

**REPORT IN TERMS OF SECTION 182(1) (b) OF THE CONSTITUTION,
1996 AND SECTION 8(1) OF THE PUBLIC PROTECTOR ACT 23 OF 1994**



**PUBLIC PROTECTOR
SOUTH AFRICA**

REPORT NO. 9 of 2008/2009

**FINAL REPORT ON AN INVESTIGATION BY THE PUBLIC PROTECTOR
INTO COMPLAINTS BY PEOPLE AND COMMUNITIES WHO WERE
ALLEGEDLY ADVERSELY AFFECTED BY THE CONSTRUCTION OF THE
NANDONI DAM IN VHEMBE DISTRICT, LIMPOPO PROVINCE**

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EXECUTIVE SUMMARY

1. This report deals with complaints lodged by individuals and communities from the following villages: Mutoti, Budeli, Mulembe, Tshilungoma, Dididi, Tshitomboni, Mphego, Tswinga, Maniini and Tshaulu.
2. Their basic complaint is that they were negatively affected by the construction of Nandoni Dam, which stretches from Mutoti to Tshitomboni village.
3. The complaints are mainly on the following issues: inadequate or lack of compensation for loss of the right to access to arable land and loss of agricultural production, secure access to the river, compensation for domestic fruit trees, compensation for commercial fruit orchards or farms, poor quality or workmanship on newly built houses, lack of toilet facilities, lack of sports grounds, relocation of graves, traditional medicinal plants, poor communication, poorly constructed fences and access roads, water supply, dam safety, fraudulent claims, and other related matters.
4. The Office of the Public Protector conducted an investigation, which included a public hearing and an *inspection in loco*.
5. An interim report was issued by the Public Protector in October 2006, containing the following findings:
 - 5.1 Most of the complaints were genuine, and others were found to be baseless or minor;
 - 5.2 Communication breakdown between the Department of Water Affairs and Forestry (DWAF) and the affected individuals or communities was found to be the underlying problem; and

- 5.3 It was also established that the main cause of the communication breakdown was the dissolution by DWAF of a community liaison structure called the Community Action Committee (the CAC).
6. As communication breakdown was identified as the underlying problem, it was recommended that dialogue between the complainants and DWAF be resumed in order to identify and address outstanding issues.
7. In order to implement the above findings and recommendations, the Public Protector in consultation with DWAF formed the Complaint Resolution Committee (the CRC) in order to facilitate the resumption of dialogue between DWAF and the affected communities and individuals. The CRC started to operate in November 2006 and held its final meeting in November 2007.
8. After taking into consideration all circumstances surrounding the matter, the evidence presented during the public hearing, *the inspection in loco* and the reports submitted by the CRC, the Public Protector made findings regarding every complaint, as well as the following key findings:
- 8.1 The Department was afforded an opportunity through the CRC to respond to the allegations made against it by complainants, and the interim findings by the Public Protector;
- 8.2 Most of the complaints by individuals and communities that have been affected by the development of the Dam were found to be genuine, and this was confirmed during the CRC process. Complaints which were found to be baseless were disposed off by the CRC;
- 8.3 The Department has, through the CRC, attended, or undertaken to attend to some of the minor complaints, leading to the resolution of some of these complaints;

- 8.4 An effort was taken by the CRC to inspect the defective houses, and such task was not completed at the date of issue of this report due to its vastness and limited time;
 - 8.5 No conclusion could be reached on the issue of alternative land. However DWAF was still willing to entertain the matter if such land could be found;
 - 8.6 There is a need to protect affected communities and the public at large against dangers posed by the Dam;
 - 8.7 DWAF needs to take full control of the dam area, and to establish controlled access to the dam area. DWAF also needs to ensure safe usage of the dam;
 - 8.8 Private individuals and entities were profiteering by charging members of the public to gain access to the dam area. Such individuals and/or entities are not official DWAF agents; and
 - 8.9 DWAF did not have a post-resettlement plan to deal with complaints raised by affected communities and individuals.
9. Taking into consideration all the findings, observations and recommendations as per each complaint, as well as the key findings, the Public Protector made the following key recommendations:
- 9.1 The Minister of Water Affairs and Forestry forms a task team which would ensure the implementation of all recommendations in this report within 2 months of the issue of this report;
 - 9.2 The implementation of the recommendations to be completed within 12 months from the date of appointment of the above task team; and
 - 9.3 DWAF reports on progress to the Public Protector on a quarterly basis.

