</tbody>
</table>

**1.2 Toilets**

<table>
<thead>
<tr>
<th>CHDM</th>
<th>CHDM</th>
<th>CHDM</th>
</tr>
</thead>
<tbody>
<tr>
<td>No toilets and community struggles when nature calls and the situation is exacerbated by lack of water.</td>
<td><strong>Immediate</strong> Liaise with Enoch LM Councillors. <strong>Short to long term</strong> Add village in priority list of next financial year (2022/23). Implementation planned for financial year (2023/24) depending on the availability of budget.</td>
<td>ISD &amp; PMU Project Manager</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ISD &amp; PMU Project Manager</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ISD &amp; PMU Project Manager</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ISD &amp; PMU Project Manager</td>
</tr>
<tr>
<td></td>
<td></td>
<td>End June 2022</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FY (2022/23)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FY (2022/23)</td>
</tr>
</tbody>
</table>

**2. Engcobo:**

<table>
<thead>
<tr>
<th>CHDM</th>
<th>CHDM</th>
<th>CHDM</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Qutubeni</strong> Water carting done twice</td>
<td><strong>Immediate</strong></td>
<td>Civil Technician</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Weekly</td>
</tr>
<tr>
<td>administrative area, ward 13</td>
<td>(2) a week.</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>2.1 <strong>Lack of access to water</strong></td>
<td><strong>Short term</strong></td>
<td></td>
</tr>
<tr>
<td>There are taps but they ran dry a while ago. There are no reservoir tanks.</td>
<td>There is a reservoir but it is leaking and in a process of doing repairs.</td>
<td></td>
</tr>
<tr>
<td>Qutubeni and Silindini have water challenges because of the old infrastructure.</td>
<td><strong>Long term</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Qutubeni to be fed by Sitholeni WTW but currently having community unrest because of them wanting electricity into the village prior to supply WTW and requires intervention of all stakeholders.</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>PMU Area Manager</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>End December 2022</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>ELM/ESKOM/OTP/FD WS/CHDM/ Community</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Ongoing</strong></td>
<td></td>
</tr>
</tbody>
</table>

6.14.10 The Investigation Team invited the CHDM to an interview held at Orient Theatre, East London, on 03 June 2022. The purpose of the interview was to provide CHDM with another opportunity to respond orally to the allegations raised in the various communities and to provide action plans to address the challenges identified.

6.14.11 During the session the CHDM’s delegation confirmed that the core business of CHDM, is the provisioning of Water and Sanitation services, and submitted the following:

(a) That CHDM has challenges with old infrastructure in some areas which is not functioning;

(b) The Molteno Water Treatment Plant was not functioning, due to ongoing refurbishment, whilst two plants in Engcobo were not functional; and
(c) There are challenges of vandalism and theft, which hamper the functioning of the water treatment plants.

6.14.12 The CHDM was further requested by the Investigation Team to provide additional information pertaining to some of the issues raised during the interview session. The additional information was provided to the Public Protector on 18 July 2022, in a letter signed by Mr Mashiyi, who indicated that CHDM as a Water Services Authority, has the following thirteen (13) dams that will address water backlogs within the district:

<table>
<thead>
<tr>
<th>Municipality</th>
<th>Name</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enoch Mgijima (Sterk / Molteno)</td>
<td>Paradise</td>
<td>CHDM</td>
</tr>
<tr>
<td></td>
<td>Canavon Estate</td>
<td>CHDM</td>
</tr>
<tr>
<td></td>
<td>(Average)</td>
<td></td>
</tr>
<tr>
<td>Intsika Yethu</td>
<td>Ncora Dam</td>
<td>DWS</td>
</tr>
<tr>
<td></td>
<td>Lubisi</td>
<td>DWS</td>
</tr>
<tr>
<td></td>
<td>Tsojana Dam</td>
<td>DWS</td>
</tr>
<tr>
<td>Enoch Mgijima (Komani/Whittlesea)</td>
<td>Bonkolo Dam</td>
<td>CHDM</td>
</tr>
<tr>
<td></td>
<td>Waterdown Dam</td>
<td>DWS</td>
</tr>
<tr>
<td>Emalahleni</td>
<td>Xonxa Dam</td>
<td>DWS</td>
</tr>
<tr>
<td></td>
<td>Machubeni Dam</td>
<td>DWS</td>
</tr>
<tr>
<td></td>
<td>Dornriver Dam</td>
<td>DWS</td>
</tr>
<tr>
<td></td>
<td>Munik Dam</td>
<td>CHDM</td>
</tr>
</tbody>
</table>
6.14.13 There is a backlog in terms of water and sanitation service delivery and for years, the CHDM was unable to attend to these backlogs, due to funding constraints. A table reflecting the Infrastructure Development Plan (IDP), to eradicate the backlogs was furnished to the Investigation Team. The table indicates the respective local municipalities, project names, the service provider to undertake the work, together with projected figures on the cost of each project from 2022/23 up to the financial year 2024/25;

6.14.14 The CHDM appointed Mizotech Trading on 19 March 2021 to provide support services for repairs and maintenance of civil infrastructure on a three (3) year period for water infrastructure;

6.14.15 A geohydrological study has been conducted in McBride, Mndlela, Tshatshu, Rhwantsana, St Marks and Fani villages. The study entails citing of boreholes, exploration drilling of boreholes, and testing of a new groundwater source;

6.14.16 Boreholes have been drilled in Fani and McBride villages. The McBride project was completed and handed over to CHDM on the 15 July 2021 and Fani Administrative Area project, which started during October 2021, is incomplete and SCM processes are being followed for equipping, testing and positioning of existing reservoirs; and
6.14.17 CHDM’s Waste Water Treatment Works (WWTW) and their status of functionality as follows:

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Water Services Provision (WSP)</th>
<th>WWTW NAME</th>
<th>Operational/Non operational</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Enoch Mgijima</td>
<td>Queenstown</td>
<td>Partial functioning and under refurbishment</td>
</tr>
<tr>
<td>2.</td>
<td></td>
<td>Whittlesea</td>
<td>Partial functioning</td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td>Sterkstroom</td>
<td>Operational</td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td>Molteno</td>
<td>Operational</td>
</tr>
<tr>
<td>5.</td>
<td></td>
<td>Hofmeyr</td>
<td>Operational</td>
</tr>
<tr>
<td>6.</td>
<td></td>
<td>Tarkastad</td>
<td>Operational</td>
</tr>
<tr>
<td>7.</td>
<td>Sakhisizwe</td>
<td>New Khowa</td>
<td>Non-Operational</td>
</tr>
<tr>
<td>8.</td>
<td></td>
<td>Old Khowa</td>
<td>Non-Operational</td>
</tr>
<tr>
<td>9.</td>
<td></td>
<td>Cala</td>
<td>Partial functioning and under upgrade</td>
</tr>
<tr>
<td>10.</td>
<td>Intsika Yethu</td>
<td>Tsomo</td>
<td>Partial Operational and under upgrade</td>
</tr>
<tr>
<td>11.</td>
<td></td>
<td>Cofimvaba</td>
<td>Non-Operational</td>
</tr>
<tr>
<td>12.</td>
<td></td>
<td>Qamata package plant</td>
<td>Non-Operational</td>
</tr>
<tr>
<td>13.</td>
<td>Engcobo</td>
<td>Engcobo (New)</td>
<td>Under construction</td>
</tr>
<tr>
<td>14.</td>
<td></td>
<td>Engcobo (Old)</td>
<td>Operational and to be decommissioned once new commissioned</td>
</tr>
<tr>
<td>15.</td>
<td>Inxuba Yethemba</td>
<td>Cradock</td>
<td>Partial operational</td>
</tr>
<tr>
<td>16.</td>
<td></td>
<td>Middelburg</td>
<td>Non-Operational</td>
</tr>
<tr>
<td>17.</td>
<td>Emalahleni</td>
<td>Cacadu</td>
<td>Operational</td>
</tr>
<tr>
<td>18.</td>
<td></td>
<td>Dordrecht</td>
<td>Operational</td>
</tr>
<tr>
<td>19.</td>
<td></td>
<td>Indwe</td>
<td>Operational</td>
</tr>
</tbody>
</table>

6.14.18 The CHDM has a total of eighty four thousand six hundred (84 600) flushing toilets (37.73% of total households), one hundred and three thousand (103 000), Ventilation Improved Pit (VIP) (45.82% of total households) and twenty thousand, five hundred (20 500), (9.13% of total households) pit toilets.
Response to the notice in terms of section 7(9)(a) of the Public Protector Act

6.14.19 A Notice in terms of section 7(9)(a) of the Public Protector Act, dated 02 June 2023 was issued and sent to CHDM. The Municipal Manager of CHDM, Mr Mashiyi responded to the Notice in an email dated 12 July 2023 and stated that CHDM has no further representation to make on the Notice and undertook to implement the remedial actions of the Public Protector in the final report.

