

**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**



**REPORT NUMBER: 38 OF 2023/2024**

**ISBN NUMBER: 978-1-7764955-1-1**

**INVESTIGATION INTO ALLEGATIONS OF FAILURE BY THE FUNCTIONARIES OF  
THE DEPARTMENT OF MINERAL RESOURCES AND ENERGY TO ATTEND TO  
AND RESOLVE A COMPLAINT BY THE SWARTKOPFONTEIN COMMUNITY  
RELATING TO MINING ACTIVITIES BY MANGANESE MINERALS (PTY) LTD**

<b>TABLE OF CONTENTS</b>		
<b>ITEM</b>	<b>DESCRIPTION</b>	<b>PAGE NO.</b>
	<b>LIST OF ACRONYMS AND ABBREVIATIONS</b>	<b>3</b>
	<b>EXECUTIVE SUMMARY</b>	<b>4</b>
<b>1</b>	<b>INTRODUCTION</b>	<b>12</b>
<b>2</b>	<b>THE COMPLAINT</b>	<b>12</b>
<b>3</b>	<b>POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR</b>	<b>15</b>
<b>4</b>	<b>ISSUES IDENTIFIED FOR INVESTIGATION</b>	<b>16</b>
<b>5</b>	<b>THE INVESTIGATION</b>	<b>16</b>
<b>6</b>	<b>THE DETERMINATION OF ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS</b>	<b>20</b>
<b>7</b>	<b>FINDINGS</b>	<b>46</b>
<b>8</b>	<b>REMEDIAL ACTION</b>	<b>49</b>
<b>9</b>	<b>MONITORING</b>	<b>50</b>

## LIST OF ACRONYMS AND ABBREVIATIONS

ACRONYMS/ ABBREVIATIONS	DESCRIPTION
<b>Constitution</b>	Constitution of the Republic of South Africa, 1996
<b>DEDECT</b>	North West Provincial Department of Economic Development, Environment, Conservation and Tourism
<b>Department</b>	North West Provincial Department of Education, Ngaka Modiri Molema District Office
<b>DMRE</b>	Department of Mineral Resources and Energy
<b>DMRE: NW Region</b>	Department of Mineral Resources and Energy: North West Region
<b>EIA</b>	Environmental Impact Assessment
<b>LEDP</b>	Local Economic Development Project
<b>MHSA</b>	Mine Health and Safety Act, 1996
<b>MPRDA</b>	Mineral & Petroleum Resources Development Act, 2002
<b>NW Region</b>	North West Region
<b>Public Protector</b>	Public Protector of the Republic of South Africa
<b>SLP</b>	Social Labour Plan

## **EXECUTIVE SUMMARY**

- (i) This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (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, 1994 (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 an investigation into the alleged failure by the functionaries of the Department of Mineral Resources and Energy: North West Region (DMRE: NW Region) to attend to and resolve a complaint lodged during March 2019, by the Swartkopfontein Community, relating to the mining activities of Manganese Minerals (Pty) Ltd (Manganese Minerals).
- (iii) The investigation originates from a complaint lodged on 19 September 2019 with the North West Provincial Office of the Public Protector, by Tebogo Motse Attorneys (the Complainant) on behalf of the Community of Swartkopfontein village.
- (iv) In the main, the Complainant alleged that:
  - (a) Manganese Minerals is operating a mining business at Swartkopfontein Village, situated near Zeerust, within the Ramotshere-Moiloa Local Municipality, in the North West Province. As a result of these mining operations:
    - (aa) Some of the residents' houses situated near the mine have developed cracks. On 24 and 30 April 2019, consultations were held between the

- owners of the affected houses and Manganese Minerals to consider relocating several households situated near the mining area;
- (bb) Some of the residents incurred losses as livestock, particularly goats, fell into the mining holes and some died after consuming contaminated mine water because of a lack of proper fencing around the mining area; and
- (cc) The community members are exposed to dust during mining operations, which affects their health and well-being.
- (b) During 2010, Manganese Minerals submitted a Social and Labour Plan (SLP) to DMRE: NW Region, which amongst others stipulated that Manganese Minerals would build a school and a community hall for the community of Swartkopfontein;
- (c) Manganese Minerals failed to implement and deliver according to the SLP, but provided reports to DMRE: NW Region indicating that the community hall and the school were built, which reports were false;
- (d) During 2019, the Community of Swartkopfontein approached DMRE: NW Region complaining about the conduct of Manganese Minerals, whereupon the DMRE: NW Region investigated their complaints and issued a report, dated 06 May 2019. The DMRE: NW Region report recommended that Manganese Minerals should:
- (aa) Relocate the identified houses which were in close vicinity of the mining operations;
- (bb) Erect a fence around the mining area to deter the community's livestock from gaining access to the mining area; and
- (cc) To submit copies of dust monitoring reports for the last three (03) quarters.

- (e) Through a letter dated 09 May 2019, the DMRE: NW Region gave Manganese Minerals a period of twenty-one (21) days to respond to the directives issued by the Inspector. However, Manganese Minerals failed to relocate the houses identified and only erected a fence, which was inadequate as the livestock still managed to gain access to the mining area.
- (f) Despite the community informing the DMRE: NW Region that Manganese Minerals had not implemented the directives, DMRE: NW Region has not taken any action against Manganese Minerals to ensure compliance.
- (g) The Complainant requested an investigation by the Public Protector to ensure that:
  - (aa) Manganese Minerals relocates the housing units identified in the 2019 DMRE: NW Region report;
  - (bb) Manganese Minerals erects a proper and effective fence which will deter the community's livestock from gaining access to the mining area;
  - (cc) Manganese Minerals should ensure that the affected families are tested for any possible lung infections; and
  - (dd) The SLP submitted by Manganese Minerals is implemented, which includes building a school and a community hall for the community of Swartkopfontein.
- (v) Based on the analysis of the complaint, the following issues were considered and investigated:
  - (i) Whether the functionaries of DMRE: North West Region failed to assist and resolve a complaint by the community of Swartkopfontein village relating to

the mining activities of Manganese Minerals, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act; and

- (ii) Whether the functionaries of DMRE: North West Region failed to ensure that Manganese Minerals delivers and reports on its social responsibility as per the approved 2011 Social and Labour Plan, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act.
  
- (vi) The investigation was conducted in terms of section 182(1) of the Constitution and section 6(4) of the Public Protector Act. It included an analysis of all the relevant documents, application of relevant laws, case law and related prescripts.
  
- (vii) On 30 January 2024 and 01 February 2024, notices in terms of section 7(9)(a) of the Public Protector Act, (section 7(9) notices) were delivered to Mr Jacob Mbele (Mr Mbele), the Director General of the Department of Mineral Resources and Energy; Mr Phumudzo Nethwadzi (Mr Nethwadzi), NW DMRE Regional Manager; Mr Tebogo Motse (the Complainant), and Ms Nancy Schutte (Ms Schutte), the CEO of Manganese Minerals respectively, to afford them an opportunity to respond to the likely adverse findings and proposed remedial action. Section 7(9)(a) provides that persons implicated in an investigation by the Public Protector, are to be afforded an opportunity to make representations regarding the likely adverse findings and remedial action.
  
- (viii) An email dated 30 January 2024 acknowledging receipt of the section 7(9) notice was received from Ms Mamabefu Modipa on behalf of Mr Mbele, the Director General of the Department. Another email dated 01 February 2024

acknowledging receipt of the section 7(9) notice was received from Ms Schutte.

