

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



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NUMBER: 73 OF 2022/23

ISBN: 978-1-991244-26-0

**INVESTIGATION INTO ALLEGATIONS OF UNDUE DELAY BY THE DEPARTMENT
OF MINERAL RESOURCES AND ENERGY TO INVESTIGATE COMPLAINTS OF
IMPROPER CONDUCT BY THE OFFICIALS OF THE DEPARTMENT RELATING TO
THE ISSUING OF MINING PERMITS, MINING RIGHTS, PROSPECTING RIGHTS
AND OTHER RELATED ADMINISTRATIVE PROCESSES**

TABLE OF CONTENTS

ITEM NO.	DESCRIPTION	PAGE NO.
	ACRONYMS	3
1.	INTRODUCTION	4
2.	THE COMPLAINT	5
3.	POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR	8
4.	ISSUE IDENTIFIED FOR INVESTIGATION	11
5.	THE INVESTIGATION	11
6.	THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS	14
7.	OBSERVATIONS	23
8.	INTERVENTION	24
9.	CONCLUSION	25

LIST OF ABBREVIATIONS AND ACRONYMS

Constitution	Constitution of the Republic of South Africa, 1996
Complainant	Mr Tshivhe Ralushai
CIPC	Companies and Intellectual Property Commission
Department	Department of Mineral Resources and Energy
Exponent Resources	Exponent Resources (Pty) Ltd
MITT	Ministerial Investigating Task Team
Public Protector Act	Public Protector Act Public Protector Act, 1994
PP Rules	Rules relating to investigations by the Public Protector and Matters Incidental Thereto, 2018, as amended
PPSA	Public Protector South Africa
SAPS	South African Police Service
Tylogix	Tylogix (Pty) Ltd

1. INTRODUCTION

- 1.1 This is a report of the Public Protector issued in terms of section 8(1) of the Public Protector Act, 1994 (the Public Protector Act), which provides that “*The Public Protector may, subject to the provisions of subsection (3), in the manner he or she deems fit, make known to any person any finding, point of view or recommendation, in respect of a matter investigated by the Public Protector*”.
- 1.2 The report relates to an investigation into allegations of undue delay by the Department of Mineral Resources and Energy (Department) to investigate complaints of improper conduct by the officials of the Department, relating to the issuing of mining permits, mining rights, prospecting rights and other related administrative processes.
- 1.3 The mandate of the Public Protector is derived from section 182(1) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and the Public Protector Act, to promote accountability, transparency and fairness in the public sector. The Public Protector continuously reviews and monitors the information gathered from complaints lodged with the office, with the view to identifying the most probable underlying root causes of the problems, complaints and undesired events within relevant public bodies or authorities.
- 1.4 The aim is to formulate and establish corrective actions to at least mitigate, if not eliminate, those root causes and to produce significant long-term improvements in the public administration.
- 1.5 The point of departure is that, any complaint might be a symptom of an underlying organisational failure, *inter alia*, in areas such as systems, procedures and human error. By addressing the underlying deficiencies in the systems that are the causes of the complaints, the Public Protector aims to reduce the number of individual complaints, in turn, working

collaboratively with stakeholders to get the problems resolved and provide constructive feedback that will enable it to address the root causes of complaints and prevent recurrence.

2. THE COMPLAINT

2.1 The investigation originates from a complaint received by the Public Protector from Mr Tshivhe Ralushai (the Complainant) on 11 June 2020 in which he alleged that:

2.1.1 He was a shareholder and director of Tylogix (Pty) Ltd (Tylogix). He co-founded Tylogix with his business partners in December 2012, and the business operates under the name, Exponent Resources (Pty) Ltd, (Exponent Resources), since October 2014.