Applicable Law and legal Prescripts

6.14.20 The relevant provisions of the applicable legal framework are referred to under ANDM above apply mutatis mutandis to the situation at the CHDM.

Analysis

6.14.21 It is evident that CHDM is striving to the extent permitted by its resources and financial means to address service delivery issues in its area of jurisdiction. The investigation, however, has revealed that there is still poor and/or lack of basic essential services such as water and water infrastructure within certain villages, which impact negatively on the community.

6.14.22 Areas of concern relate to inadequate access to clean water and proper sanitation. The CHDM also has challenges with old water infrastructure and there is poor maintenance thereof. These shortcomings contribute to poor water service delivery to communities and as such, are incompatible with the CHDM’s legal obligations imposed by the Constitution and the law.
Conclusion

6.14.23 Based on the evidence at hand, the Public Protector concludes that there is inadequate delivery of water supply by CHDM, which prejudices the community members within its district. This service deficiency is not in line with the legal obligations of the CHDM.

FINDINGS

6.14.24 Having regard to the evidence and the regulatory framework determining the standard that should have been complied with, the Public Protector makes the following findings:

**Whether municipal services by the Chris Hani District Municipality within certain villages in the Eastern Cape Province are rendered in a progressive and effective manner as contemplated in the Constitution and the law, if not, whether such constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as improper prejudice in terms of section 6(4)(a)(v) of the Public Protector Act**

6.14.24.1 The allegation that municipal services by the CHDM within certain villages in the EC province are not rendered in a progressive and effective manner as contemplated in the Constitution and the law, is substantiated.

6.14.24.2 Evidence placed at the disposal of the Public Protector has established that strides have been made for the provision of water services by the CHDM, but there are still some service challenges which manifest in
the following inadequacies, as observed by the Investigation Team during site inspections:

(a) Households at KwaFani Village are without access to clean water and the situation is forcing residents to buy water;

(b) Households at Qutubeni Administrative Area have taps but those taps ran dry a while ago, as a result residents fetch water from a stream at the hill of the nearby mountain; and

(c) Qutubeni and Silindini locations experience water challenges due to old water infrastructure.

6.14.24.3 The investigation has also revealed that some of the CHDM’s Waste Water Treatment Works are either non-operational or partially functioning, thereby contributing to the water shortages in the following local municipalities:

(a) Sakhisizwe Local Municipality - New Khowa, Old Khowa, and Cala;

(b) Intsika Yethu Local Municipality – Tsomo and Cofimvaba; and

(c) Inxuba Yethemba Local Municipality – Cradock and Middleburg.

6.14.24.4 In terms of the evidence submitted by CHDM, it was noted that there is a backlog for water provision of about 18, 8 % and 52, 6 % for sanitation of the communities within the CHDM which has lasted for years. The backlog in terms of water and sanitation service delivery was attributed to funding constraints.
Notwithstanding the budgetary constraints, CHDM furnished the Public Protector with an implementation plan which showed its Infrastructure Development Plan (IDP), to eradicate water backlogs with time frames and/or due dates set for all projects. While the IDP has been put in place by CHDM in an effort to address the water related problems in the district, these water challenges remain in place and continue to prejudice the community in the CDHM until the plan is fully executed or implemented.

It is the legislative and constitutional responsibility of the CHDM to ensure the needs of the people within its district are responded to by providing municipal services to the community in a progressive and sustainable manner as envisaged by the Constitution and Local Government Municipal Systems Act.

The inadequate provision of municipal services and the lack of necessary infrastructure on the part of CHDM poses a health risk to the community within its district and remains incompatible with sections 27(1)(b), 152(1), 153, 237 of the Constitution, section 4(2) of the Local Government Municipal Systems Act, section 83(3) of the Local Government Municipal Structures Act, sections 2(2) and 3(1) of the National Water Act, as well as section 11(1) of the Water Services Act.

The conduct of the CHDM accordingly constitutes improper conduct as envisaged in section 182(1)(a) of the Constitution as well as prejudice in terms of section 6(4)(a)(v) of the Public Protector Act.

REMEDIAL ACTION

Having regard to the evidence, the regulatory framework determining the standard that CHDM should have complied with, the Public
Protector takes the following remedial action in terms of section 182(1)(c) of the Constitution:

**The Municipal Manager for CHDM**

6.14.25.1 Within **ninety (90) calendar days** of the date of this report, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, conduct an assessment to determine the basic municipal services requirements in all affected areas within CHDM, related to provision of water supply and sanitation;

6.14.25.2 Within **ninety (90) calendar days** to, in line with the obligations and mandate contemplated in section 152(1)(b) of the Constitution, develop an Implementation Plan for tabling before Council, setting out the measures to be undertaken in addressing the service delivery challenges identified in this report, within the CHDM. The implementation plan is to be submitted to the Municipal Council and the Member of the Executive Council (MEC) for COGTA for monitoring of implementation;

**The Executive Mayor for CHDM**

6.14.25.3 Within **sixty (60) calendar days** of the date of this report, table a copy thereof before the Municipal Council for discussion in line with the powers and functions of the Executive Mayor in terms of section 56 of the Municipal Structures Act. The Municipal Council is to thereafter consider the Implementation Plan developed by the Municipal Manager, setting out steps/measures to be taken by CHDM to address shortcomings on municipal services related to provision of clean and potable water services for domestic use in all affected areas within
CHDM, in line with the obligations of the municipality contemplated in section 152(1)(b) of the Constitution; and

6.14.25.4 Within **thirty (30) calendar days** of the submission of the Implementation Plan by the Municipal Manager, submit same to the Member of the Executive Council (MEC) for COGTA, indicating steps/measures to be taken or already taken to address the water service delivery concerns of the communities within CHDM, as identified in this report.

**FURTHER REMEDIAL ACTION**

6.14.26 Having regard to the evidence, the regulatory framework determining the standard that all implicated and affected Provincial Departments and Municipalities should have complied with, the Public Protector takes the following further remedial action in terms of section 182(1)(c) of the Constitution:

**The Premier for the EC Province**

6.13.26.1 Take note of the findings of the Public Protector as highlighted in this report and further exercise and/or ensure executive oversight, in line with his powers as envisaged in section 125(2) of the Constitution and every six (06), months submit reports to the Public Protector regarding progress in the implementation of the remedial action in respect of affected departments and municipalities;

6.13.26.2 To request through the Director-General of the EC province that all departments and municipalities identified in this report, which procured
services and later cancelled or terminated contracts, to give a detailed account on the following to the Premier:

(a) The list of projects wherein contracts were cancelled;

(b) What were the values of the contracts;

(c) What was delivered in relation to what was supposed to be delivered in terms of the contracts;

(d) How much more still needs to be paid in order to finalise the project;

(e) What were the reasons for the cancellation; and

(f) What action was taken against the defaulting service provider(s).

7. ENGAGEMENTS WITH OTHER AFFECTED STAKEHOLDERS

7.1 DEPARTMENT OF WATER AND SANITATION (DWS)

7.1.1 DWS is primarily responsible for the formulation and implementation of policy governing water resources. DWS has a role to ensure that all South Africans gain access to clean water and dignified sanitation and also to promote effective and progressive water resources management to ensure sustainable economic and social development.\(^{57}\) As the custodian of South Africa’s water resources, the Public Protector also consulted DWS during the course of this Systemic Investigation for its own submissions.