- (ix) A response from Mr Mbele was received on 13 February 2024. The contents were noted and considered by the Public Protector.
- (x) No responses were received from Mr Nethwadzi, Ms Schutte, and Mr Motse.
- (xi) Having regard to the evidence and regulatory framework determining the standards that the DMRE: North West Region should have complied with, the following findings are made:
  - (i) **Whether the functionaries of DMRE: North West Region failed to assist and resolve a complaint by the community of Swartkopfontein village relating to the mining activities by Manganese Minerals, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**
  - (aa) The allegation that the functionaries of DMRE: North West Region failed to assist and/or resolve a complaint by the community of Swartkopfontein village, relating to the mining activities of Manganese Minerals, is **unsubstantiated**.
  - (bb) Mr. Nethwadzi received a complaint from the community of Swartkopfontein relating to damage caused by the mining operations of Manganese Minerals, in their area. The complaint was investigated by DMRE: NW Region and it was found that certain issues raised by the community were well founded.



- (cc) The DMRE: NW Region then formally requested Manganese Minerals to appoint a Structural Engineer to determine whether houses should be relocated; provide a report on how the mine plans to fence off the mining operation; and to submit copies of dust reports for the three quarters from April 2018 to March 2019. Manganese Minerals issued a report outlining the corrective action to be undertaken to address the complaint.
- (dd) On 06 June 2019, Manganese Minerals furnished its report to the DMRE: NW Region on the measures it had taken to implement the corrective steps, including erecting a fence and appointing a Structural Engineer and an independent environmental specialist to determine the impact of dust created during mining operations, on the community. The report by the Structural Engineer established that the cracks at the houses were not as a result of mining activities. Manganese Minerals undertook to consult with the community and relocate the houses that were identified to be in close proximity to the mining operations, once operations resume.
- (ee) The Public Protector notes that the mine has not been operational since February 2019.
- (ff) The conduct of the functionaries of DMRE: North West Region in this regard does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, as the DMRE: North West Region assisted and investigated the complaint received from the community members.
- (ii) **Whether the functionaries of DMRE: North West Region failed to ensure that Manganese Minerals delivers and reports on its social responsibility as per the approved 2011 Social and Labour Plan, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act**

- (aa) The allegation that the functionaries of DMRE: NW Region failed to ensure that Manganese Minerals delivers on their social responsibility as per their approved 2011 Social and Labour Plan, **is substantiated**.
- (bb) In terms of the approved 2011 SLP, Manganese Minerals committed to improve the school infrastructure at Zhakheleni Intermediate School, Swartkopfontein. This project was intended to commence during the year 2010 and to be completed in 2014. The school improvement project only started in October 2019, almost eight (08) years after the approved 2011 SLP and it is still not fully completed.
- (cc) Section 25(2)(h) of the MPRDA, read with Regulations 45 of the MPRDA Regulations, compels Manganese Minerals to submit annual reports on the implementation of its approved 2011 SLP to DMRE: NW Region. For the period 2011 to 2016 DMRE: NW Region failed to ensure that Manganese Minerals submits its SLP annual reports and to deliver on their social responsibility, in this instance, the school infrastructure improvement project.
- (dd) The DMRE: NW Region failed to ensure that Manganese Minerals submits its SLP annual reports and delivers on their social responsibility timeously, in terms of Regulation 45 of the MPRDA Regulations, and this conduct therefore constitutes improper conduct as envisaged in section 182(1) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, 1994.
- (xii) The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution, are the following:

### **The Director General**

- (aa) Take cognizance of the findings and remedial action contained in this report and ensure that the Regional Manager enforces compliance with the directive issued in terms of section 93(1)(b)(i) of MPRDA, dated 04 March 2019.
  
- (bb) Develop a monitoring tool in respect of which all DMRE Regional Managers, after consultation with communities involved, submit annual reports to the Director General, on:
  - (a) Progress by the Mines on the implementation of the SLP's in terms of regulation 45 of MPRDA; and
  
  - (b) Measures developed by the Mines to ensure compliance in terms of section 5(2)(b) of MHSA.

### **The Regional Manager for DMRE: North West Regional Office**

- (cc) Within **ninety (90) calendar days** of the date of this report, ensure that Manganese Minerals complies with the directive issued in terms of section 93(1)(b)(i) of MPRDA, dated 04 March 2019.

## **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) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act).

1.2 This report is submitted to the following persons in terms of section 8(1) read with section 8(3) of the Public Protector Act, which empowers 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, where applicable:

1.2.1 Mr Jacob Mbele, the Director General for the Department of Mineral Resources and Energy;

1.2.2 Mr Phumudzo Nethwadzi, the DMRE: NW Regional Manager;

1.2.3 Ms Nancy Schutte, the CEO of Manganese Minerals, and

1.3 A copy of the report is also provided to the Complainant.

1.4 The report relates to an investigation into the alleged failure by the functionaries of the Department of Mineral Resources and Energy: North West Region (DMRE: NW Region) to attend to and resolve a complaint lodged by the Swartkopfontein Community during March 2019, about the mining activities of Manganese Minerals (Pty) Ltd (Manganese Minerals).

## **2. THE COMPLAINT**

2.1 The investigation originates from a complaint lodged on 19 September 2019, with the Rustenburg Regional Office of the Public Protector (the

Public Protector), by Tebogo Motse Attorneys (the Complainant) on behalf of the Swartkopfontein community.

2.2 The Complainant alleged, *inter alia*, that:

2.2.1 Manganese Minerals is operating a mining business at Swartkopfontein Village, situated near Zeerust, within the Ramotshere-Moiloa Local Municipality, in the North West Province. As a result of these mining operations:

2.2.1.1 Some of the residents' houses situated near the mine have developed cracks. On 24 and 30 April 2019, consultations were held between the owners of the affected houses and Manganese Minerals to consider relocating several households situated near the mining area;

2.2.1.2 Some of the residents incurred losses as livestock, particularly goats, fell into the mining holes and some died after consuming contaminated mine water because of a lack of proper fencing around the mining area; and

2.2.1.3 The community members are exposed to dust during mining operations, which affects their health and well-being.

2.2.2 During 2010, Manganese Minerals submitted a Social and Labour Plan (SLP) to DMRE: NW Region, which amongst others stipulated that Manganese Minerals would build a school and a community hall for the community of Swartkopfontein;

2.2.3 Manganese Minerals failed to implement and deliver according to the SLP, but provided reports to DMRE: NW Region indicating that the community hall and the school were built, which reports were false;

- 2.2.4 During 2019, the community of Swartkopfontein approached DMRE: NW Region complaining about the conduct of Manganese Minerals, whereupon the DMRE: NW Region investigated their complaints and issued a report, dated 06 May 2019. The DMRE: NW Region report recommended that Manganese Minerals should:
- 2.2.4.1 Relocate the identified houses which were in close vicinity of the mining operations;
  - 2.2.4.2 Erect a fence around the mining area to deter the community's livestock from gaining access to the mining area; and
  - 2.2.4.3 To submit copies of dust monitoring reports for the last three (03) quarters.
- 2.2.5 Through a letter dated, 09 May 2019, the DMRE: NW Region gave Manganese Minerals a period of twenty-one (21) days to respond to the directives issued by the Inspector. However, Manganese Minerals failed to relocate the houses identified and only erected a fence, which was still inadequate as the livestock still managed to gain access to the mining area.
- 2.2.6 Despite the community informing the DMRE: NW Region that Manganese Minerals had not implemented the directives, DMRE: NW Region has not taken any action against Manganese Minerals to ensure compliance.
- 2.3 The Complainants requested an investigation by the Public Protector to ensure that:
- 2.3.1 Manganese Minerals relocates the housing units identified in the 2019 DMRE: NW Region report;
  - 2.3.2 Manganese Minerals erects a proper and effective fence which will deter the community's livestock from gaining access to the mining area;

- 2.3.3 Manganese Minerals should ensure that the affected families are tested for any possible lung infections; and
- 2.3.4 The SLP submitted by Manganese Minerals is implemented, which includes building a school and a community hall for the community of Swartkopfontein.