2.1.2 After lodging a few prospecting right applications for coal with the Department in the Mpumalanga Region from early 2013, through Tylogix, he and his partners were approached by Mr Aubrey Tshivhandekano, the Mpumalanga Regional Manager of the Department;

2.1.3 The manner of approach was solicitation for payments to ensure amongst others, that Tylogix applications are processed quickly and without any hindrances. During that period, Tylogix was one of the few companies that lodged applications to the Department on a monthly basis;

2.1.4 Mr Tshivhandekano first approached him around March/April 2013, at the inaugural Mpumalanga Mining Summit, hosted by the then Minister of Mineral Resources, Ms Susan Shabangu, at the Middleburg Banquet Hall. He turned down the offer but nonetheless, Mr Tshivhandekano, through his influential corrupt activities, allegedly managed to own an equity stake in Tylogix through a proxy company, Malmo Trading (Pty) Ltd;

- 2.1.5 He reported Mr Tshivhandekano's conduct to the Department's former Deputy Director General, Mr Joel Raphela (Mr Raphela) but the matter remained unresolved. He escalated his complaint concerning Mr Tshivhandekano's conduct to the Department's former Director General, Adv Thabo Mokoena (Mr Mokoena), but no investigation was conducted into the matter;
- 2.1.6 During his time as a shareholder and director of Tylogix, he visited the Mpumalanga Regional Office of the Department on a monthly basis to follow up on the status of all his prospecting right applications. During one such visit, on 26 September 2013, he met Mineral Recording Assistant Director, Mr Mpho Mutavhatsindi (Mr Mutavhatsindi) who expressed his willingness to "assist" Tylogix, i.e. give him information in return for cash payments. He declined the offer, but Mr Mutavhatsindi emailed him his home address to show his seriousness and said that he had been involved in a car accident and needed money for his insurance excess;
- 2.1.7 He started having private meetings with Mr Raphela, another central figure in the Delmas Coal history, from 30 July 2015, over the Delmas Coal mining rights. He indicated that Mr Raphela promised to help him to acquire more coal projects and also to fast-track the project managed by Tylogix at the time. He stated that he informed Mr Raphela of Mr Tshivhandekano's stake in Tylogix, but Mr Raphela told him to turn a blind eye as that is how the Department functioned;
- 2.1.8 On 21 May 2018, he visited the Mpumalanga Regional Office unannounced and met Mr Tshivhandekano, Mr N Phasha, the Deputy Director Mine Economics (Mr Phasha) and Mr X Mankayi, the Risk Champion (Mr Mankayi), to request the status of all Tylogix applications, as he had decided to go back into mining. The meeting was hostile and Mr Phasha said that they could not give him any information on Tylogix as he was no longer a director and shareholder. He applied for access to information and it was granted by the Department's Legal Services on 12 June 2018, with reference number 2328AR;

- 2.1.9 During this time, he also requested minutes of the three (3) meetings he had with the Ministry of Mineral Resources on 04 June 2018, 20 November 2018 and 06 March 2019 respectively. The meeting of 04 June 2018 was to report corruption and to ask the Minister of Mineral Resources to get his project back. An official (name not mentioned) in the Ministry undertook to investigate the allegations against Mr Tshivhandekano and provide feedback to him;
- 2.1.10 Since reporting the matter to the Ministry on 04 June 2018, nothing happened and he was told by Mr Sello Helepi (Mr Helepi), the then Special Adviser to the Minister that he should forget about the matter. On 05 June 2019, he addressed an email to Mr Mampuru Koma, in the Ministry informing him that it had been a full year since he formally reported corruption and that neither action had been taken against Mr Tshivhandekano nor a response provided to him;
- 2.1.11 He also requested his lawyers to intervene in the matter, who subsequently wrote to the Ministry on 19 July 2019, requesting an urgent meeting to try and resolve the issues. The request fell on *deaf ears* and he was left with no option but to litigate against the Department on 16 August 2019, a process which he subsequently abandoned and approached the Public Protector for assistance.

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, 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 –

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- (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 provides that the Public Protector has 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 the conduct of state affairs.

3.4. Section 6(9) of the Public Protector Act states that “*except where the Public Protector in special circumstances, within his or her discretion, so permit, 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.*”

3.5. The incident or matter concerned occurred more than two years prior to its reporting. The Public Protector has exercised her discretion in terms of section 6(9) of the Public Protector Act to entertain the complaint based on the following special circumstances as envisaged in Rule 10(1) of the Public Protector Rules in relation to this matter as follows:

Nature of the complaint and seriousness of the allegations

3.5.1 The Complainant alleged that he lodged a complaint on 26 April 2018, with the Department regarding alleged improper conduct by its officials, relating to the issuing of mining permits, mining rights, prospecting rights and other related administrative processes, but no action was taken by the Department to investigate the matter and to take appropriate action. The Complaint was, however, lodged with the Public Protector on 11 June 2020. A period of more than two years had therefore elapsed from the date of occurrence of the

incident to the date of reporting the complaint. The Public Protector considered the allegations as very serious and required intervention. The Public Protector is one of the constitutional institution mandated to ensure that government does not delay to address complaints lodged by members of the public, particularly, where such complaints relate to potential corruption by public officials.