Response from the DWS

7.1.2 On 16 March 2022, the Investigation Team sent a letter of enquiry to Dr Sean Phillips (Dr Phillips), the Director-General of DWS, requesting a submission on the DWS’s role in the development of water and sanitation infrastructure in the province of EC. On 04 April 2022, Dr Phillips responded to the Public Protector as follows:

7.1.2.1 The DWS discharges its mandate based on the constitutional requirements, which are enabled by the National Water Act\textsuperscript{58}, further that the role of the DWS includes:

(a) Planning, developing, operating and maintaining major infrastructure that provides bulk water supply, to ensure water security for major systems supporting urban and rural domestic users, irrigation, mining and industrial water users, besides other water use sectors of the country;

(b) Regulating the use and protection of the country’s natural water resources;

(c) Supporting municipalities to perform their constitutional responsibility of providing water supply and sanitation services and monitoring and regulating their performance; and

(d) Overseeing and supporting entities like Water Boards and other water agencies that provide specialised services related to water.

\textsuperscript{58} National Water Act 36 of 1998.
7.1.2.2 The established water infrastructure systems in the EC province are spread across the province, this includes:

(a) The Amatola Water Board supplying Buffalo City and surrounding towns and villages;
(b) The Algoa Water Supply System supplying the Nelson Mandela Bay Metropolitan Municipality and surrounding towns and villages; and
(c) The Lusikisiki Regional Water supply scheme.

7.1.2.3 Due to the increasing water and sanitation demands caused by unpredictable immigration patterns, ageing infrastructure, irresponsible destruction and vandalism, the existing infrastructure is overstretched to the extent that it is unable to meet the demand for services by the communities.

7.1.2.4 The DWS launched the National Water and Sanitation Master plan (Master Plan) in 2019, to guide further implementation of interventions at all levels, including provinces and municipalities. The Master Plan sets out the interventions to be implemented by the water sector in South Africa to ensure water security for the country.

7.1.2.5 Local Government is at the frontline of water services provision and has a constitutional duty to ensure that all citizens have properly managed basic water supply and sanitation services. However, for a variety of reasons many municipalities are unable to meet this obligation despite the financial and technical support provided by national government.

7.1.2.6 The water services infrastructure backlogs in the EC province, are depicted in the table below, presenting both the number of households
with access to RDP level of service and households with reliable services, as well as associated backlogs. The information is based on Statistics South Africa (STATSSA) data.

<table>
<thead>
<tr>
<th>Province</th>
<th>Total population</th>
<th>Total Households</th>
<th>Households with water services to RDP level</th>
<th>%</th>
<th>Backlog %</th>
<th>Households with reliable water services</th>
<th>%</th>
<th>Backlog %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eastern Cape</td>
<td>6 465 010</td>
<td>1 748 487</td>
<td>1 214 441</td>
<td>69%</td>
<td>31%</td>
<td>784 442</td>
<td>45%</td>
<td>55%</td>
</tr>
</tbody>
</table>

7.1.2.7 The DWS initiated a national roll-out programme to develop a five-year reliable water and sanitation service delivery implementation plans in all forty four (44) district municipalities of South Africa, to ensure an integrated and aligned approach to service delivery.

7.1.2.8 The purpose of the project was to assess the existing situation of service delivery, in relation to reliability of service provision to all households and subsequently develop a pipeline of projects for the next five (5) years, to ensure integration of implementation programmes and grant funding.

7.1.2.9 The process would be carried through a reticulation services situational assessment for water and sanitation services and to develop a project Gap Analysis and Project identification process.

7.1.2.10 The projects would be prioritised with funding through the District Development Model (DDM) and will be updated on the DWS Geo-Database reference system, to ensure a knowledge base of service provision requirements and intervention programmes for all
communities that will result in a sustainable audit and monitoring structure.

7.1.2.11 The process will be managed and monitored by the National DWS in collaboration with the DWS Provincial Office and District Municipalities through a Project Steering Committee.

7.1.2.12 The DWS also facilitates the compilation of comprehensive project planning documents for Regional Bulk Infrastructure Grant (RBIG), projects by:

(a) Facilitating the appointment of Implementing Agents and Professional Service Providers with a proven track record of implementing bulk water and sanitation projects;

(b) Providing guidance in the compilation of the documents to ensure all planning guidelines are adhered to; and

(c) Compiling guidelines, frameworks and standard operating procedures for the development of planning documents, to ensure comprehensive planning, sustainable provision of water and sanitation services, as well as successful implementation of the projects.

7.1.2.13 Water and Sanitation projects are supported by the DWS using grant funding that is categorised into Regional Bulk Infrastructure and the Water Services Infrastructure Grants, which are implemented in partnership with Municipalities.

7.1.2.14 The purpose of the RBIG is to:
(a) Develop new infrastructure of regional significance that connects water resources to infrastructure serving extensive areas across municipal boundaries or within municipal boundaries;

(b) Refurbish, upgrade, replace ageing bulk water and sanitation infrastructure of regional significance, that connects water resources to infrastructure serving extensive areas across municipal boundaries or within municipal boundaries; and

(c) Implement bulk infrastructure with a potential of addressing water conservation and water demand management (WC/WDM) projects or facilitate and contribute to the implementation of local WC/WDM projects that will directly impact on bulk infrastructure requirements.

7.1.2.15 The purpose of the Water Services Infrastructure Grant (WSIG), is to:

(a) Facilitate the planning and implementation of various water and sanitation projects, to accelerate backlog reduction and enhance the sustainability of services especially in rural municipalities;

(b) Provide basic and intermittent water and sanitation supply that ensures provision of services to identified and prioritised communities, including spring protection and groundwater development;

(c) Support Municipalities in implementing water conservation and water demand management (WC/WDM) projects;

(d) Support the close out of the existing Bucket Eradication programme Intervention in formal residential areas; and
(e) Support drought relief projects in affected municipalities.

7.1.2.16 Regional Bulk Infrastructure Grants (RBIG) in the EC province are presented in the table below:

<table>
<thead>
<tr>
<th>RBIG Projects in the Eastern Cape</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of RBIG projects completed</td>
<td>12</td>
</tr>
<tr>
<td>Number of projections under construction</td>
<td>16</td>
</tr>
<tr>
<td>Number of projects under feasibility</td>
<td>4</td>
</tr>
<tr>
<td>Number of projects under implementation readiness</td>
<td>3</td>
</tr>
<tr>
<td>Number of projects under design/tender</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total RBIG projects</strong></td>
<td><strong>39</strong></td>
</tr>
</tbody>
</table>

7.1.2.17 Water Services Infrastructure Grant (WSIG) in the EC province are presented in the table below:

<table>
<thead>
<tr>
<th>WSIG Projects in the Eastern Cape</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of WSIG projects completed</td>
<td>13</td>
</tr>
<tr>
<td>Number of WSIG projects under construction</td>
<td>33</td>
</tr>
<tr>
<td><strong>Total WSIG Projects</strong></td>
<td><strong>46</strong></td>
</tr>
</tbody>
</table>

7.1.2.18 The following table depicts grant allocations for infrastructure projects in the EC province over the 2022/23, Medium Term Expenditure Framework of the DWS:

<table>
<thead>
<tr>
<th>Medium Term Expenditure Estimates for Grant Funding</th>
<th>Total Grant Investment</th>
</tr>
</thead>
</table>
7.1.2.19 The Master Plan below specifies actions that should be implemented at Provincial, District and Local Municipality level and indicates key long-term planned infrastructure projects in the EC province, which include the following:

**Umzimvubu Water Project Phase I:**

(a) Entails a multi-purpose conjunctive scheme comprising a large dam at Ntabelanga on the Tsitsa River, a tributary of the
Umzimvubu River and a smaller dam at Lalini further downstream on the Tsitsa River;

(b) The main objective of the project is socio-economic development of Umzimvubu River catchment, which lies in the eastern part of the EC province. The project supply area include the three (03) district municipalities of OR Tambo, Alfred Nzo and Joe Gqabi;

(c) In addition to supplying domestic and irrigated agricultural requirements, the upstream Ntabelanga Dam will regulate stream flow in the Tsitsa River, for generating hydroelectric power at Lalini Dam. Although the two (02) dams are designed to operate as one integrated scheme sustainable over its useful life, the two components are being proposed for phased development. The Ntabelanga Dam, catering for the social needs will be developed first and the commercial component comprising the hydroelectric power scheme developed in a later phase; and