### **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) directs 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 The DMRE is an organ of state as envisaged in section 239 of the Constitution and its conduct amounts to conduct in state affairs, as a result, the Public Protector is satisfied that the complaint falls within its competency to investigate as envisaged in section 182(1)(a) of the Constitution and section 6(4) of the Public Protector Act.

#### **4. ISSUES IDENTIFIED FOR INVESTIGATION**

- 4.1 Based on the analysis of the complaint, the following issues were identified to inform and focus the investigation:

4.1.1 Whether the functionaries of DMRE: North West Region failed to assist and resolve a complaint by the community of Swartkopfontein village relating to the mining activities by Manganese Minerals, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994; and

4.1.2 Whether the functionaries of DMRE: North West Region failed to ensure that Manganese Minerals delivers and reports on its social responsibility as per the approved 2011 Social and Labour Plan, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994.

#### **5. THE INVESTIGATION**

##### **5.1 Methodology**

- 5.1.1 The investigation is conducted in terms of section 182 of the Constitution read with 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 how to investigate with due regard to the circumstances of each case.

## **5.2 Approach to the Investigation**

5.2.1 The approach to the investigation included the exchange of documents, analysis of the relevant documentation and 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 improper conduct or maladministration?
- (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. Evidence is evaluated and a determination is made on what happened based on a balance of probabilities. In this case, the factual enquiry principally focused on whether the alleged conduct of the functionaries of DMRE was inconsistent with the applicable prescripts.

5.2.4 The enquiry regarding what should have happened, focuses on the law and/or rules that regulate the standards that should have been met by the functionaries of DMRE: North West Region in the execution of their duties in relation to the subject of the complaint.

## 5.3 Key sources of information

### 5.3.1 Documents and Correspondence

- 5.3.1.1 Manganese Minerals' Social and Labour Plan, dated 15 January 2010 (2011 Approved SPL);
- 5.3.1.2 Manganese Minerals' Social and Labour Plan Annual Report: 2018 dated 16 November 2018;
- 5.3.1.3 Manganese Minerals' Letter to affected Community members titled "*Construction of Your House*" signed by Ms. Schutte, dated 18 April 2019;
- 5.3.1.4 DMRE: North West Regional Office's letter to the Swartkopfontein Community, dated 24 April 2019;
- 5.3.1.5 DMRE: North West Regional Office's report titled "*Complaint Inspection Report for Manganese Minerals (Pty) Ltd...*" compiled by Mr. C Tshisevhe dated 30 April 2019 (the Inspection Report);
- 5.3.1.6 Letter from DMRE: North West Regional Office's to Swartkopfontein Community dated 09 May 2019 (Letter on Inspection Outcome);
- 5.3.1.7 Report from Manganese Minerals' on "*Inspection Conducted on 30 April 2019*" to DMRE: North West Regional Manager – Mineral Regulation Mr. Ndlelenhle Zindela, dated 06 June 2019 (Progress Report On Implementation of Recommendation);
- 5.3.1.8 Agreement between Manganese Minerals and Swartkopfontein Community dated 30 July 2019 (Agreement);
- 5.3.1.9 Complaint form from Mr. T Motse, dated 19 September 2019;
- 5.3.1.10 Letter from Mr. Nethwadzi to Public Protector dated 22 January 2020;
- 5.3.1.11 Letter from Public Protector to Mr. Nethwadzi, dated 24 January 2020;
- 5.3.1.12 Letter from Mr. Nethwadzi to Public Protector, dated 26 January 2020;
- 5.3.1.13 Letter from Public Protector to Mr. Nethwadzi, dated 22 July 2020;
- 5.3.1.14 Letter from Mr. Nethwadzi to Public Protector, dated 05 October 2020;
- 5.3.1.15 Letter from Mr. Nethwadzi to Public Protector, dated 13 November 2020;  
and

5.3.1.16 “Analyzed Dust Report for Manganese Minerals (Pty) Ltd and Mining Activities at Swartkopfontein compiled by DMRE: North West Regional Office and DEDECT, dated 20 November 2020 (Dust Report).

### 5.3.2 **Legislation and Policies**

5.3.2.1 Constitution of the Republic of South Africa, 1996;

5.3.2.2 Mine Health and Safety Act, 1996;

5.3.2.3 Mineral and Petroleum Resources Development Act, 2002 (MPRDA); and

5.3.2.4 Public Protector Act, 1994.

### 5.3.3 **Case Law**

5.3.3.1 *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* (CCT76/17) [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (29 December 2017)

### 5.3.4 **Notices issued in terms of section 7(9)(a) of the Public Protector Act**

5.3.4.1 Section 7(9)(a) of the Public Protector Act, provides that persons implicated in an investigation by the Public Protector, are to be afforded an opportunity to make representations regarding same.

5.3.4.2 Section 7(9)(a) notices were served on the following persons to afford them an opportunity to make representations regarding the likely findings and remedial action:

- (a) Mr Mbele, on 30 January 2024;
- (b) Mr Nethwadzi, on 30 January 2024;
- (c) Mr Motse, on 30 January 2024; and
- (d) Ms Schutte, on 01 February 2024

5.3.4.3 An email acknowledging receipt of the section 7(9)(a) notice dated 30 January 2024 was received from Ms Mamabefu Modipa on behalf of Mr Mbele. Another email acknowledging receipt of the section 7(9) notice dated 01 February 2024, was received from Ms Schutte.

5.3.4.4 A response was received from Mr Mbele on 13 February 2024.

5.3.4.5 No responses were received from Mr Nethwadzi, Ms Schutte, and Mr Motse.

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

**6.1 Whether the functionaries of DMRE: North West Region failed to assist and resolve a complaint by the community of Swartkopfontein village relating to the mining activities by Manganese Minerals, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994**

### *Common cause*

6.1.1 Manganese Minerals is the holder of a mining right issued by DMRE, for twenty-five (25) years from 09 June 2011 until 08 June 2038, at Swartkopfontein Village, which is situated near Zeerust, within the Ramotshere-Moiloa Local Municipality (the Municipality), in the North West Province.

- 6.1.2 During 2019, the community of Swartkopfontein approached DMRE: NW Region to lodge a complaint relating to Manganese Minerals' mining activities.

*Issue in dispute*

- 6.1.3 The issue for the Public Protector's determination is whether the 2019 complaint lodged by the community of Swartkopfontein village, regarding Manganese Minerals' mining operations, was addressed by the functionaries of the DMRE: NW Region.