CHAPTER 1: INTRODUCTION AND BACKGROUND

1. Introduction

- 1.1 This report is submitted in terms of Section 181(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and Section 8(8) of the Public Protector Act, 1994, to the Minister and Director – General of the Department of Water Affairs and Forestry (DWAF), the Premier: Limpopo Province and the Speakers of the Limpopo Provincial Legislature and the Vhembe District Municipality.
- 1.2 The report deals with an investigation of complaints lodged with the Office of the Public Protector (the OPP) by individuals and communities who alleged that they were adversely affected by the construction of the Nandoni Dam (the Dam). The Dam is located in the Vhembe District, Limpopo Province.

2 Background

- 2.1 The Dam is a Government project implemented through DWAF. The purpose of the project was to construct a dam, which would provide water supplies to a number of communities in the Vhembe District. The project commenced in 1998.
- 2.2 The construction of the Dam affected 33 villages, although complaints were received only from Mutoti, Budeli, Mulenzhe, Mphego, Tshiulungoma, Dididi, Tshitomboni, Muledane, Tswinga, Maniini and Tshaulu communities. Some villages such as Budeli, Mulenzhe, Dididi and Tshiulungoma were so directly affected that some homesteads had to be

relocated. About 405 homesteads were finally relocated. Other communities lost mainly agricultural land for crop production, grazing and fruit trees. Those who lost land rights were to be provided with alternative land, and where this was not possible, monetary compensation would be paid. Monetary compensation was to be paid for loss of production. Those who lost homesteads were to be provided with new modern houses with facilities such as toilets and fences.

- 2.3 In order to facilitate the implementation of the project, several committees were formed, including the Project Co-coordinating Committee (PCC), Project Steering Committee (PSC), Coordinating Policy Committee (CPC), Community Action Committee (CAC) and Relocation Action Committee (RAC).
- 2.4 All affected members of the public and legal entities were represented in the CAC through village representatives who participated in various sub-committees such as Housing, Land and Grazing, Infrastructure, Cultural Affairs and others. The CAC was represented in the PSC through its chairperson, thus ensuring that community members were represented at the highest level of the project structure. The CAC therefore formed a vital communication link between the PSC and affected individuals or communities.
- 2.5 The CAC was also represented in the CPC, which was responsible for the development of all policy guidelines, procedures and agreements. These policies were embodied in a document called the Relocation Action Plan (the RAP), which contains most of the agreements between DWAF and other stakeholders.

- 2.6 Some members of the above-mentioned communities were not satisfied with some aspects of the relocation process. Some of their grievances were as follows: unilateral determination of compensation amounts; inadequate or lack of compensation for loss of production and land rights; insufficient or lack of compensation for fruit trees in residential yards; lack or inadequate compensation for fruit orchards or farms; poorly constructed houses; leaking roofs and gutters; poorly erected fences or no fences at all; lack of toilet facilities or facilities constructed on wrong sites; insufficient debushing or no debushing at all; inadequate or lack of water supply; unrelocated families; lack of compensation for yard walls; lack of compensation for relocation expenses; insufficient or no compensation for symbolic graves or reburial rituals; lack of secure access to the river; wire cattle kraals, inadequate sport grounds and many more.
- 2.7 Affected members of the community voiced out their dissatisfaction through the CAC. However, this structure ceased to function during 2003 when DWAF stopped funding it due to procedural differences. This deprived members of the community of a platform to air their grievances; hence they approached the OPP for assistance.
- 2.8 In April 2004, the OPP, Limpopo, received over 300 complaints from Budeli village. Individual community members were complaining about what they perceived as the adverse consequences of the construction of the Dam. By May 2006, community members from seven other affected villages had lodged their complaints, which by then exceeded 700.
- 2.9 Due to the complex nature of the problems, and the length of the time that it was taking to resolve the disputes, the Public Protector decided to conduct a public hearing on the matter, with the view of bringing the investigation to finality. The public hearing was conducted on 09-12 May

2006. After the Public hearing, the Public Protector issued an interim report in which he made the following key findings:

- 2.9.1 Most of the complaints by individuals and communities that have been affected by the development of the Dam were found to be genuine;
- 2.9.2 All complaints can be resolved through further dialogue and engagement between the complainants and DWAF;
- 2.9.3 There was communication breakdown between DWAF and the complainants,
- 2.9.4 The dissolution of the CAC by DWAF was the main cause of communication breakdown;
- 2.9.5 The dissolution of the CAC was premature and ill-advised;
- 2.9.6 DWAF failed to honour some essential undertakings which were embodied in the relocation action plan documents;
- 2.9.7 Some claims by the complainants were not well-founded, and this was possibly caused by lack of knowledge due to inadequate communication;
- 2.9.8 DWAF entrusted all management of the relocation, including communication, to BKS, with very little evidence of contact between DWAF itself and the affected communities in order to attend to their complaints;
- 2.9.9 The complainants have lost all confidence in BKS, more particularly the official who was later appointed to work as a liaison officer for the project;
- 2.9.10 The issue of alternative land was not entertained to conclusion; and
- 2.9.11 DWAF was committed to revisit the project and rectify the defects and omissions where they were found to exist.

2.10. Based on the above key findings, the Public Protector made the following recommendations:

- 2.10.1 A committee was to be formed comprising of 10 representatives from the affected villages (Budeli, Tswana, Mphego, Tshaulu, Mutoti, Mulenzhe, Tshitomboni, Tshilungoma, Muledane and Dididi), the former Chairperson of

- CAC, at least 2, but not more than 5 DWAF representatives and 2 BKS members,
- 2.10.2 The function of the above committee was to identify and confirm all the complaints that could not be verified during the hearing and to recommend corrective measures or the implementation of the findings,
- 2.10.3 The committee was to prepare a project plan detailing how the findings in the report were to be implemented. The project plan would include time frames within which the identified gaps referred to in the report would be rectified,
- 2.10.4 The project plan was to be submitted to the Public Protector within 3 months from the date of the committee's first sitting, which was scheduled to take place during the month of November 2006,
- 2.10.5 The OPP, through its Limpopo office, would convene and chair the committee meetings and facilitate its activities, including reporting back to the Public Protector and DWAF,
- 2.10.6 The committee was to complete its work within 12 months from the date of approval of the project plan or such date/s that the Public Protector might, in appropriate circumstances, determine; and
- 2.10.7 DWAF was to effect corrective measures on those complaints that were proved to be genuine during the *inspection in loco*.
- 2.11 After issuing the interim report, the Public Protector convened a meeting with senior DWAF officials where it was agreed that a committee should be formed to implement the recommendations made in the report. The Committee was composed of representatives from the ten affected villages, at least 2 members from DWAF (with the maximum of five), two members from BKS (the project implementing agent or consultant) and 2 members from the OPP. The OPP in Limpopo would convene and chair the committee. The committee was given a year from the date of its first sitting to finalise its mandate.

2.12 On 21 November 2006, the OPP convened a meeting with all the relevant stakeholders where the envisaged committee was formally constituted. In January 2007 the Committee, which henceforth became known as the Nandoni Dam Complaints Resolution Committee (the CRC), developed terms of reference which were approved by the Public Protector. A project plan was also developed and approved by the Public Protector.

CHAPTER 2: POWERS AND FUNCTIONS OF THE PUBLIC PROTECTOR

- 2.1 The institution of the Public Protector was established in terms of Chapter 9 of the Constitution as one of a number of bodies that support constitutional democracy. The Public Protector Act, 1994, provides for the operational requirements of the Office of the Public Protector.
- 2.2 The Public Protector is appointed by the President after approval by the National Assembly of a candidate recommended by a joint committee. He/she is independent of government and any political party. The Public Protector receives complaints from aggrieved persons and institutions against government agencies and officials. He/she has the power to investigate these matters, to report on his/her findings and to take appropriate remedial action.
- 2.3 In terms of the Public Protector Act, 'appropriate remedial action' includes mediation, negotiation, conciliation, and the making of recommendations to the affected government agency on how any shortcomings found should be rectified and a recurrence of similar deficiencies could be prevented.
- 2.4 The Public Protector reports on the activities of his/her office to Parliament at least once a year. However, the Public Protector can report to Parliament on the findings of a particular investigation whenever he/she deems it necessary.
- 2.5 The findings of an investigation by the Public Protector shall, when he or she deems it fit but as soon as possible, be made available to the complainant and to any person implicated thereby.

2.6 The conduct of DWAF complained against fall within the jurisdiction and mandate of the Public Protector to investigate.