(d) The Bulk water distribution infrastructure is provided to convey water to the edge of fields for irrigated agriculture and to command reservoirs supplying potable water requirements. A centralised water treatment works is located immediately downstream of Ntabelanga Dam from where purified water will be pumped to, strategically positioned command reservoirs located throughout the project supply area. From these command reservoirs, secondary bulk water pipelines are laid down to further distribute water to community reservoirs from where the district municipalities, acting as water service authorities, will reticulate water to households and commercial users.
Umzimvubu Water Project Phase II:

(a) Mbokazi Dam and Hydropower scheme: The Mbokazi Dam site was one of the nineteen (19) dam sites investigated at a reconnaissance level during the Umzimvubu Water Project Phase I. Although the Ntabelanga and Lalini sites were selected for the Phase 1 development, a phased development was recommended in order to reach different parts of the catchment;

(b) In order to spread socio-economic development to other parts of the region, the DWS will soon commission a feasibility study at Umzimvubu Water Project phase II to investigate the potential of the Mbokazi dam site located in the Lower Umzimvubu River catchment area; and

(c) The Mbokazi Dam site although mainly a hydropower scheme has potential for augmentation of water supply to Port St Johns and other surrounding communities, supply to irrigated agriculture and furthermore, an inter-basin transfer to Nelson Mandela Bay Metropolitan and the Lower Orange River system will also be investigated.

7.1.2.20 Zalu Dam Project: The Lusikisiki Regional Water supply scheme supplies water to the town of Lusikisiki and twenty three (23), surrounding villages in the Ingquza Hill Local Municipality under the OR Tambo District Municipality -

(a) Over the past years the capacity of the existing infrastructure has been surpassed by the growing water requirements of the local population and is inadequate to reach emerging new villages in the areas that are yet to be served;
(b) The Zalu Dam will have the capacity to store a maximum of 19.8 million cubic metres (m3) of water and yield 10.9 cubic metres per annum at 98% level of assurance. The yield will be sufficient to supply potable water requirements amounting to 8.92 million m3 per annum to a population of one hundred and twenty seven thousand, five hundred (127 500) up to the year 2040; amd

(c) In addition to the proposed Zalu Dam, potential exists to develop local groundwater resources in the area. Seventeen (17) production boreholes have been identified with a combined yield of 0.95 million m3 per annum. Some of the ground water will be blended with surface water from the Zalu Dam while the balance is supplied directly from stand-alone instalments to far flung villages. Funding will be provided to support OR Tambo to develop the groundwater resources and refurbish bulk water distribution infrastructure.

7.1.2.21 Foxwood Dam Project: The Foxwood Dam site lies on the Koonap River close to the town of Adelaide in the Amathole District Municipality. The proposed Foxwood Dam will regulate the variable runoff in the Koonap River to make water available for irrigation development by emerging farmers. This together with the mobilisation of land and human resources, is a strategic initiative to provide a stimulus for socio-economic development in the region -

(a) The dam has been designed to store a total of 55 million cubic metres of water and yield approximately 16 million cubic metres at a 95% level of assurance. The yield from the proposed dam is sufficient for an irrigation scheme of one thousand, two hundred
and fifty (1250), hectares of high value tree crops that can be established along the river downstream of the dam; and

(b) The proposed dam can also supply the future annual urban water requirement of 0.78 million cubic metres for the town of Adelaide and surrounding areas. A pipeline is required to deliver bulk raw water from the dam to Adelaide’s existing water treatment works.

7.1.2.22 **Lower Coerney Dam**: The purpose of the proposed Lower Coerney Dam is to provide dedicated balancing storage for water supply to the Nooitgedagt Water Treatment Works (WTW), which provides potable water to Nelson Mandela Bay Municipality (the capacity of the dam will be sufficient to supply the Phase 3 capacity of the WTW (210ML/day) for twenty one (21) days during emergencies, which may result from unplanned interruptions in supply from the Lower Sundays River GWS, such as canal breaks. The proposed Coerney Dam is in a valley adjacent to the existing Scheepersvlakte Balancing dam, eighteen kilometres (18 km), from the town of Kirkwood.

7.1.2.23 The DWS was in the process of developing a monitoring programme (Project Dashboard), that will monitor implementation and the achievement of various milestones within each of the projects to adjust the reliability calculator and accurately report on progress.

7.1.3 On 18 May 2022, the Investigation Team invited DWS to interviews held on 31 May 2022, at the Orient Theatre in East London. The DWS was represented by its EC Provincial Head, Ms Portia Makhanya (Ms Makhanya), accompanied by one of the Directors, Mr Andrew Lucas (Mr Lucas). During the session, Ms Makhanya made the following submission:
7.1.3.1 The allegations as articulated by the Public Protector are accurate and the inequalities exist, especially in the former homeland areas of Ciskei and Transkei. The towns that fell under the then Republic of South Africa, received advantages due to existing infrastructure, although it might be old or stressed due to over population demand;

7.1.3.2 In the value chain from source to tap, there are different spheres of government involved with different functions. DWS features under National Government and in that value chain DWS is assigned funding largely for purposes of resource development;

7.1.3.3 There is a middle sphere, which is the Provincial Government, which through COGTA funding is transferred to Municipalities through the Municipal Infrastructure Grant (MIG). The municipalities are responsible for ensuring that water comes out of the tap and are responsible for treated water going to the communities;

7.1.3.4 When taps are dry it can be related to both a source and an infrastructural problem. When infrastructure was designed, it was designed for a specific time period and usage. As the community grows the demand grows. In addition, there is an issue of illegal connections and vandalism. The lack of maintenance is also a contributing factor, which ultimately results in dry taps;

7.1.3.5 The DWS is responsible for the RBIG. The main funding is for primary bulk supply. National Government funding is for developing the source and the major treatment plant. The DWS also receives the Water and Sanitation Infrastructure Grant (WSIG), which is used in cases of interim relief;

7.1.3.6 The table below depicts the grant allocation received by municipalities from the DWS:
### 2022/23 INFRASTRUCTURE GRANT ALLOCATIONS

<table>
<thead>
<tr>
<th>DM/METRO</th>
<th>WSIG</th>
<th>RBIG</th>
<th>MIG</th>
<th>USDG</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amathole DM</td>
<td>86 000 000</td>
<td>222 935 000</td>
<td>767 214 000</td>
<td>1 076 149 000</td>
<td></td>
</tr>
<tr>
<td>Alfred Nzo DM</td>
<td>100 000 000</td>
<td>15 000 000</td>
<td>627 590 000</td>
<td>742 590 000</td>
<td></td>
</tr>
<tr>
<td>Buffalo City Metro</td>
<td></td>
<td></td>
<td></td>
<td>496 166 000</td>
<td>496 166 000</td>
</tr>
<tr>
<td>Chris Hani DM</td>
<td>60 000 000</td>
<td>216 907 000</td>
<td>570 644 000</td>
<td>847 551 000</td>
<td></td>
</tr>
<tr>
<td>OR Tambo DM</td>
<td>50 000 000</td>
<td>200 000 000</td>
<td>1 049 644 000</td>
<td>1 299 644 000</td>
<td></td>
</tr>
<tr>
<td>Joe Gqabi DM</td>
<td>60 000 000</td>
<td>15 000 000</td>
<td>289 064 000</td>
<td>364 064 000</td>
<td></td>
</tr>
<tr>
<td>Nelson Mandela Bay Metro</td>
<td></td>
<td></td>
<td></td>
<td>588 945 000</td>
<td></td>
</tr>
<tr>
<td>SBDM WSAs</td>
<td>172 051 000</td>
<td>117 746 000</td>
<td></td>
<td>476 348 000</td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>528 051 000</td>
<td>787 588 000</td>
<td>3 490 712 000</td>
<td>1 132 936 000</td>
<td>4 806 351 000</td>
</tr>
</tbody>
</table>