*The Complainant's version*

- 6.1.4 The Complainant contended that the DMRE: NW Region failed to assist and resolve their complaint relating to the mining activities of Manganese Minerals.
- 6.1.5 On 19 March 2019, the community of Swartkopfontein, represented by Messrs Brian Mashilo, Kings Ntetane and Obakeng Molokwane, lodged a formal complaint with DMRE: NW Region, about the damage caused to their houses, as well as the loss of livestock belonging to the community living near the mining area, due to Manganese Minerals' mining operations. They requested DMRE: NW Region to intervene.
- 6.1.6 In a letter dated 24 April 2019, the then DMRE: North West Regional Manager – Mining Regulations, Mr Ndelelehle Zindela, responded to the community and advised that the Department had, during a preliminary investigation, identified three (03) issues for further investigation, namely:
- 6.1.6.1 The impact of the mining operations on the affected residential houses;

- 6.1.6.2 The health and well-being of the community due to the dust from the mining operations; and
- 6.1.6.3 The community's livestock that fell into the mining holes and died after consuming contaminated mine water because of a lack of proper fencing around the mining area.
- 6.1.7 On 30 April 2019, DMRE: North West Region conducted a site inspection at the mining area and issued a report which confirmed the concerns raised by the community. Manganese Minerals was "*formally requested*", in a letter dated 09 May 2019, to:
- 6.1.7.1 Appoint a Structural Engineer to determine which houses should be relocated first and submit such report to the office of the DMRE: NW Region, within twenty-one (21) days;
- 6.1.7.2 Compile and submit a detailed plan/report on how the mine is planning to fence off its mining operation (with a timeframe for implementation); and
- 6.1.7.3 Submit copies of dust monitoring reports for the last three (03) quarters.

*DMRE's response*

- 6.1.8 The Public Protector issued an allegations letter dated 24 January 2020 to the DMRE: NW Region, addressed to Mr Nethwadzi, the then Acting Regional Manager (now Regional Manager).
- 6.1.9 Mr Nethwadzi responded to the Public Protector Investigation Team (Investigation Team) through a letter dated 26 February 2020, stating that:

- 6.1.9.1 In terms of the MPRDA, as amended, there is no prescribed timeframe within which the mine is expected to adhere to the recommendations made by the DMRE: NW Region post an investigation;
- 6.1.9.2 However, in the case of the investigation conducted on 30 April 2019, following the complaint lodged by the community, the mine was formally requested to respond within twenty-one (21) days from the date on which Mr Nethwazi had issued the investigation report;
- 6.1.9.3 Manganese Minerals was required to respond to the directive on or before 07 June 2019. On 06 June 2019, Manganese Minerals responded to the DMRE: NW Region, however, due to the nature of the submitted report (Structural Engineering report), it was forwarded to the Principal Inspector of Mines in Rustenburg on 10 June 2019, for further evaluation and to advise Manganese Minerals accordingly;
- 6.1.9.4 The action to be taken by DMRE: NW Region when a mine fails to adhere to its directives vary depending on various issues, such as the nature of the complaint or non-compliance;
- 6.1.9.5 The most common procedure in terms of the MPRDA is that if a mine does not comply with the terms and conditions of a mining right, an instruction will be issued in terms of section 93 of the MPRDA;
- 6.1.9.6 However, if the nature of the non-compliance is about health and safety, a directive may be issued in terms of section 54 of the Mine Health and Safety Act, 1999 (MHSA);
- 6.1.9.7 Furthermore, if the nature of a complaint is about environmental issues, a compliance notice may be issued in terms of section 31(l) of the National Environmental Management Health Act, 1998 (NEMA) or a directive in terms of section 28 of the act can also be issued;

- 6.1.9.8 Once the DMRE: NW Region exhausted all procedures to ensure that a mine complies with its instructions, a directive can be issued in terms of section 93 of the MPRDA, section 54 of MHSA or a compliance notice in terms of section 31(l) of NEMA, to suspend part of the operations or the whole mining operation; and
- 6.1.9.9 The issues raised by the Complainant were investigated and the community members were updated through a letter dated 24 April 2019.

*Documents received from the DMRE*

*Inspection in Loco Report by the DMRE, 2019*

- 6.1.10 Mr Nethwadzi furnished the Investigation Team with an “*Inspection in Loco Report*” dated 09 May 2019. The report made three (03) recommendations on corrective measures to be taken by Manganese Minerals to address the complaint raised by the community. According to the report, the mining right issued to Manganese Minerals remains valid until 08 June 2038.

*Letter from DMRE to Manganese Minerals*

- 6.1.11 Mr Nethwadzi also furnished the Investigation Team with a copy of a letter which he wrote to Manganese Minerals dated 09 May 2019, instructing the mine to respond within twenty-one (21) days to the directives arising from the investigations conducted by the functionaries of DMRE: NW Region.

*Report from Manganese Minerals to DMRE*

- 6.1.12 Mr Nethwadzi also submitted a copy of the report dated 06 June 2019 compiled by Manganese Minerals’ CEO, Ms Schutte, relating to the



implementation of the DMRE: NW Region directives, indicating *inter alia*, the following:

- 6.1.12.1 Regarding the appointment of a Structural Engineer to determine which houses had to be relocated first – a Structural Engineer was appointed and he had engagements with the community and Mine Management. The Engineer found that the cracks at the houses were not the result of mining activities. Some of the houses are, however, in close proximity to the mining activities and the mine is willing to relocate those houses. The mine will further consult with community delegates and affected community members once mining activities resume to map out a way forward together. The outcome of such engagement will be sent to DMRE: NW Region for noting and filing;
- 6.1.12.2 Regarding the compiling and submission of how the mine is planning to fence off the mining area – this was an ongoing project, but the mine planned to fence off 1 hectare area where mining was taking place, which project was to be completed by 31 July 2019; and
- 6.1.12.3 Regarding the submission of dust monitoring reports of the last three (03) quarters – same were submitted with the report to the DMRE: NW Region. The mine had sourced the services of another independent Environmental Specialist who collected dust deposition samples and he would compile a report, the details of which would be shared with community delegates and DMRE: NW Region. This report was to be available by mid-August 2019.

*Submission from the Chief Inspector, Mr Bushy Legwale – Mine Health and Safety Inspectorate*

- 6.1.13 On 07 October 2020, the Investigation Team held a meeting with officials of the DMRE: NW Region and the Chief Inspector – Mine Health and Safety Inspectorate, Mr Bushy Legwale (Mr Legwale), to discuss the investigation

conducted by the DMRE: NW Region. It was resolved at the meeting that Mr Legwale would respond in writing to the Investigation Team.

- 6.1.14 In his response letter dated 22 October 2020, Mr Legwale stated that:
- 6.1.14.1 The investigation into the matter was initiated on 30 April 2019, in terms of section 60(2)(b), read with section 60(2)(c) of the MHSA;
- 6.1.14.2 The scope of the investigation was limited to damaged houses, lack of fencing around the mine and other health and safety matters that may pose a risk to the community because of the mining activities;
- 6.1.14.3 The Inspector requested Manganese Minerals and the Complainants, to jointly appoint a Geotechnical Specialist/Structural Engineer, to determine whether the mining activities may have contributed to the alleged damage to the houses located within one hundred (100) meters of the mining activities;
- 6.1.14.4 The investigation was ongoing and the reason for the delay to finalise the investigation was due to the following:
- (a) Volatile situation caused by disputes between community members and the mine that led to the Inspectors feeling unsafe in the area; and
  - (b) Covid-19 lockdown that was effected from 26 March 2020, as the DMRE was not operating at 100% capacity.
- 6.1.14.5 Manganese Minerals has ceased operations at the mining site since February 2019 and no mining officials are on site, preventing the Principal Inspector of Mines to comment or arrive at any conclusion pertaining to the report of the Structural Engineer.

*Inspection in loco by the Public Protector Investigation Team*

- 6.1.15 On 21 January 2021, the Investigation Team visited Swartkopfontein village to conduct an inspection *in loco*. It was observed that:
- 6.1.15.1 The mining operations start at the entrance of Swartkopfontein village, which is located between Moshana village and Ramotswa-Mokopong Border Gate, used for entering neighbouring Botswana;
  - 6.1.15.2 Open cast mining, which entails prospecting and digging is conducted at the mine, however, the mine was not operational at the time of the inspection *in loco* and the gates to the mine were locked;
  - 6.1.15.3 The mining dump is in close proximity to the residential houses in the area; and
  - 6.1.15.4 Manganese Minerals constructed a fence using barbed wire to prevent livestock from accessing the mining area. A local resident who had lost his livestock stated that the fence does not deter livestock from entering the mining area.