CHAPTER 3: THE INVESTIGATION

The investigation comprised of informal and formal investigations, as well as consideration and study of relevant legislation, policies and procedures that regulated the construction and usage of the Dam.

3.1 Informal Investigation

3.1.1 Upon receipt of the complaints several consultative meetings were held, first with the community representatives, and thereafter with each and every community that lodged a complaint. The meetings were held at the headman's kraals on Sundays so as to accommodate all the complainants. Every complainant available was afforded an opportunity to substantiate on his or her complaint.

3.1.2 Physical inspections were also carried out in order to verify some of the complaints, for example, leaking roofs, cracked houses, undebushed sites, toilets built on wrong sites, poorly erected fences and so on.

3.1.3 After establishing that some of the complaints could be genuine, a letter was written to DWAF to inform them about the complaints. The Head of Department responded by inviting the OPP to a meeting to discuss the matter. The meeting took place on 27 June 2004 in Pretoria. The meeting was also attended by members of BKS (Pty) Ltd (BKS), a company retained by DWAF as implementing agents for the Dam project. The Head of the Department expressed his willingness to cooperate, but indicated that any claim that would require more money to be spent would be impossible to honour, as DWAF had already exceeded its budget. He further indicated that all communications should be channelled through BKS as they had all the information about the project,

and only when experiencing problems with BKS the OPP could contact DWAF directly.

3.2 Formal Investigation

3.2.1 Following the meeting with DWAF, the OPP held several meetings with BKS in order to clarify some of the issues raised by complainants. Documents relating to the relocation process, compensation, agreements and other information were received from BKS. Several meetings were held where both BKS and different communities participated. The aim of these meetings was to isolate contentious issues and to try to find solutions. At some instances joint *inspections in loco* were held with both the communities and BKS, more particularly when it came to defects in houses, poorly constructed fences, toilets and debushing.

3.2.2 The OPP also engaged the services of several experts, particularly where BKS was disputing the allegations by communities, and the field was of a technical nature. Following below is a summary of the technical assistance that was sourced from various experts:

- (i) The Department of Minerals and Energy (DME) was requested to investigate allegations that there were houses which sustained cracks due to the blasting of rocks that occurred during the construction of the Dam. Good cooperation was received from DME, and a report was submitted to the OPP after investigations. The report indicated that the possibility that the blasting during the construction of the Dam could have induced the cracks was very remote. This report was also presented by DME at the public hearing.

- (ii) The National Department of Agriculture was requested to investigate the fairness or otherwise of the compensation that was offered to the complainants for the loss of arable land and domestic fruit trees. Good cooperation was also received from this Department, and an agricultural economist was assigned the task to investigate this issue. A report was submitted to the OPP, and also presented during the public hearing.
- (iii) The Provincial Department of Agriculture also assisted with the remeasurement of a limited number of fields when there were several complaints about incorrect measurements. Most of the remeasured fields confirmed the discrepancies that were complained about, indicating that some complainants were indeed paid for lesser number of hectares instead of the actual size. This Department also presented evidence at the public hearing.
- (iv) The OPP also requested an opinion from the Provincial Department of Environmental Affairs and Tourism as far as the removal of certain trees from the residential sites. The Department indicated that any tree could be removed from a residential site, but residents could not remove or destroy trees outside their yards without permission. This Department also participated during the public hearing.

3.2.3 The OPP also contacted some of the contractors who were involved in the construction of houses and fences, as well as consultants that advised DWAF on the amount of compensation for loss of land.

3.2.4 Due to the multi-facet nature of the complaint, the length of the time it was taking to deal with some of the issues, as well as the seriousness

thereof, the Public Protector also decided to conduct a public hearing on this matter. The hearings were held from the 09th to the 12th May 2006 at Budeli Village.

The aim of the public hearing was to deal with the issues speedily, and in an open and transparent manner. The complainants submitted oral evidence, and DWAF had the opportunity to test that evidence and to present its own version of events. Other role-players such as the National Department of Agriculture, the Provincial Department of Agriculture, DME, Provincial Department of Environmental Affairs and Tourism and DWAF's consultants, BKS, were afforded the opportunity to submit oral evidence, especially on their previous reports or comments.

3.2.5 After the public hearings, the OPP together with DWAF, BKS and community representatives, conducted an *inspection in loco* at Budeli, Mutoti, Mulenzhe, Tshitomboni, Dididi and Tshilungoma. The aim of the inspection was to carry out a physical observation on some of issues complained about, such as cracked houses, debushing and leaking roofs to mention but a few.