### Overview of infrastructure investment per grant

<table>
<thead>
<tr>
<th>Programme</th>
<th>Programme</th>
<th>DoRA schedule</th>
<th>Allocation in R'000</th>
<th>Targeted 2022/23 performance per district</th>
<th>Total R'000</th>
</tr>
</thead>
</table>
| RBIG (Regional Bulk Infrastructure Grant) | Schedule 5B | 431 907       | 19 regional bulk infrastructure project phases under construction of which:  
• Alfred Nzo:2  
• Amathole:2  
• Chris Hani:9  
• Joe Gqabi: 0  
• OR Tambo:1  
• Sarah Baartman:5 | 787 588 |
|                                       | Schedule 6B | 355 681       |                     |                                          |             |
| WSIG (Water and Sanitation Infrastructure Grant) | Schedule 5B | 498 051       | 53 small WSIG projects under construction of which:  
• Alfred Nzo: 4  
• Amathole: 12  
• Chris Hani: 12  
• Joe Gqabi: 5  
• OR Tambo: 10  
• Sarah Baartman: 10 | 528 051 |
|                                       | Schedule 6B | 30 000        |                     |                                          |             |
| Municipal infrastructure grant projected investment | 85 MIG projects (MIS registered) of which:  
• Alfred Nzo: 12  
• Amathole: 16  
• Chris Hani: 15  
• Joe Gqabi: 9  
• OR Tambo: 17  
• Sarah Baartman: 16 | 3 490 712 |
The statistical delivery of regional bulk projects for EC was reflected as follows:

(a) Total RBIG Projects: 39
(b) Number of RBIG projects completed: 12
(c) Number of Projects under Construction: 16
(d) Number of Projects under Feasibility: 4
(e) Number of Projects under Implementation Readiness: 3
(f) Number of Projects under Design/Tender: 4

The total RBIG commitment vs expenditure was reflected as follows:

<table>
<thead>
<tr>
<th>TOTAL DWS COMMITMENT</th>
<th>EXPENDITURE TO DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>R 10 056 267 000</td>
<td>R 6 809 566 341</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>WSA</th>
<th>Project name</th>
<th>Project cost</th>
<th>Project Impact (population served)</th>
<th>Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alfred Nzo DM</td>
<td>Mount Ayliff Bulk Water Supply</td>
<td>R 68,1 million</td>
<td>31400</td>
<td>2015/16</td>
</tr>
<tr>
<td>Alfred Nzo DM</td>
<td>Greater Mbizana Regional Bulk Water Supply Phase 1(Dam &amp;10ML/d)</td>
<td>R646million</td>
<td>266 000</td>
<td>2016/17</td>
</tr>
<tr>
<td>Dr Beyer's Naude</td>
<td>Steytlerville Bulk Water Supply</td>
<td>R 111 494 million</td>
<td>8380</td>
<td>2016/17</td>
</tr>
<tr>
<td>Location</td>
<td>Project Description</td>
<td>Cost</td>
<td>Customers</td>
<td>Year</td>
</tr>
<tr>
<td>------------------------------</td>
<td>----------------------------------------------------------</td>
<td>------------</td>
<td>-----------</td>
<td>-------</td>
</tr>
<tr>
<td>Amathole DM</td>
<td>Mncwasa Bulk Water Supply</td>
<td>R 294,8 million</td>
<td>36 740</td>
<td>2016/17</td>
</tr>
<tr>
<td>Amathole DM</td>
<td>Ibika Bulk Water Supply</td>
<td>R 65 million</td>
<td>32,574</td>
<td>2016/17</td>
</tr>
<tr>
<td>Chris Hani DM</td>
<td>Tsomo Bulk Water Supply</td>
<td>R9,7 million</td>
<td>4865</td>
<td>2012/13</td>
</tr>
<tr>
<td>OR Tambo DM</td>
<td>Coffee bay Bulk Water Supply</td>
<td>R113 million</td>
<td>16 940</td>
<td>2012/13</td>
</tr>
<tr>
<td>OR Tambo DM</td>
<td>KSDPI Bulk Sanitation</td>
<td>R595 million</td>
<td></td>
<td>2019/20</td>
</tr>
<tr>
<td>Chris Hani DM</td>
<td>Xonxa Bulk Water Supply Project - Phase 1</td>
<td>R503 million</td>
<td>190 724</td>
<td>2019/20</td>
</tr>
<tr>
<td>Ndlambe LM</td>
<td>Ndlambe Emergency BWS</td>
<td>R80 million</td>
<td>56 736</td>
<td>2021/22</td>
</tr>
<tr>
<td>Chris Hani DM</td>
<td>Middelburg BWS</td>
<td>R33 million</td>
<td>19 000</td>
<td>2021/22</td>
</tr>
<tr>
<td>Dr Beyers Naude LM</td>
<td>Graaff Reinet BWS</td>
<td>R71,8 million</td>
<td>24 542</td>
<td>2021/22</td>
</tr>
</tbody>
</table>

7.1.3.9 There are backlogs in the Eastern Cape which are not the responsibility of the DWS but the responsibility of Municipalities. Municipalities have the mandate and the responsibility as water services authorities to plan, prioritise and decide where funding will go to as per their communities;

7.1.3.10 DWS has drafted a Backlog Master Plan (attached below) for the EC, which is aimed at dealing with backlogs although the method of government funding to the water sector will hinder the efforts aimed at
eliminating the backlog. The backlog on existing water supply as at 2018 was quantified as follows:

(a) Alfred Nzo District Municipality - 57%
(b) Amathole District Municipality – 20%
(c) Buffalo City Metropolitan Municipality – 1%
(d) Chris Hani District Municipality – 19%
(e) Joe Gqabi District Municipality - 48%
(f) Nelson Mandela Metropolitan Municipality – 0%
(g) OR Tambo District Municipality – 45%
(h) Sarah Baartman District Municipality – 0%

7.1.3.11 The Minister of Water and Sanitation at the national sphere of government is largely obtaining funding for bulk infrastructure, whereas Municipalities in the local government sphere obtain funding through the MIG. Municipalities then decide, plan and prioritize water projects;

7.1.3.12 The inability of Municipalities to perform their functions and their failures becomes the problems of DWS to fix. The lack or absence of accountability and consequence management on part of municipalities within the local government sphere suggests that if consequence management was applied progressively most of the problems would be rectified;

7.1.3.13 Municipalities have huge debts with the DWS and although certain municipalities arrange for repayment of debts, the provision of water services to others who fail to pay have to be terminated. The following graph shows the debts of the municipalities, which are WSA’s and also details the payments made towards their debts as at the 31 March 2022:
### DEBT BOOK STATUS OF TOP OWING WSA’S AND WATER BOARD AS AT 31 MARCH 2022