*Meeting held with the DMRE: NW Region*

- 6.1.16 On 14 November 2022, the Investigation Team held a virtual meeting with DMRE: NW Region. At that meeting, Mr Legwale indicated that subsequent to the meeting held on 07 October 2020 with the Investigation Team, the DMRE: NW Region, together with the Department of Economic Development and Environmental Conservation and Tourism (DEDECT) visited the mining area to conduct an inspection *in loco*, but their efforts were in vain as the mine was still not operational.

- 6.1.17 It was confirmed by DMRE: NW Region that the mining permit for Manganese Minerals is still valid (and will be until 2038) and DMRE: NW Region has established that once Manganese Minerals has managed to secure an investor, the mine would commence with its operations. However, since it had been closed for a very long time, Manganese Minerals will have to “start up”, meaning it will have to conduct and provide a Risk Assessment Report, including furnishing the particulars of their investor or new owner, to the DMRE: NW Regional Manager.

*Additional documents received from the DMRE: NW Region*

- 6.1.18 Following the meeting of 14 November 2022, the DMRE: NW Region also provided the Investigation Team with the “*Analysed Dust Report for Manganese Minerals at Swartkopfontein*” dated 20 November 2020, (Dust Report) drafted by the then DEDECT Deputy Director: Air Quality Management, Mr Victor Loate (Mr Loate).
- 6.1.19 According to the Dust Report, Manganese Minerals was required to submit the results of dust monitoring for the period of (01) year, beginning 01 December 2020 to December 2021. During that period, the community was required not to interfere with the dust monitoring programme put in place by Manganese Minerals. The recommendations were not implemented as the mine was not operational since February 2019.

*Further submissions received from Mr Legwale*

- 6.1.20 In an email dated 14 November 2022, Mr Legwale indicated that Manganese Minerals did not request permission from the DMRE: NW Region to operate within a less than one hundred metre (100m) radius of the houses.

- 6.1.21 On 11 April 2023, the Investigation Team telephonically contacted Mr Legwale to enquire whether the letter dated 06 May 2019 addressed to Manganese Minerals, was issued in terms of section 93(1) of the MPRDA, which provides for “*orders, suspensions and instructions*” in circumstances where it is found that there is a contravention or suspected contravention of the MPRDA. Mr Legwale stated that the letter was not a compliance order.

### **Response to the section 7(9)(a) Notice**

#### *Response from Mr Mbele*

- 6.1.22 On 30 January 2024 the Investigation Team issued a section 7(9) notice to Mr Mbele, affording him an opportunity to make representations regarding the intended findings and remedial action of the Public Protector. Mr Mbele responded on 13 February 2024 and stated that:
- 6.1.22.1 The Department has studied the notice and he confirmed that Manganese Minerals is the mining right holder for twenty-five (25) years from 09 June 2011 until 08 June 2038 at Swartkopfontein village;
- 6.1.22.2 Subsequent to receipt of the complaint from the Swartkopfontein community about the mining activities of Manganese Minerals, the complaint was adequately investigated and directives were issued to Manganese Minerals. Manganese Minerals in return compiled and submitted a report outlining the corrective action to be taken to address the complaints;
- 6.1.22.3 The Swartkopfontein mine has been under care and maintenance since February 2019. A mine is usually put under care and maintenance when economic conditions associated with the mine make it difficult for the operator to sustain operations. However, this does not absolve the mine from its obligations in terms of their mining right; and

- 6.1.22.4 DMRE will implement the remedial action within 90 days as directed and should there be developments in the intervening period. The Public Protector would be advised accordingly.
- 6.1.23 The Public Protector also served copies of the section 7(9) notice to Ms Schutte and Mr Nethwadzi, on 30 January 2024 and 01 February 2024, respectively.
- 6.1.24 Mr Nethwadzi neither acknowledged receipt of the section 7(9) notice nor responded thereto.
- 6.1.25 Ms Schutte acknowledged receipt of the section 7(9) notice on 01 February 2024 and stated that it would be referred to their attorneys for further attention. However, no further submissions in this regard were received.

*Applicable law*

**The Constitution of the Republic of South Africa, 1996 (the Constitution)**

- 6.1.26 Section 7(2) of the Constitution provides that:

*“the state must respect, protect and fulfil the rights in the Bill of Rights.”*

- 6.1.27 Section 24 of the Constitution provides that:

*“Everyone has the right—*

- (a) to an environment that is not harmful to their health or wellbeing; and*  
*(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—*  
*(i) prevent pollution and ecological degradation;*  
*(ii) promote conservation; and*

*(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”*

### **The Mine Health and Safety Act, 1996 (MHSA)**

6.1.28 Section 5 of the Act provides for the maintenance of health and a safe mining environment. It provides that:

*“(2) As far as reasonably practicable, every employer must-*

*(a) identify the relevant hazards and assess the related risks to which persons who are not employees may be exposed; and*

*(b) ensure that persons who are not employees, but who may be directly affected by the activities at the mine, are not exposed to any hazards to their health and safety.”*

6.1.29 Section 49(1)(a) of the MHSA provides that:

*“Without limiting any statutory duty of any other person in terms of this act, the Chief Inspector must:*

*(a) Ensure that the provisions of this act are complied with and enforced and that every duty imposed on the Chief Inspector, the medical inspector or inspectors, in terms of any other law is performed.”*

6.1.30 Section 60 of the MHSA, provides that:

*“(2) At any time an inspector may investigate-*

*(c) any actual or suspected contravention of, or failure to comply with, any provision of this Act.”*

## The Mineral and Petroleum Resources Development Act, 2002

6.1.31 Section 1 of the MPRDA defines a mining operation as any operation relating to the act of mining and matters directly incidental thereto.

6.1.32 Section 93 of the MPRDA provides that:

*(1) If an authorised person finds that a contravention or suspected contravention of, or failure to comply with:*

- (a) any provision of this Act; or*
- (b) term or condition of any right, permit or permission or any other law granted or issued or any environmental management programme or environmental management plan approved in terms of this Act, has occurred or is occurring on the relevant reconnaissance, exploration, production, prospecting mining or retention area or place where prospecting operations or mining operations or processing operations are being conducted, such a person may-*
  - (i) order the holder of the relevant right permit or permission, or the person in charge of such area, any person carrying out or in charge of the carrying out of such activities or operations or the manager, official, employee or agent of such holder or person to, take immediate rectifying steps; or*
  - (ii) order that the reconnaissance, prospecting, exploration, mining, production or processing operations or part thereof be suspended or terminated and give such other instructions in connection therewith as may be necessary.*



(2) *The Director-General must confirm or set aside any order contemplated in subsection (1)(a) or (b)...*”

### *Analysis*

- 6.1.33 Sections 7(2) and 24 of the Constitution impose a duty on the DMRE: NW Region to ensure that mining operations are conducted in a manner which ensures a safe environment, which is not harmful to the community of Swartkopfontein village and to protect their health and well-being through legislative and other measures.
- 6.1.34 In terms of section 5 of the MHSA, Manganese Minerals had a duty to identify and assess the risks which the Swartkopfontein community may be exposed to. It further had a duty to ensure that the community is not exposed to any identified health and safety hazards as a result of the mining operations.
- 6.1.35 Sections 5(2)(b), 49(1)(a) and 60(2)(c) of the MHSA empower the functionaries of DMRE: NW Region to investigate any contraventions or failure to comply with any provisions of the Act. The evidence at the Public Protector’s disposal indicates that the Complainant reported the community’s challenges relating to the mining operations by Manganese Minerals in March 2019, to the DMRE: NW Region. Subsequently, the DMRE: NW Region conducted an inspection on 30 April 2019 into the complaint and issued instructions to Manganese Minerals on 09 May 2019, to rectify the identified contraventions or non-compliance.
- 6.1.36 On 06 June 2019, Manganese Minerals furnished its report to the DMRE: NW Region on the measures it had taken to implement the corrective steps issued, including erecting a fence and appointing a Structural Engineer and an independent environmental specialist to determine the impact of dust created during mining operations, on the community. The report by the

Structural Engineer established that the cracks at the houses were not as a result of mining activities. Manganese Minerals undertook to consult with the community and relocate the houses that were identified to be in close proximity to the mining operations, once operations resume.