Due consideration of available evidence and other information relating to the incident/event that would enable the Public Protector to successfully investigate the complaint

- 3.5.2 The period that elapsed between the incident and the lodging of the complaint was approximately two years and two months was not so long as to prejudice the investigation as information and relevant officials would still be available to ensure the successful finalisation of the investigation.
- 3.5.3 Furthermore, the Complainant was able to provide supporting evidence that he had lodged a complaint with the Department. The Complainant further provided a copy of an email from Mr Lekorotsoana, Chief of Staff in the Department, (Mr Lekorotsoana), dated 07 June 2019, addressed to him, in which he made an undertaking that he would update him regarding the status of his complaint.
- 3.5.4 The Complainant also alleged that the matter remained unresolved when he lodged his complaint with the Public Protector.
- 3.5.5 The aforementioned considerations necessitate that the Public Protector investigate the alleged misconduct of the state organs and/or its officials to determine the merits of the matter.

4. ISSUE IDENTIFIED FOR INVESTIGATION

4.1 Based on the analysis of the complaint and the allegations contained therein, the following issue was identified for investigation:

4.1.1 Whether the Department of Mineral Resources and Energy unduly delayed to investigate complaints of improper conduct by the officials of the Department relating to the issuing of mining permits, mining rights, prospecting rights and other related administrative processes, if so; whether such conduct 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.

5. THE INVESTIGATION

5.1 The Investigation Process

5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution, read with sections 6 and 7 of the Public Protector Act. The Public Protector Act confers on the Public Protector the sole discretion to determine the format and procedure to be followed in conducting an investigation.

5.1.1.1 The investigation process included written correspondence with officials of the Department and relevant stakeholders, the analysis and evaluation of the relevant documents and information obtained during the investigation and the consideration and application of the relevant laws and prescripts.

5.1.1.2 All relevant documents and correspondence were obtained and analysed. Relevant laws, policies and related prescripts were also considered and applied throughout the investigation.

5.2 Approach to the investigation

5.2.1 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 improper conduct and/or maladministration?
- (d) In the event of maladministration or improper conduct, what would it take to remedy the wrong or to place the Complainant as close as possible to where he would have been but for the maladministration or improper conduct?

5.2.2 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced during the investigation. In this particular case, the factual enquiry principally focused on whether the Department unduly delayed to investigate complaints lodged by the Complainant of improper conduct by its officials.

5.2.3 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department to prevent maladministration or improper conduct.

5.3 The Key Sources of Information

5.3.1 Complaint, dated 09 June 2020 received from the Complainant;

5.3.2 Email from the Complainant providing further information, dated 15 June 2020;

5.3.3 Allegations letter from the Public Protector to Mr Mokoena, dated 04 March 2021;

5.3.4 Reminder letter from the Public Protector to Mr Mokoena, dated 06 May 2021;

5.3.5 Subpoena issued by the Public Protector to Mr Mokoena, dated 19 July 2021;

- 5.3.6 Copy of the Department's investigation report titled "*Department of Mineral Resources and Energy: Ministerial Investigating Task Team (MITT) Report 2018 – Investigation into Allegations of Fraud, Corruption and Maladministration in the Issuing of Mining Permits, Mining Rights, Prospecting Rights and other Related Administrative Processes (At the Affected Regional Offices of the Department of Mineral Resources and Energy)*" delivered to the Public Protector on 31 August 2021;
- 5.3.7 Letter from the Public Protector to the Senior Manager of the Companies and Intellectual Property Commission (CIPC), Mr Andre Oosthuizen (Mr Oosthuizen), dated 26 April 2022;
- 5.3.8 Letter from the Public Protector to the Director General of the Department of Home Affairs: Mr L T Makhode (Mr Makhode), dated 09 June 2022;
- 5.3.9 Letter from the Public Protector to Mr Tshivhandekano, dated 09 June 2022;
- 5.3.10 Email received from the CIPC, dated 20 May 2022;
- 5.3.11 Letter received from Mr Makhode, dated 30 June 2022;
- 5.3.12 Affidavit received from Mr Tshivhandekano, dated 22 June 2022;
- 5.3.13 Letter from the Public Protector to the Director General of the Department: Mr Mbele (Mr Mbele), dated 17 September 2022; and
- 5.3.14 Letters received from Mr Mbele, dated 30 November 2022 and 01 February 2023, respectively.