<table>
<thead>
<tr>
<th>NAME OF MUNICIPALITIES</th>
<th>AMOUNT OWED</th>
<th>PAYMENT STATUS</th>
<th>PAYMENTS ® - MARCH 2022</th>
<th>LAST PAYMENT DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMATOLA WATER BOARD</td>
<td>R 292 763 044.79</td>
<td>Payment agreement submitted &amp; AWB is not honouring the submitted payment agreement</td>
<td></td>
<td>28.01.2022</td>
</tr>
<tr>
<td>OLIVER TAMBO DISTRICT MUNICIPALITY</td>
<td>R 107 814 424.17</td>
<td>Short falling on current invoices. Monthly statements &amp; invoices are posted &amp; emailed</td>
<td></td>
<td>23.02.2022</td>
</tr>
<tr>
<td>Area</td>
<td>Total Debt</td>
<td>Status</td>
<td>Date</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------------------</td>
<td>---------------------------------------------</td>
<td>------------</td>
<td></td>
</tr>
<tr>
<td>AMATOLE DISTRICT MUNICIPALITY</td>
<td>R106 087 357,64</td>
<td>Not paying at all. Monthly statements &amp; invoices are posted &amp; emailed</td>
<td>14.11.2021</td>
<td></td>
</tr>
<tr>
<td>MAKANA MUNICIPALITY</td>
<td>R66 091 427,09</td>
<td>Not paying at all &amp; not honouring the submitted payment plan. Monthly statements &amp; invoices are posted &amp; emailed</td>
<td>08.12.2020</td>
<td></td>
</tr>
<tr>
<td>KING SABATA DALINDYEBO MUNICIPALITY</td>
<td>R54 167 022,24</td>
<td>Not paying historic debt</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NELSON MANDELA BAY MUNICIPALITY</td>
<td>R35 549 443,02</td>
<td>Paying. Monthly statements &amp; invoices are posted &amp; emailed</td>
<td>R19 032 134,14 02.03.2022</td>
<td></td>
</tr>
<tr>
<td>CHRIS HANI DISTRICT MUNICIPALITY</td>
<td>R71 129 700,42</td>
<td>Short falling on current invoices &amp; not paying historical debt. Monthly statements &amp; invoices are emailed</td>
<td>R 411 510,91 16.03.2022</td>
<td></td>
</tr>
<tr>
<td>BUFFALO CITY MM</td>
<td>R 50 639 236,34</td>
<td>Paying. Monthly statements &amp; invoices are posted &amp; emailed</td>
<td>23.02.2022</td>
<td></td>
</tr>
<tr>
<td>SUNDAY’S RIVER VALLEY MUNICIPALITY</td>
<td>R23 480 917,54</td>
<td>Short falling on current invoices &amp; not paying historical debt. Monthly statements &amp; invoices are emailed</td>
<td>R13 229,24 30.03.2022</td>
<td></td>
</tr>
<tr>
<td>Municipality</td>
<td>Amount</td>
<td>Status</td>
<td>Payment Method</td>
<td>Date</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------</td>
<td>------------------------------------------------------------------------</td>
<td>---------------------------------</td>
<td>------------</td>
</tr>
<tr>
<td>ALFRED NZO</td>
<td>R 9 192 522.49</td>
<td>Paying current invoices. Monthly statements &amp; invoices are emailed &amp; posted</td>
<td></td>
<td>15.03.2022</td>
</tr>
<tr>
<td>DISTRICT MUNICIPALITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>JOE GQABI</td>
<td>R 5 562 198.52</td>
<td>Not paying. Monthly statements &amp; invoices are posted &amp; emailed</td>
<td></td>
<td>13.10.2020</td>
</tr>
<tr>
<td>DISTRICT MUNICIPALITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>BLUE CRANE</td>
<td>R 2 761 718.21</td>
<td>Short falling on current invoices &amp; not paying historical debt. Monthly statements &amp; invoices are emailed</td>
<td></td>
<td>25.03.2022</td>
</tr>
<tr>
<td>ROUTE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DR BEYERS</td>
<td>R 2 791 726.79</td>
<td>Not paying. Monthly statements &amp; invoices are posted &amp; emailed</td>
<td></td>
<td>07.07.2021</td>
</tr>
<tr>
<td>NAUDE LOCAL MUNICIPALITY</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>R 828 030 739.26</td>
<td></td>
<td></td>
<td>R20 807 719.62</td>
</tr>
</tbody>
</table>

The total debt owing to DWS as can be seen from the above table is at a staggering amount of R 828 030 739, 26, repayment on the other end is R20 807 719, 62.

7.1.3.14 DWS intervenes with the funding that they have control over and they would restore infrastructure to functionality. The Municipality will then allow it to run until it is no longer functional. There are fourteen (14) water services authorities in the EC, who are responsible for restoring their infrastructure. DWS would write letters of non-compliance to Municipalities and the Minister of DWS does intervene. There was a court case against Amathole District Municipality.
7.1.3.15 Access to reliable basic services remains a challenge despite significant strides having been made in bridging the inequality gap since 1994, with specific reference to Water and Sanitation services, this is exacerbated by the following:

(a) Climate change (severe drought impact) threatening water security;
(b) Inability to eradicate historical water (22%) and sanitation (29%) services backlogs and response increased demands especially in former homelands;
(c) Illegal connections and demand for yard connections vs decreased financial resources vs ability to spend;
(d) High levels of dysfunctional infrastructure due to poor Operations and Maintenance, poor asset management (old infrastructure) and by default water losses;
(e) High level of Non-Revenue water due to rural nature of province;
(f) Poor Revenue Management;
(g) Deteriorating waste water infrastructure seeing increased levels of environmental pollution; and
(h) Weak Institutional Capacities to deal with demands across the value chain calls for urgent and decisive institutional reforms.

7.1.3.16 The DWS’s primary function is to build Reservoir dams and through the funding, it has tried to fulfil this mandate. New developments with regards to the Umzimvubu Dam and Foxwood Dam in the EC province are as follows:

*Umzimvubu Water Project’s progress as at March 2022 -*

(a) Site established from November 2020, is 95% complete;
(b) The Contractor is using tender design drawings (no river/stream crossings design) for construction work;
(c) Construction progress on the access roads is at 37% completion;

(d) Estimated Total Cost at Completion is estimated at R 14 700 000 000;

(e) Total Expenditure to Date R 332 293 827 at 2% Expenditure;

(f) Construction has been delayed by some 6 months due to unexpected rock quantities during excavation; and

(g) Procurement is at 80% (Final stage) for National tenders.

The Foxwood Dam Water Project’s progress as at March 2022 -

(a) Progress on the project has been hampered by the lack of funding for project implementation;

(b) Budget has been allocated in the 2022/23 financial year to advance the design development;

(c) Estimated Total Cost at Completion R2 169 298 246; and

(d) There is no expenditure at the moment.

Response to the notice in terms of section 7(9)(a) of the Public Protector Act, read with Rule 41(1) of the Public Protector Rules

7.1.4 A Notice in terms of section 7(9)(a) of the Public Protector Act, read with Rule 41(1) of the Public Protector Rules, dated 02 June 2023 was issued to DWS. Dr Phillips responded to the Notice on behalf of DWS in a letter dated 15 June 2023. Dr Phillips responded as follows:

7.1.4.1 DWS acknowledges receipt of the Notice and that its EC Provincial office studied the Notice and it was noted that Water Service Authorities and provincial departments responded to the service delivery issues raised by the Public Protector outlining the remedial plans to the findings. DWS was represented by Provincial Head and Director for Regulation and Use at Orient Theatre in East London, who
responded on water and sanitation support to Water Service Authorities and this is captured in the Notice;

7.1.4.2 The role and support by DWS was clearly outlined at the engagement in East London. DWS informed the Public Protector that projects are supported by DWS using grant funding that is categorised into RBIG and WISIG, which are implemented in partnerships with municipalities that are Water Service Authorities. DWS is responsible for RBIG and the funding is for bulk supply;

7.1.4.3 The national funding is for developing source and major treatment plants. As a regulator, DWS also plays a major role in policy guidance and setting up norms and standards for the provision of reliable water services. This is achieved through regular interactions with Water Service Authorities, which are responsible for domestic water supply and sanitation to communities through the Provincial War Room and High Level Bilateral meetings;

7.1.4.4 In addition to these measures, the DWS has appointed Professional Service Providers (PSP) to develop a five (5) year reliability plan for water and sanitation implementation and for development of a Bulk Water Master Plan for the entire EC province. All these interventions are meant to support Water Service Authorities to perform on their legislative mandate of providing water services to communities; and

7.1.4.5 In conclusion, DWS has noted that there are no findings and remedial actions or further information required from DWS. DWS wishes to thank the Public Protector for an opportunity to share its mandate and support offered to Water Service Authorities in the EC province and undertakes to continue supporting municipalities that are struggling in line with the blue and green drop reports that were realised on 06 June 2023.
Analysis

7.1.5 From the evidence placed before the Public Protector, there are different role players involved with different functions to ensure the delivery of water to communities. These role players are national, provincial and local spheres of government. The DWS is part of national government and is responsible for funding for purposes of resource development.

7.1.6 Water and Sanitation projects are supported by the DWS using grant funding that is categorized into RBIG and WSIG, which are implemented in partnership with municipalities, which are water service authorities. The DWS is responsible for the RBIG. The main funding is for primary bulk supply. National Government funding is for developing the source and the major treatment plant.

7.1.7 The funding is transferred through the Provincial Government, via the COGTA, to Municipalities from the MIG. The municipalities are responsible for ensuring that water comes out of the tap and are responsible for treated water going to the communities.

7.1.8 Evidence from DWS indicates that when taps are dry it can be related to both a source and an infrastructural problem, which was designed for a specific time period and usage. Lack of maintenance of water treatment plants or infrastructure contributes to dry taps. As the community grows the demand grows. According to DWS, there is also an issue of illegal connections and vandalism that is alleged to add to the disruption of water supply to communities.
7.1.9 Municipalities should decide, plan prioritise water projects, because inability of municipalities to perform their functions becomes the problems of DWS to fix.