- 6.1.37 The evidence before the Public Protector indicates that the mine has not been operational since February 2019. The DMRE: NW Region, however, confirmed that the mining right issued to Manganese Minerals remains valid until 08 June 2038 and as a result, the legal duties and responsibilities in terms of the MPRDA will continue to rest with Manganese Minerals.

*Conclusion*

- 6.1.8 Having considered the evidence before the Public Protector, it is concluded that subsequent to the receipt of the Swartkopfontein Community complaint about Manganese Minerals, the functionaries of DMRE: NW Region investigated the complaint and issued directives to Manganese Minerals. Manganese Minerals in return complied with the instructions and submitted a report outlining the corrective actions to be taken to address the complaints. However, no further steps have been taken by the DMRE: NW Region to ensure compliance by the mine or enforcement in terms of section 93 of the MPRDA, as the mine is still not operational.

- 6.2 Whether the functionaries of DMRE: North West Region failed to ensure that Manganese Minerals delivers and reports on its social responsibility as per the approved 2011 Social and Labour Plan, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994**

*Common cause*

- 6.2.1 During the year 2010, Manganese Minerals submitted a Social and Labour Plan dated 15 January 2010, to the DMRE: NW Region, which was approved by the DMRE: NW Region on 09 June 2011 (approved 2011 SLP). The SLP was valid for a period of five (05) years. In terms of the approved SLP, Manganese Minerals committed to improve the infrastructure of the Zakhaleni Intermediate School at Swartkopfontein village.
- 6.2.2 Manganese Minerals provided the Social and Labour Plan Annual Report dated 16 November 2018 (2018 SLP Annual Report) to DMRE: NW Region reporting on the progress and implementation of the approved 2011 SLP.

*Issue in dispute*

- 6.2.3 The issue for the Public Protector's determination is whether the functionaries of the DMRE: North West Region exercised the necessary oversight and ensured that Manganese Minerals duly implements its approved 2011 Social and Labour Plan.

*Complainant's version*

- 6.2.4 The Complainant alleged that the DMRE: NW Region failed to ensure that Manganese Minerals implemented and delivered according to the approved 2011 SLP.
- 6.2.5 As part of the complaint, the Complainant provided a copy of the approved 2011 SLP; the 2018 SLP Annual Report, and an Agreement between Manganese Minerals, Swartkopfontein Community Leadership (The Tribal Authority, Swartkopfontein Development Trust and the Community Top 5), dated 30 July 2019 (the Agreement).

6.2.6 The Complainant contends that Manganese Minerals submitted a false 2018 SLP Annual Report to DMRE: NW Region on the implementation of the approved 2011 SLP, in that none of the milestones mentioned were achieved as stated in the SLP 2018 Annual Report. This alleged false reporting necessitated DMRE: NW Region’s intervention.

*Documentary evidence submitted by the Complainant*

6.2.7 The Complainant submitted the following documents to support the complaint:

*Manganese Minerals’ Social and Labour Plan (2011)*

6.2.7.1 In terms of item 4.3 of the SLP on “*IMPACT OF THE MINING OPERATION*” Manganese Minerals and the Ramotshere-Moiloa Local Municipality: Local and Economic Development Manager identified, amongst others, the following needs for Swartkopfontein village:

PRIORITY AREA	PROJECT	LOCATION
COMMUNITY FACILITIES	<ul style="list-style-type: none"> <li>- Facilitate the establishment of Multipurpose Community Centre</li> <li>- Upgrading of the existing soccer grounds to cater for all sporting codes</li> <li>- Maintenance of the existing community hall and the supply of equipment</li> </ul>	Swartkopfontein
SCHOOLS AND LIBRARY	- There is a need for a library	Moshana
	- There is a need for a High School	Swartkopfontein

- 6.2.7.2 In terms of the approved 2011 SLP, Manganese Minerals committed to upgrade the Zakhaleni Intermediate School (school improvement project) at Swartkopfontein Village. The school improvement project was, in terms of the approved 2011 SLP, intended to start in the third quarter of the year 2010 and envisaged to end in the year 2014.
- 6.2.7.3 The approved 2011 SLP further provided for the following milestones for the implementation of the school improvement project:
- (a) Third Quarter 2010 - start with the building of an ablution block for boys and girls, equipped with running water, toilets, and wash basins. The envisaged completion date for the ablution was the fourth quarter of 2010;
  - (b) First Quarter 2011 to Fourth Quarter 2012: Roofing and ceiling of all the classrooms;
  - (c) Third to Fourth Quarter 2012: Commence with the construction of the administration office, to be completed in the third and fourth quarters of 2013; and
  - (d) First to Fourth Quarter 2014: Fencing of school terrain.

*Manganese Minerals Social and Labour Plan Annual Report (2018)*

- 6.2.8 In the report, Manganese Minerals stated that:
- 6.2.8.1 In the first to third quarter of the year 2011, a roof and ceiling would be constructed on all the classrooms and it would commence with the construction of the administration office. The administration office would be completed in 2013;

- 6.2.8.2 In the third to fourth quarter of 2013, it would commence with the fencing of the school terrain, to be completed in the year 2014; and
- 6.2.8.3 In the third quarter of 2014, it would start with the building and also complete an ablution block.
- 6.2.8.4 The undated SLP Annual Report indicated that the above school project milestones were achieved in 2018.

*DMRE: NW Region's response*

- 6.2.9 The Public Protector issued an allegations letter dated 24 January 2020, to Mr Nethwadzi who was requested to comment on the allegation that Manganese Minerals failed to deliver on the SLP.
- 6.2.10 In a response dated 26 February 2020, Mr Nethwadzi indicated that on 06 March 2019<sup>1</sup>, Manganese Minerals was instructed in terms of section 93(1) of the MPRDA, to provide an SLP Action Plan and an SLP annual report within twenty-one (21) days.
- 6.2.11 They were requested to submit an SLP for the next five (05) years to the DMRE: NW Region, within sixty (60) days from the date of the instruction. Manganese Minerals submitted an action plan to address non-compliance in terms of local economic development projects. The action plan stipulated first deliverables in the first quarter of 2020 for local economic development projects. Post the commitment period of 2020, the DMRE: North West Region intended to undertake an audit inspection to verify the implementation of the action plan.

---

<sup>1</sup> Date as provided on the response received on 26 February 2021 by Mr Nethwadzi

- 6.2.12 The above letter of DMRE: NW Region indicated that Manganese Minerals had submitted an action plan to address the non-compliance in terms of the Local Economic Development Project (LEDP), stipulating that the first deliverables in the approved 2011 SLP would be in the 1<sup>st</sup> quarter of 2020. The DMRE: NW Region further committed to conduct inspections to verify the implementation of the action plan.