3.3 Study of legislative provisions regulating the relocation of people for developmental purposes

In this instance the following Acts were looked into: the Constitution, the National Water Act 36 of 1998, the Water Act Regulations, the National Environmental Management Act 107 of 1998, the Merchant Shipping Act of 1951 and the Merchant Shipping Regulations of 2007.

3.4 Policies and procedures

The following agreements on policies and procedures which regulated the relocation process were considered: (a) Policy and procedure for the relocation of misanda, clinics, churches, community buildings and businesses; (b) Policy and procedures for acquiring access to land and mitigating the loss of crop production, grazing, orchards and natural resources; (c) Policy and procedure for relocation of graves; and the Operational Policy: Recreational Water Use, 2004.

3.5 The Complaint Resolution Committee (CRC)

After its formation, the CRC embarked on a process of verifying all complaints, and analyzing them, and tried to find solutions where possible. Details regarding the investigation of each complaint and the outcome thereof will be dealt with in chapter 5 of this report.

CHAPTER 4: LEGISLATIVE FRAMEWORK, POLICIES AND PROCEDURES

4.1 The Legislative Framework

4.1.1 The Constitution

4.1.1.1 The Constitution is the supreme law of the country, and any law or conduct inconsistent with it is invalid. The Bill of Rights is a cornerstone of democracy.

It enshrines the rights of all people and affirms the democratic values of human dignity, equality and freedom. The State is obliged to respect, protect, promote and fulfil the rights.

4.1.1.2 Section 10 of the Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected.

4.1.1.3 Section 24 provides that everyone has the right to an environment that is not harmful to their health and well-being.

4.1.1.4 Section 30 and 31 provide for the rights of people to participate in cultural life of their choice, and such persons may not be deprived that right.

4.1.1.5 In constructing the Dam, DWAF was supposed to have abided by the values of the Constitution and other statutory directives.

4.1.2 National Water Act 36 of 1998

The purpose of this Act is to ensure that the national water resources are protected, used, developed, conserved, managed and controlled in ways, which

take into account, amongst others, the promotion of equitable access to water and dam safety. Section 121(a) of the Act provides that the Minister needs to protect the public, property and the resource quality against the potential hazard posed by the dam or category of dams.

4.1.3 The Water Act Regulations 654/1961

The Water Act Regulations clearly indicate that the control of the access to the dam area and storage (dam) area water use is the responsibility of DWAF:

- (i) Paragraph 2(b) of the Regulations states that the Minister may at any time prohibit the use of the water surface of any Government Dam or part thereof in a storage area.
- (ii) Paragraph 3(a) states as follows: the Minister may allow or refuse any person access to any part of a storage area and may prohibit the holding or giving of any public entertainment; collection of money from the public; distribution of any pamphlet, book or any other printed or written matter; or organising, holding or addressing of any gathering in any storage area or part thereof.
- (iii) Paragraph 20 further states that the Minister may prohibit swimming or diving in any storage area or restrict swimming or diving to such times and such areas of any storage area as he may from time to time determine.
- (iv) Paragraph 21(a) states that the Minister may prohibit angling in any storage area or restrict angling to such times and such areas as he may determine from time to time.

- (v) Paragraph 22(i) states that no person may use a boat of any description on any government dam in a storage area except with the written permission the Minister.

From the investigations, there is no evidence that DWAF has assumed any of its responsibilities relating to control of the dam area, access to the dam and water use, as prescribed by the Regulations.

4.1.4 National Environment Management Act 107/1998

This Act provides the principles that guide decision making on matters affecting the environment. Section 1 deals particularly with rights of people who may be affected by environment management during a development process. The principles may be summarised as follows:

- (i) The principles shall apply alongside all other appropriate and relevant considerations, including the state's responsibility to respect, protect, promote and fulfil the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination.
- (ii) The environment management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.
- (iii) Development must be socially, environmentally and economically sustainable.

- (iv) Sustainable development requires the consideration of all relevant factors including the following:-
- (a) Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human well-being must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.
 - (b) Participation of all interested and affected parties in environmental governance must be promoted and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.
 - (c) Community well-being and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.
 - (d) The social, economic and environmental impacts of activities, including disadvantages and benefits must be considered, assessed and evaluated and decisions must be appropriate in the light of such consideration and assessment.
 - (e) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.