5.4 **Meeting**

- 5.4.1 Virtual meeting between the Public Protector Investigation Team and Mr Mbele on 12 December 2022.

5.5 **Legislation and other prescripts**

- 5.5.1 The Constitution of the Republic of South Africa, 1996;
- 5.5.2 The Public Protector Act, 1994; and
- 5.5.3 The White Paper on Transforming Public Service Delivery ("Batho Pele Principles"), 1997.

6. DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS

6.1 Whether the Department of Mineral Resources and Energy unduly delayed to investigate complaints of improper conduct by the officials of the Department relating to the issuing of mining permits, mining rights, prospecting rights and other related administrative processes, if so; whether such conduct 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

Common cause issues

- 6.1.1 On 04 June 2018, the Complainant lodged a complaint of improper conduct with the Department against its officials relating to the issuing of mining permits, mining rights, prospecting rights and other related administrative processes.
- 6.1.2 In June 2018, the Minister of Mineral Resources and Energy, Mr Gwede Mantashe (the Minister) appointed and mandated the MITT to establish the veracity of the allegations of fraud, corruption and maladministration in the processing of applications and the issuing of mining permits, prospecting rights, mining rights and other related administrative transactions in its regional offices.
- 6.1.3 The investigation was commissioned by the Minister following complaints and allegations made during his interactive engagements with the different stakeholders of the Department, during the time when the Minister was doing roadshows for the mining charter.

Issue in dispute

- 6.1.4 The issue for the Public Protector's determination is whether the Department unduly delayed to investigate complaints lodged by the Complainant regarding improper conduct by its officials, relating to the issuing of mining permits, mining rights, prospecting rights and other related administrative processes.

The Complainant's version

- 6.1.5 The Complainant stated that on 26 April 2018, he lodged a complaint of improper conduct with the Department relating to its officials, but no action was taken by the Department to address the complaint.
- 6.1.6 On 04 June 2018, he escalated his complaint to the Ministry of Mineral Resources and Energy. He contends that the Ministry, also failed to take action to address his complaint.

Mr Mokoena's response

- 6.1.7 On 04 March 2020, the Investigation Team sent an allegations letter to Mr Mokoena, the Department's then Director General, but no response was received.
- 6.1.8 On 19 July 2021, the Public Protector issued and served Mr Mokoena with a subpoena, based on his prior failure to respond to the allegations letter and reminders.
- 6.1.9 On 31 August 2021, Mr Mokoena submitted to the Public Protector a signed copy of the Department's internal investigation report titled: "*Investigation into allegations of fraud, corruption and maladministration in the issuing of mining rights, prospecting rights and other related administrative processes at the affected Regional Offices of the Department of Mineral Resources, 2018.*"

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- 6.1.10 According to paragraph 2.1 of the report, the scope of the investigation focused on the various allegations, complaints and/or queries, relating to the processing of applications for prospecting and mining rights, mining permits, environmental authorizations and other such related administrative transactions.
- 6.1.11 The investigation included checking compliance with the requirements of the Minerals and Petroleum Resource Development Act (MPRDA), National Environmental Management Act, 1998 (NEMA), and any other relevant legislation. The aim of the investigation was to determine whether there is merit to any or all of the allegations, complaints and/or queries. More specifically, the investigation was to establish whether:
- (a) There were any irregularities in the awarding of mining permits, mining rights, prospecting rights and related processes;
 - (b) There was any collusion and/or improper conduct between departmental official/s and prospective miners or applicants;
 - (c) There was any prejudice or potential prejudice suffered by the Department as a result of the above irregularities and/or improper conduct, if any, flowing from the matters under investigation;
 - (d) There was consistency and even-handedness in the manner that departmental and other government officials dealt with these processes;
 - (e) There were any government officials within or outside the Department that have conducted themselves in a manner that has prejudiced or has the potential to prejudice the processes set out in applicable legislation;