*Documents received from DMRE: NW Region*

- 6.2.13 Mr Nethwadzi provided the Investigation Team with a copy of the Instruction letter dated 04 March 2019, titled *“INSTRUCTION IN TERMS OF SECTION 93(1)(b)(i) OF MINERALS PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (ACT 28 OF 2002) AS AMENDED IN TERMS OF SECTION 67 OF THE ACT, HEREIN REFERRED TO AS THE AMENDED ACT: MANGANESE MINERALS (PTY) LTD (THE COMPANY): SITUATED IN THE MAGISTERIAL DISTRICT OF LEHURUTSHE”* signed by the then DMRE: NW Regional Manager, Mr Zindela, addressed to the CEO of Manganese Minerals, Ms Schutte. The instruction was ratified by the Chief Director: Mineral Regulation: Western Regions, Ms. Rebone Hellen Nkambule, on 05 March 2019.
- 6.2.14 Under paragraph 2 of the abovementioned instruction on Social and Labour Plan, Manganese Minerals were instructed to do the following:
- 6.2.14.1 Submit and present an action plan within twenty-one (21) working days of receipt of the instruction and to indicate how Manganese Minerals will address the failure to implement the approved 2011 SLP;
- 6.2.14.2 Submit and present SLP Annual and Mining Charter reports within twenty-one (21) working days; and

- 6.2.14.3 Submit and present SLP for the next five (05) years within sixty (60) working days.

*Inspection in loco by the Public Protector Investigation Team*

- 6.2.15 The Investigation Team conducted an inspection *in loco* on 21 January 2021 at Swartkopfontein village, with the assistance of a local community member and the following was observed:
- 6.2.15.1 Two (02) new buildings at Zakheleni Intermediate School were still under construction as shown in Figures 1 and 2 below:



**Figure 1: Newly constructed classrooms**





**Figure 2: Administration Block**

- 6.2.16 On 01 November 2022, the Investigation Team conducted a second inspection *in loco* to assess the progress in respect of the school improvement project. The Investigation Team met with the School Principal, Mr JR Madise (Mr Madise), who advised that the school improvement project commenced on 21 October 2019, with the construction of the Administration Block, a four (04) classroom block, and a kitchen.
- 6.2.17 Mr Madise further indicated that Manganese Minerals handed the buildings over to the district office of the Department of Education: Ngaka Modiri Molema District (the Department) on 02 June 2022. The school buildings are currently being utilised by learners and educators.
- 6.2.18 The Investigation Team observed that the project remains incomplete as there are no ceilings. It was also noted that ablution facilities were not built.

*Meeting between the Investigation Team and the DMRE: NW Region*

- 6.2.19 On 14 November 2022, the Investigation Team held a virtual meeting with the Assistant Director: Social and Labour Plans, Ms Ellen Kwele (Ms Kwele) from the DMRE: NW Region. During the meeting, Ms Kwele informed the Investigation Team that according to the approved 2011 SLP, Manganese Minerals only committed to improve the existing school and that there was no commitment to improve the community hall.
- 6.2.20 Ms Kwele further indicated that the DMRE: NW Region had received the SLP for the period 2015 to 2022 and the SLP Annual Reports from Manganese Minerals, which would be shared with the Investigation Team. All attempts by the Investigation Team thereafter to obtain copies of the said SLP and the SLP Annual Reports from the DMRE: NW Region were futile.
- 6.2.21 On 15 August 2023, the Investigation Team telephonically contacted the school and liaised with Ms Maletswa, one of the Educators. She confirmed to the Investigation Team that the school is still without ceilings, floor tiles, and that no ablution facilities have been built.

**Response to the section 7(9)(a) notice**

- 6.2.22 A notice in terms of section 7(9)(a) of the Public Protector Act was sent to various persons on 30 January 2024 and 01 February 2024 respectively. The response as alluded to at paragraph 6.1.22 *supra* also applies in this instance and will not be repeated.
- 6.2.23 Ms Schutte and Mr Nethwadzi did not formally respond to the section 7(9) notice except for acknowledging receipt thereof.

*Applicable law*

**Mineral and Petroleum Resources Development Act, 2002 (MPRDA)**

6.2.24 Section 23(1)(e) of the MPRDA provides that the Minister must grant a mining right if the applicant has provided a prescribed social and labour plan.

6.2.25 Section 25(2)(d), (f) and (h) of MPRDA provide that the holder of the mining right must:

*“(d) comply with the relevant provisions of this Act, any other relevant law, and the terms and conditions of the mining right;*

*(e) ...*

*(f) comply with the requirements of the prescribed social and labour plan;*

*(g) ...*

*(h) The holder of the mining right must submit the prescribed annual report, detailing the extent of the holder’s compliance with the provisions of section 2(d) and (f), the charter contemplated in section 100 and the social and labour plan.”*

6.2.26 Section 93 of the MPRDA provides that:

*(1) If an authorised person finds that a contravention or suspected contravention of, or failure to comply with:*

*(a) any provision of this Act; or*

*(b) term or condition of any right, permit or permission or any other law granted or issued or any environmental management programme or environmental management plan approved in terms of this Act, has occurred or is occurring on the relevant reconnaissance, exploration, production, prospecting mining or retention area or place where*

*prospecting operations or mining operations or processing operations are being conducted, such a person may-*

- (i) order the holder of the relevant right permit or permission, or the person in charge of such area, any person carrying out or in charge of the carrying out of such activities or operations or the manager, official, employee or agent of such holder or person to take immediate rectifying steps; or*
- (ii) order that the reconnaissance, prospecting, exploration, mining, production or processing operations or part thereof be suspended or terminated and give such other instructions in connection therewith as may be necessary.*

*(2) The Director-General must confirm or set aside any order contemplated in subsection (1)(a) or (b)”.*

### **Mineral and Petroleum Resources Development Regulations, 2015**

6.2.27 Regulation 42(1)(a) of the MPRDA Regulations of 03 June 2015 (the MPRDA Regulations), provides that an application for a mining right must be accompanied by a social and labour plan contemplated in regulation 46.

6.2.28 Regulation 46(c)(ii) & (iii) of the MPRDA Regulations, provides that:

- “(c) A local economic development programme which must include—*
- (i) ...*
  - (ii) the impact that the mine would have in the local and sending communities;*
  - (iii) the infrastructure and poverty eradication projects that the mine would support in line with the Integrated Development Plan of the areas in which the mine operates and the major sending areas...”*

- 6.2.29 Regulation 45 of the MPRDA Regulations provides that the holder of a mining right must submit an annual report on the compliance with the social and labour plan to the relevant Regional Manager.

*Analysis*

- 6.2.30 The evidence before the Public Protector indicates that Manganese Minerals submitted the SLP dated 15 January 2010 to DMRE: NW Region and it was approved in June 2011. In terms of the SLP, Manganese Minerals committed to make improvements at the Zakhelani Intermediate School, during the first quarter of the year 2011. Section 23(1)(e) of the MPRDA read with the MPRDA Regulations 42(1), makes it peremptory for the mining rights holder, in this instance Manganese Minerals, to have an SLP, which commits Manganese Minerals to socio-economic development of the communities, within its area of operation.
- 6.2.31 In November 2018, Manganese Minerals submitted the SLP Annual Report on the implementation of the approved 2011 SLP to DMRE: NW Region. Section 25(2)(d); (f) and (h) of the MPRDA read with Regulations 45 of the MPRDA Regulations compel Manganese Minerals to provide annual reports detailing the extent of the implementation of an SLP to the Regional Manager of the DMRE: NW Region.
- 6.2.32 Section 93 of MPRDA, places an obligation on the DMRE: NW Region, in particular the Regional Manager to ensure that Manganese Minerals implements and reports annually on the progress made in implementing the approved 2011 SLP. In ensuring compliance, on 04 March 2019, the DMRE: NW Regional Manager issued an “*Instruction in terms of Section 93 (1)(b)(i)*” of the Act to Manganese Minerals, instructing it to submit and present an action plan on how to address its failure to submit annual reports on compliance with the approved 2011 SLP.