7.2 ESKOM

*Engagements with Eskom*

7.2.1 On 18 February 2022, the Public Protector raised all the complaints lodged by Complainants in various villages relating to lack of electricity with Eskom, thereby giving the power utility an opportunity to respond to the issues relating to the provisioning of electricity to the affected communities in EC province. In a letter dated 07 March 2022, signed by Mr Mbulelo Yedwa (Mr Yedwa), Acting General Manager Cape Coastal Cluster, Eskom provided the response to the Public Protector indicating the following:

**Matatiele**

7.2.1.1 The villages mentioned are Schedule 5B (Municipality Electrification Programme) projects, and queries should be directed to the municipality concerned.

**Mount Frere: Hofisi Village**

7.2.1.2 The process of electrifying the area started in 2014, but could be not be finished. Phase 1 was only completed around 2018/19, and that electricity was available, but new houses subsequently built in the area are not yet supplied with power. Furthermore, the villages are Schedule 5B (Municipality Electrification Programme), projects and queries should be directed to the municipality.
Mthatha: Mandela Park

7.2.1.3 The queries regarding the high mast lights should be directed to the municipality.

Sterkspruit: Ndofela village

7.2.1.4 The prioritisation of the area should be referred to the municipality for inclusion in the IDP, Eskom implements as per municipal priorities. The electrification (INEP) programme is funded by the DMRE, prioritised by the municipality based on their IDP and Eskom’s only role is that of being an implementing agent.

Keiskammahoek: Rabula Administrative Area

7.2.1.5 Queries regarding high mast lights should be directed to the local municipality. The electrification of the three hundred (300), households is planned for 2023/24.

King William’s Town: Tyutyu Village

7.2.1.6 Prioritisation of the area should be referred to the municipality for inclusion in the IDP as Eskom implements as per municipal priorities. Mr Yedwa indicated that the electrification (INEP) programme is funded by the DMRE, prioritised by the municipality based on their IDP and Eskom’s only role is that of being an implementation agent. As such, queries regarding the high mast lights should be directed to the municipality. With regard to the taking of co-ordinates at Tyutyu village, Mr Yedwa further indicated that Eskom did what is called pre-
marketing in the area however, the Municipality needs to confirm which financial year to electrify the area.

**Whittlesea: Fani Village**

7.2.1.7 During the 2022/23 financial year, seventy six (76) homes will be electrified and the planned completion date is June 2022, the remainder of the homes will be electrified as prioritised by the municipality.

7.2.2 The Investigation Team invited Eskom to an investigative interview with a view to further interrogate the responses provided. The session was held on 01 June 2022 at Orient Theatre, East London. Eskom sent a delegation of two officials, namely, Ms Nosipho Manyonga (Ms Manyonga) and Mr Njabulo Ngwane (Mr Ngwane), who are regional managers at the power utility.

7.2.3 During the session, Ms Manyonga conceded that there are historical backlogs in the EC province, more especially in the former homeland areas. According to Ms Manyonga, the backlog in the EC province is at approximately five thousand (5000), households with no electricity. She, however, stated that Eskom was in the process of electrification of outstanding households.

7.2.4 Ms Manyonga submitted that there is a tripartite alliance including the DMRE, Eskom and the Municipalities and that there are two (02), programs being carried out, that is, the Schudule 6(B) of electrification done by Eskom and Schedule 5(B) falling within the jurisdiction of the municipalities.
7.2.5 Mr Ngwane submitted that the issue of high mast lights falls within the competency of the municipalities, with Eskom helping only with the design. Further, that there are areas under the municipalities and those of Eskom. He stated that, over and above that the need to provide electricity has to be included on the IDP of the local municipality.

7.2.6 During the session, Eskom was requested to provide the Public Protector with additional information relating to the following:

(a) The list of beneficiaries to the project of electrification at Fani village;

(b) The number of projects to be completed/done during the 2021/22 financial year for the province; and

(c) The performance of the electrification programmes since inception.

7.2.7 The requested information was provided to the Public Protector in a letter dated 22 June 2022, signed by Mr Yedwa. He further provided the Investigation Team with the list of eighty (80) beneficiaries on the electrification project at Fani Administrative Area, providing their names, surnames and addresses.

7.2.8 Mr Yedwa submitted that the fourteen (14) connections mentioned and scheduled to be completed by the 10 June 2022, did not materialise and a revised date of connection was 22 August 2022. Furthermore, the work to connect a further seventy three (73) customers was underway at Brakkloof, Emamfeneni, Xhumabhokwe and Zingquthu villages. This work was planned to be completed by 30 June 2022. Mr Yedwa further provided the Investigation Team with the table below,
which lists the roll-over projects, planned for completion date at 31 March 2023:

<table>
<thead>
<tr>
<th>Project Name</th>
<th>Current Year</th>
<th>Municipal Name</th>
<th>Connections</th>
</tr>
</thead>
<tbody>
<tr>
<td>MHLONTLO WARD EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC156_Mhlontlo</td>
<td>7</td>
</tr>
<tr>
<td>INTSIKA YETHU EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC135_Intsika Yethu</td>
<td>3</td>
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<tr>
<td>ELUNDINI EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC141_Elundini</td>
<td>17</td>
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<tr>
<td>BATLOKOA 02 SP 21/22</td>
<td>Roll over (21/22)</td>
<td>EC141_Elundini</td>
<td>82</td>
</tr>
<tr>
<td>ELLIOTDALE RURAL Ph4 21/22</td>
<td>Roll over (21/22)</td>
<td>EC121_Mbhashe</td>
<td>14</td>
</tr>
<tr>
<td>MAKANA RURAL EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC104_Makana</td>
<td>290</td>
</tr>
<tr>
<td>MPAHLANE 21/22</td>
<td>Roll over (21/22)</td>
<td>EC443_Mbizana</td>
<td>204</td>
</tr>
<tr>
<td>BAKOENA 10 SP 21/22</td>
<td>Roll over (21/22)</td>
<td>EC441_Matatiele</td>
<td>178</td>
</tr>
<tr>
<td>BALFOUR &amp; SEYMOUR EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC129_Raymond Mhlaba</td>
<td>25</td>
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<tr>
<td>DEBE NEK EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC129_Raymond Mhlaba</td>
<td>76</td>
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<tr>
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<td>165</td>
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<tr>
<td>ELLIOTDALE RURAL Ph5 21/22</td>
<td>Roll over (21/22)</td>
<td>EC121_Mbhashe</td>
<td>78</td>
</tr>
<tr>
<td>ELLIOTDALE RURAL Ph6 21/22</td>
<td>Roll over (21/22)</td>
<td>EC121_Mbhashe</td>
<td>175</td>
</tr>
<tr>
<td>ELUNDINI Ph4 21/22</td>
<td>Roll over (21/22)</td>
<td>EC141_Elundini</td>
<td>23</td>
</tr>
<tr>
<td>EMALAHLENI WARD EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC136_Emalahleni</td>
<td>45</td>
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<tr>
<td>ENGCOBO RURAL EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC137_Engcobo</td>
<td>100</td>
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<tr>
<td>ENOCH MGIJIMA RURAL EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC139_Enoch Mgijima</td>
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<tr>
<td>KOU-KAMMA EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC109_Kou-Kamma</td>
<td>10</td>
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<tr>
<td>KSD EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC157_King Sabata Dalindyebo</td>
<td>213</td>
</tr>
<tr>
<td>Location</td>
<td>Roll Over Details (21/22)</td>
<td>Code</td>
<td>Population</td>
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<tr>
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<td>---------------------------</td>
<td>------------</td>
<td>------------</td>
</tr>
<tr>
<td>MANGOLANENI SP 21/22</td>
<td>Roll over (21/22)</td>
<td>EC441_Matatiele</td>
<td>154</td>
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<tr>
<td>MNQUMA WARDs EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC122_Mnquma</td>
<td>57</td>
</tr>
<tr>
<td>MOANDULI Ph6 21/22</td>
<td>Roll over (21/22)</td>
<td>EC157_King Sabata Dalindyabo</td>
<td>64</td>
</tr>
<tr>
<td>NYANDENI WARD Ext Ph2 21/22</td>
<td>Roll over (21/22)</td>
<td>EC155_Nyandeni</td>
<td>45</td>
</tr>
<tr>
<td>PSJ EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC154_Port St Johns</td>
<td>142</td>
</tr>
<tr>
<td>SAKHISIZWE EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC138_Sakhisizwe</td>
<td>39</td>
</tr>
<tr>
<td>SUNDAYS RIVER VALLEY Ext 21/22</td>
<td>Roll over (21/22)</td>
<td>EC106_Sundays River Valley</td>
<td>260</td>
</tr>
<tr>
<td>TSHATSHU 21/22</td>
<td>Roll over (21/22)</td>
<td>ECBUF_Buffalo City</td>
<td>23</td>
</tr>
<tr>
<td>NTABANKULU WARD Ext 21/22</td>
<td>Roll over (21/22)</td>
<td>EC444_Ntabankulu</td>
<td>220</td>
</tr>
<tr>
<td>MAKAULA 06 21/22</td>
<td>Roll over (21/22)</td>
<td>EC442_Umzimvubu</td>
<td>49</td>
</tr>
<tr>
<td>MAKAULA 07 21/22</td>
<td>Roll over (21/22)</td>
<td>EC442_Umzimvubu</td>
<td>288</td>
</tr>
<tr>
<td>SILVER CITY 21/22</td>
<td>Roll over (21/22)</td>
<td>EC442_Umzimvubu</td>
<td>103</td>
</tr>
<tr>
<td>KOUGA NEW HOUSING 21/22</td>
<td>Roll over (21/22)</td>
<td>EC108_Kouga</td>
<td>171</td>
</tr>
<tr>
<td>JUMZIMVUBU EXT 21/22</td>
<td>Roll over (21/22)</td>
<td>EC442_Umzimvubu</td>
<td>62</td>
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<tr>
<td>NYANDENI WARD Ext Ph1 21/22</td>
<td>Roll over (21/22)</td>
<td>EC155_Nyandeni</td>
<td>188</td>
</tr>
<tr>
<td>MAKWANTINI Bizana 1 WARD 25</td>
<td>Roll over (21/22)</td>
<td>EC443_Mbizana</td>
<td>165</td>
</tr>
<tr>
<td>ALICE EXT Ph2 21/22</td>
<td>Roll over (21/22)</td>
<td>EC129_Raymond Mhlaba</td>
<td>73</td>
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<tr>
<td>INGQUZA HILL AREA EXT 21/22</td>
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<td>EC153_Ngquza Hill</td>
<td>95</td>
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<tr>
<td>MBHASHE WARD EXT PH2</td>
<td>Roll over (21/22)</td>
<td>EC121_Mbhashe</td>
<td>75</td>
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<tr>
<td>MAKANA EXT Nkanini 21/22</td>
<td>Roll over (21/22)</td>
<td>EC104_Makana</td>
<td>629</td>
</tr>
</tbody>
</table>
7.2.9 It was also submitted by Mr Yedwa that there are no off-Eskom customers, however, the power utility was considering the following villages for micro-grid supply, these are: Lugadu, Dikidikini and Mdlankwazi in Ntabankulu. Mr Yedwa provided the Investigation Team, with the following table, which shows households connected per year since the inception of the programme -