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- (f) The management and oversight role played by the officials of the Department has in anyway impacted negatively on the implementation of the MPRDA and NEMA any other related legislation;
 - (g) The overall management and institutional arrangements pertaining to the administration of the MPRDA were appropriate and whether any changes to the operational methods, procedures, policies, institutional and/or management arrangements are required in order to improve the effectiveness, efficiency and impact;
 - (h) There were no fraud related transactions within the Region; and
 - (i) Based on findings, make appropriate recommendations.
- 6.1.12 The report found in relation to collusion in the issuing of rights and permits that there was evidence of collusion between the officials of the Department and specific external parties in a manner that excluded and/or prejudiced access to opportunities for other interested parties in an unfair, unlawful and unethical manner. It found that there were cases where mining opportunities had been taken from legitimate applicants or prospectors and irregularly given to other parties;
- 6.1.13 The investigation also established that there were officials in the Regional Offices who were leaking mining rights data to interested external parties. The rights and permits renewals and rejections trend analysis conducted, indicated that soon after rights and/or permits expiry and applications rejection, application for these areas and their corresponding rights would be submitted. The prevalence rate of this trend indicated a strong possibility of “insider trading” practice by some officials within the Regional Offices;
- 6.1.14 With reference to Tylogix or Exponent Resources, the investigation found that there was a strong allegation that there were senior officials of the Mpumalanga Regional Office who had colluded by providing information to Sumo Coal/Tylogix regarding the fact that Delmas Coal mining rights had

lapsed, yet the same Office had failed or neglected to perform its regulatory function to prevent or stop the continuation of mining operations where a mining right had lapsed; and

- 6.1.15 The investigation also found that there was compelling evidence implicating a senior official in the Mpumalanga Regional Office in collusive conduct and covert participation in mining shareholding, related to operations that the Office was regulating or held privileged and/or confidential business intelligence (information). Furthermore, it was found that, if proven, these allegations constituted gross misconduct and that further detailed forensic investigation on this matter was imperative.
- 6.1.16 The report made the following recommendations to the Department:
- (a) Consider establishing a team to investigate all old mining right conversions processes, with an emphasis in the Limpopo region;
 - (b) Establish an independent legal team to reconsider all appeals and investigate the root cause and role of the employees in such appeals. The scope to consider all requests for Promotion of Access to Information Act, 2000 (PAIA);
 - (c) Reconcile records of mining and prospecting rights issued and investigate any discrepancies;
 - (d) Consider a Fraud hotline relating to mining applications and follow up on all incidents;
 - (e) Suspend, charge and discipline responsible officials with misconduct relating to poor performance and those identified in collusion in the processing of applications;

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- (f) Establish an interim management team (IMT) for affected regional offices and mandate them to perform managerial duties for regional offices as prescribed in relevant legislation and regulations;
 - (g) Implement an institutional and service delivery improvement intervention to strengthen the Department's strategic and operational capabilities to deliver on its mandate effectively, efficiently and ethically, focusing on bringing about improvement in business process and service management;
 - (h) Design and implement business process digitization and modernization with focus on the South African Mineral Resources Administration (SAMRAD) application, its process and record management automation. The Council of Geoscience should be considered to re-design the system;
 - (i) Commission a forensic investigation into fraud and corruption cases already identified; and
 - (j) Appoint an audit or consulting firm to investigate and confirm the validity, authenticity and completeness of all financial provisions in the Regional offices on an urgent basis.

The Department's response

6.1.17 On 01 November 2022, the Investigation Team wrote to Mr Mbele, requesting supporting documentation in relation to the implementation of the recommendations of the report. On 12 December 2022, a meeting was held with Mr Mbele to discuss the matter.

6.1.18 During the meeting, Mr Mbele requested an extension of time in which to provide a status update on the implementation of the recommendations of the report, as he had recently been appointed to the position of Director General. The request was granted to provide a status update by 31 January 2023.