- 6.2.33 The above indicates that the DMRE: NW Region only issued the instruction in terms of section 93(1) of the MPRDA, eight (08) years after the SLP was approved, for Manganese Minerals to provide an action plan on the implementation of the approved 2011 SLP. The evidence before the Public Protector shows that the 2011 SLP is still not fully implemented as the school is still without ceilings, floor tiles and has no ablution facilities.
- 6.2.33.1 The Public Protector notes from the submission of Mr Mbele in response to the section 7(9)(a) notice that the DMRE would implement the remedial action within ninety (90) days as directed and should there be developments in the intervening period, the Public Protector would be advised accordingly.

#### *Conclusion*

- 6.2.34 In terms of the approved SLP, Manganese Minerals committed to make improvements at Zakhelani Intermediate School, during the first quarter of the year 2011, but this did not take place until October 2019, when the project to construct four (04) classrooms, a kitchen and administration block commenced. In the circumstances, the functionaries of the DMRE: NW Region did not enforce its powers in terms of section 93(1) of the MPRDA to ensure that Manganese Minerals fully implements the 2011 SLP.

## **7. FINDINGS**

Having regard to the evidence, the regulatory framework determining the standards that the DMRE: NW Region should have complied with, the Public Protector makes the following findings:

- 7.1 Whether the functionaries of DMRE: North West Region failed to assist and resolve a complaint by the community of Swartkopfontein village relating to the mining activities by Manganese Minerals, if so, whether**

**such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994**

- 7.1.1 The allegation that the functionaries of DMRE: North West Region failed to assist and/or resolve a complaint by the community of Swartkopfontein village, relating to the mining activities of Manganese Minerals, is **unsubstantiated**.
- 7.1.2 Mr. Nethwadzi received a complaint from the community of Swartkopfontein relating to damage caused by mining operations of Manganese Minerals, in their area. The complaint was investigated by DMRE: NW Region and it was found that certain issues raised by the community were well founded.
- 7.1.3 The DMRE: NW Region then formally requested Manganese Minerals to appoint a structural engineer to determine whether houses should be relocated; provide a report on how the mine plans to fence off the mining operation, and to submit copies of dust reports for the three quarters from April 2018 to March 2019. Manganese Minerals issued a report outlining the corrective action to be undertaken to address the complaint.
- 7.1.4 On 06 June 2019 Manganese Minerals furnished its report to the DMRE: NW Region on the measures it had taken to implement the corrective steps issued, including erecting a fence and appointing a Structural Engineer and an independent environmental specialist to determine the impact of dust created during mining operations, on the community. The report by the Structural Engineer established that the cracks at the houses were not as a result of mining activities. Manganese Minerals undertook to consult with the community and relocate the houses that were identified to be in close proximity to the mining operations, once operations resume.

- 7.1.5 The Public Protector notes that the mine has not been operational since February 2019.
- 7.1.6 The conduct of the functionaries of DMRE: North West Region in this regard does not constitute improper conduct as envisaged in section 182(1) of the Constitution and maladministration as envisaged in section 6(4)(a)(i) of the Public Protector Act, as the DMRE: North West Region assisted and investigated the complaint received from the community members.
- 7.2 Whether the functionaries of DMRE: North West Region failed to ensure that Manganese Minerals delivers and reports on its social responsibility as per the approved 2011 Social and Labour Plan, if so, whether such conduct is improper as envisaged in section 182(1)(a) of the Constitution and amounts to maladministration in terms of section 6(4)(a)(i) of the Public Protector Act, 1994**
- 7.2.1 The allegation that the functionaries of DMRE: NW Region failed to ensure that Manganese Minerals delivers on their social responsibility as per their approved 2011 Social and Labour Plan, **is substantiated**.
- 7.2.2 In terms of the approved 2011 SLP, Manganese Minerals committed to improve the school infrastructure at Zhakheleni Intermediate School, Swartkopfontein. This project was intended to commence during the year 2010 and to be completed in 2014. The school improvement project only started in October 2019, almost eight (08) years after the approved 2011 SLP and it is still not fully completed.
- 7.2.3 Section 25(2)(h) of MPRDA, read with Regulations 45 of the MPRDA Regulations, compels Manganese Minerals to submit annual reports on the implementation of its approved 2011 SLP to DMRE: NW Region. For the period 2011 to 2016 DMRE: NW Region failed to ensure that Manganese Minerals submits its SLP annual reports and to deliver on their social



responsibility, in this instance, the school infrastructure improvement project.

- 7.2.4 The DMRE: NW Region, failed to ensure that Manganese Minerals submits its SLP annual reports and delivers on their social responsibility timeously, in terms of the Regulation 45 of the MPRDA Regulations and therefore such conduct constitutes improper conduct as envisaged in section 182(1) of the Constitution and amounts to maladministration as envisaged in section 6(4)(a)(i) of the Act, 1994.

## 8. REMEDIAL ACTION

- 8.1 The Public Protector is empowered in terms of section 182(1)(c) of the Constitution to take appropriate remedial action with a view to redressing the conduct referred to in this report.

- 8.2 In *Economic Freedom Fighters v Speaker of the National Assembly and Others: Democratic Alliance v Speaker of the National Assembly and Others* the Constitutional Court per Mogoeng, CJ held that the remedial action taken by the Public Protector has a binding effect.

- 8.1 The appropriate remedial action taken in terms of section 182(1)(c) of the Constitution are the following:

### **The Director General**

- 8.1.1 Take cognizance of the findings and remedial action contained in this report and ensure that the Regional Manager enforces compliance with the directive issued in terms of section 93(1)(b)(i) of MPRDA, dated 04 March 2019.

- 8.1.2 Develop a monitoring tool in respect of which all DMRE Regional Managers, after consultation with communities involved, submit annual reports to the Director General, on:
- (c) Progress by the Mines on the implementation of the SLP's in terms of regulation 45 of MPRDA; and
  - (d) Measures developed by the Mines to ensure compliance in terms of section 5(2)(b) of MHSA.

### **The Regional Manager for DMRE: North West Regional Office**

- 8.1.3 Within **ninety (90) calendar days** of the date of this report, ensure that Manganese Minerals complies with the directive issued in terms of section 93(1)(b)(i) of MPRDA, dated 04 March 2019.

## **9. MONITORING**

- 9.1 The **Director General** to submit an action plan to the Public Protector within thirty (30) calendar days from the date of this report on the implementation of the remedial action referred to in paragraph 8 above.
- 9.2 The submission of the implementation plan and the implementation of the remedial action shall, in the absence of a court order, be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector.

9.3 In line with the Constitutional Court Judgement in the matter of *Economic Freedom Fighters* and in order to ensure the effectiveness of the Office of the Public Protector, the remedial action prescribed in this Report is legally binding on the DMRE unless there is an Interim Interdict or Court Order directing otherwise.

## **10. CONCLUSION**

10.1 The Public Protector considers this matter as finalised and cannot take the matter any further.

---

**ADV. KHOLEKA GCALEKA**  
**PUBLIC PROTECTOR**  
**REPUBLIC OF SOUTH AFRICA**  
**DATE:**

*Assisted by: Ms Nthoriseng Motsitsi*  
*Executive Manager: PII Inland*