<table>
<thead>
<tr>
<th>Year</th>
<th>Connections</th>
<th>Year</th>
<th>Connections</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>37 586</td>
<td>2009</td>
<td>27 242</td>
</tr>
<tr>
<td>1995</td>
<td>46 984</td>
<td>2010</td>
<td>39 973</td>
</tr>
<tr>
<td>1996</td>
<td>71 157</td>
<td>2011</td>
<td>30 345</td>
</tr>
<tr>
<td>1997</td>
<td>76 892</td>
<td>2012</td>
<td>27 876</td>
</tr>
<tr>
<td>1998</td>
<td>74 445</td>
<td>2013</td>
<td>41 062</td>
</tr>
<tr>
<td>1999</td>
<td>61 787</td>
<td>2014</td>
<td>29 019</td>
</tr>
<tr>
<td>2000</td>
<td>39 041</td>
<td>2015</td>
<td>21 623</td>
</tr>
<tr>
<td>2001</td>
<td>28 913</td>
<td>2016</td>
<td>47 402</td>
</tr>
<tr>
<td>2002</td>
<td>26 235</td>
<td>2017</td>
<td>56 092</td>
</tr>
<tr>
<td>2003</td>
<td>33 362</td>
<td>2018</td>
<td>40 551</td>
</tr>
<tr>
<td>2004</td>
<td>29 331</td>
<td>2019</td>
<td>29 242</td>
</tr>
<tr>
<td>2005</td>
<td>7 876</td>
<td>2020</td>
<td>24 107</td>
</tr>
<tr>
<td>2006</td>
<td>30 550</td>
<td>2021</td>
<td>19 422</td>
</tr>
<tr>
<td>2007</td>
<td>26 318</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total connections 1991 to 2021**

7.2.10 Lastly, Mr Yedwa submitted that about one million, eighty thousand, four hundred and thirteen (1 080 413) households to date have been connected by Eskom and the five thousand, seven hundred and twenty four (5 724) left form part of the historical backlog to be completed in the 2023/2024 financial year.
Response to the notice in terms of section 7(9)(a) of the Public Protector Act, read with Rule 41(1) of the Public Protector Rules

7.2.11 A Notice in terms of section 7(9)(a) of the Public Protector Act, read with Rule 41(1) of the Public Protector Rules, dated 02 June 2023 was issued to Eskom. The Acting Group Chief Executive, Mr Calib Cassim, (Mr Cassim) responded to the Notice on behalf of Eskom in an email dated 15 June 2023. Mr Cassim responded as follows:

7.2.11.1 Eskom hereby acknowledges receipt of the Public Protector Notice and that there were no adverse findings against Eskom; and

7.2.11.2 That Eskom appreciates the opportunity afforded to participate in the investigation.

Analysis

7.2.12 In terms of the evidence presented to the Public Protector, it is apparent that prioritisation of an area for electrification is done by Eskom in line with the municipality’s IDP. Eskom implements as per municipal priorities. The electrification programme is funded by the DMRE, based on the municipality’s IDP and the Eskom’s role is that of an implementing agent.

7.3 THE PREMIER OF THE PROVINCE OF EASTERN CAPE

Integrated Response to the notice in terms of section 7(9)(a) of the Public Protector Act, read with Rule 41(1) of the Public Protector Rules

7.3.1 A Notice in terms of section 7(9)(a) of the Public Protector Act, read with Rule 41(1) of the Public Protector Rules, on 12 June 2023 was
issued to the Premier of the EC province, Mr Mabuyane. Mr Mabuyane gave an integrated response on his capacity as the Premier in a letter dated 04 October 2023. Mr Mabuyane responded as follows:

7.3.1.1 That he noted the content of the preliminary report, which is extensive, as it includes responses from the various heads of departments and municipal managers of the Eastern Cape;

7.3.1.2 He further noted the preliminary findings of the Public Protector regarding the lack of/inadequate provision of essential services and basic infrastructure in certain villages in the Eastern Cape Province by various Eastern Cape Departments and Municipalities;

7.3.1.3 That he has established a crack team in his office that will be dealing the following:

a. Investment Co-ordination;

b. Support to Local Government;

c. Driving Education and Health turnaround strategies;

d. Designated groups co-ordination and state machinery transformation; and

e. Driving strategic and catalytic projects.

7.3.1.4 He has assembled a highly skilled team to manage these projects and ensure that the worked is fastracked to ensure that the people of the province benefits from the services of government; and

7.3.1.5 That he has noted the proposed remedial action as stated in the preliminary report and that he will engage with MECs and HoDs to abide by the remedial action and to respond to the Public Protector as stipulated in the report.
8. MONITORING

The implicated Provincial Departments and Municipalities within the EC province are to provide a report to the Public Protector on the implementation of the remedial action within sixty (60) calendar days from the date of this report.

ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR
OF THE REPUBLIC OF SOUTH AFRICA
DATE: 19 OCTOBER 2023

Assisted by: Mr Vusumuzi Dlamini
Acting Executive Manager: Investigations Branch