6.1.19 On 01 February 2023, Mr Mbele submitted a written response regarding the implementation of the recommendations of the report and stated that:

- (a) As the new Director General, he familiarised himself with the MITT report and also engaged with the MITT report drafter who provided him with context to the investigation and report;
- (b) The conversion of old order mining rights would be reviewed by the Mining Titles division of the Department, which is independent of all Regional Offices. The appeals were no longer processed at the Regional Offices but managed independently by Legal Services, within the Department. Any aggrieved party could approach a Court of law for recourse;
- (c) The Department's Mining Titles division was instructed to ensure that mining and prospecting rights that had been executed were registered. A timeframe of six (6) months was allocated to carry out this task;
- (d) The Licensing and Law Enforcement division of the Department had been separated with effect from 03 January 2023. The Law Enforcement division now reports to a different Deputy Director General. This will ensure that the Licensing division does not monitor and enforce its own decisions. The capacity will be increased in the Compliance and Enforcement division, in consultation with the National Treasury;
- (e) Taking into consideration that the time had lapsed and that changes were made in various positions, the Department is faced with a challenge to charge employees for poor performance in responsibilities that they no longer held. However, performance is being monitored and targets are set. The processing of applications has timeframes, which is mandatory in the performance agreements of the Regional Managers;

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- (f) The collusion in processing of applications was a systemic lapse in oversight, which led to a culture of wrong doing. The Department is of the view that changing the culture whilst following up on specific cases where there is evidence may achieve better outcomes;
- (g) A directive was issued to all users of the SAMRAD system to ensure that information is loaded within a 24 hour period, and failure to update constitutes misconduct. In addition, the Department had commenced through SITA, a process of procuring a new mining licensing system which will be temper proof. The Council for Geoscience was part of the team that investigated and advised on the most suitable licensing system;
- (h) The IMT, as recommended by the MITT, was implemented for the Mpumalanga Regional Office for a 12-month period and the office was managed by personnel from the Head Office. Leadership change was effected for both North West and Northern Cape Regional offices in 2019;
- (i) The Service Delivery Improvement Plan is currently in place in the Department and will be extended into licensing division due to a major deficiency;
- (j) Owing to effluxion of time and changes in personnel, the Department is of the view that only those cases that have been referred to Law Enforcement authorities should be pursued as a matter of urgency;
- (k) There is a general failure in administration and as such, the tightening of controls and inculcating new ethos is a main focus and the Department's Internal Audit is conducting an audit and the recommendation thereof will be implemented; and
- (l) A forensic investigation was conducted and the report handed over to the Department in December 2022. The Department is in the process of

appointing legal counsel with the aim of attending to the findings and recommendations thereof.

Records of disciplinary hearing of Mr Tshivhandekano

- 6.1.20 The Public Protector determined from the records of the disciplinary hearing of Mr Tshivhandekano that he was charged with five (5) counts of misconduct and was found not guilty.

Applicable law

The Constitution

- 6.1.21 Section 195(1) of the Constitution provides that public administration in every sphere of government must be underpinned by amongst others, the following democratic values and principles-

- (1) *“Public administration must be governed by the democratic values and principles enshrined in the Constitution, including the following principles:*
- (a) *A high standard of professional ethics must be promoted and maintained;*
- (b) *...;*
- (e) *...; and*
- (f) *Public administration must be accountable.”*

The White Paper on Transforming Public Service Delivery (Batho Pele Principles), 1997

- 6.1.22 The Batho Pele Principles inform the manner in which service delivery has to be dispensed within the public service.
- 6.1.23 Principle 7 of the Batho Pele Principles provides for openness and transparency, citizens need to know about how decisions are reached.

Analysis of the evidence

- 6.1.24 The evidence obtained by the Public Protector indicate that the Complainant lodged a Complaint on 26 April 2018, with the Department. He proceeded to escalate his complaint to the Ministry on 04 June 2018, when the Department had failed to address his complaint.
- 6.1.25 The Ministry responded to various allegations of impropriety in the Department by commissioning an investigation which was carried out by the MITT in 2018. A report with findings and recommendations was released in the same year.
- 6.1.26 When the matter was raised with Mr Mbele at the meeting held on 12 December 2022, he could not provide the status on the implementation of the recommendations in the MITT and requested an extension to study the report and further consult with the drafter thereof.
- 6.1.27 In his response dated 01 February 2023, Mr Mbhele advised that the Department has partly implemented some of the recommendations in the MITT report as follows:
- (a) The appeals are no longer processed at the Regional Offices but are managed independently by Legal Services within the Department;
 - (b) The Licensing and Law Enforcement division of the Department has been separated with effect from 03 January 2023. The Law Enforcement division now reports to a different Deputy Director General; and
 - (c) The IMT, as recommended by the MITT, was implemented for the Mpumalanga Regional Office for a 12-month period and the office was managed by personnel from the Head Office. Leadership change was effected for both North West and Northern Cape Regional offices in 2019.

6.1.28 The Public Protector noted in the response submitted from Mr Mbele that the Department had commenced with the implementation of the outstanding recommendations, these measures were only taken after the matter was raised with the Department by the Public Protector. These recommendations included the following:

- (a) The Department's Mining Titles division was instructed to ensure that mining and prospecting rights that had been executed are registered. A timeframe of six (6) months has been allocated to carry out this task;
- (b) The collusion in processing of applications was a systemic lapse in oversight, which led to a culture of wrong doing. The Department is of the view that changing the culture whilst following up on specific cases where there is evidence may achieve better outcomes;
- (c) A directive was issued to all users of the SAMRAD system to ensure that information is loaded within a 24 hour period, and failure to update constitutes misconduct. In addition, the Department had commenced through SITA, a process of procuring a new mining licensing system which will be temper proof. The Council for Geoscience was part of the team that investigated and advised on the most suitable licensing system;
- (d) The Service Delivery Improvement Plan is being extended into licensing division;
- (e) There is a general failure in administration and as such, the tightening of controls and inculcating new ethos is a main focus and the Department's Internal Audit is conducting an audit and the recommendation thereof will be implemented; and
- (f) A forensic investigation was conducted and the report handed over to the Department in December 2022. The Department is in the process of

appointing legal counsel with the aim of attending to the findings and recommendations thereof.

Conclusion

- 6.1.29 Based on the evidence before the Public Protector, it is evident that the Complainant escalated his complaint to the Ministry within two months after lodging it with the Department.
- 6.1.30 The Ministry commissioned an investigation by the MITT which made recommendations. Therefore, it cannot be concluded that the Department unduly delayed to investigate the complaints of improper conduct by the officials of the Department relating to the issuing of mining permits, mining rights, prospecting rights and other related administrative processes.
- 6.1.31 Whilst the Public Protector notes the delay by the Department to implement the recommendations in the MITT report, however, through the intervention of the Public Protector the remaining recommendations have either been implemented or measures have been put in place to ensure finalisation thereof.

7. OBSERVATIONS

- 7.1 In light of the above information and evidence, the Public Protector makes the following observations:
- 7.1.1 Even though the Minister commissioned the investigation shortly after the Complainant lodged his complaint with the Department, the implementation of the recommendations of the report referred to in paragraph 6.1.27 above was only done after the intervention by the Public Protector.

8. INTERVENTION

- 8.1 It is therefore recommended, in terms of section 6(4)(c)(i) of the Public Protector Act, that:

The Minister of Mineral Resources and Energy

- 8.1.1 Takes note of this report and the delay to implement the recommendations of the MITT report, relating to the investigation that he commissioned in June 2018.

The Director General

- 8.1.2 Take steps, within ninety (90) calendar days to ensure that the outstanding recommendations are implemented; and
- 8.1.3 Within one hundred and twenty (120) calendar from the date of this report provide a close out report to the Public Protector indicating the implementation of the recommendations.

9. CONCLUSION

- 9.1 The Public Protector considers this matter as finalised and cannot take it any further. Should any party wish to challenge this decision they are at liberty to explore legal remedies at their disposal.



ADV KHOLEKA GCALEKA
ACTING PUBLIC PROTECTOR OF
THE REPUBLIC OF SOUTH AFRICA
DATE: 31 MARCH 2023

Assisted by: Ms Ponatshego Mogaladi
Executive Manager: Investigation