The construction of the Dam affected both human beings and the environment at large. It was therefore incumbent upon DWAF and other stakeholders to abide by the guidance of this Act in order to ensure environmental safety and sustainable development.

4.1.5 Merchant Shipping Act, 1951, and the Merchant Shipping (National Small Vessel Safety) Regulations, 2007

This Act provides for the control of all merchant shipping, and the Regulations deal mainly with the provision of safety standards for small vessels operating on inland waters. This Act and its Regulations make the Department of Transport to be an important stakeholder in the provision of safety regarding water use in the dams.

4.2 Policies and Procedures

4.2.1 Specific policies relating to the Dam

4.2.1.1 The following policies were developed through the CPC, in conjunction with the CAC and other stakeholders: Policy and Procedures for Relocation of Households, Misanda, Clinics, Churches and Community Buildings; Policy and Procedures for Relocating Businesses; Policy and Procedures for Acquiring Access to Land and Mitigating the Loss of Crop Production, Grazing, Orchards and Natural Resources; and Policy and Procedures for Relocating of Graves.

4.2.1.2 The purpose of these policies and procedures was to minimise the negative social and socio-economic impacts on communities affected by the construction of the Dam, and to maximise the benefits that could be derived from the project.

4.2.1.3 The affected communities were to be treated in accordance with the values espoused in the Bill of Rights in order to ensure freedom of choice, freedom of association and the right to be treated with dignity.

4.2.1.4 It was also a prerequisite that the communities were to be consulted and involved in the implementation of these policies and procedures throughout the implementation of this project. The main principle was that individuals and communities should not be disadvantaged or be worse off as the result of the development of the Dam.

4.2.2 Operational Policy: Recreational Water Use, 2004

4.2.2.1 The main aim of this policy is to define DWAF's responsibility regarding recreational water use and to establish fundamental principles, policy, objectives and strategies for regulating the water use. The fundamental components of this policy are as follows:

- (a) Water and water resources to be managed and utilised in an environmentally sound and equitable manner, based on integrated resource management plans
- (b) Recreational water use to be safe
- (c) Recreational water use to be appropriately authorized
- (d) Recreational water use to benefit and contribute to the sustainable livelihood of communities
- (e) The policy and implementation programme pertaining to recreational water use to be communicated and stakeholders appropriately empowered through capacity-building initiatives

- (f) Appropriate institutions to be established and effective cooperative linkages developed to ensure, among others, the sustainable management of recreational water use
- (g) Recreational water use and its regulation to comply with all relevant legislative requirements
- (h) Recreational water use is monitored, evaluated and audited in terms of both performance and compliance, and information pertaining to this use to be managed appropriately in order to promote the sustainable utilization and management of water resources.

4.2.2.2 The policy document also indicates that water resources are utilized for recreational purposes entail both natural and cultural attributes within the environment and can have both tangible and intangible value. It goes further to state that without tangible and measurable economic, social and environmental benefits to communities, the sustainability of resources cannot be ensured.

CHAPTER 5 THE COMPLAINTS

The main complaints in this matter are classified as follows:

5.1 Compensation

5.1.1 Compensation amount for loss of land

5.1.1.1 All the complainants were not satisfied with the compensation amount offered for the loss of arable land. The compensation amounts were as follows: R2181 per ha for the loss of crop production during the interim period; R11 116.98 per hectare for the permanent loss of land rights; and R3 705.66 per ha for land below the purchase line. The complainants indicated that the initial agreement was that each beneficiary would receive the amount of R2181 per hectare calculated over the period of twenty years for the permanent loss of land rights.

5.1.1.2 Communities alleged that DWAF changed the initial agreement unilaterally, and came up with the above-mentioned offers. It was further alleged that when the offers were rejected by communities, DWAF proceeded to implement the payments unilaterally. Although this is denied by BKS, the complainants indicated that they were informed by BKS that they were going to forfeit all the money if they did not accept payment within 60 days.

5.1.1.3 Another point of contention is that offers were allegedly made directly to individuals instead of through the CAC, as it was the agreed procedure. Some individuals who accepted these payments claimed that they were coerced into accepting such payments.

- 5.1.1.4 BKS responded by saying that the revised amounts were agreed to with the CAC, which represented the beneficiaries. They also indicated that they made offers directly to the complainants, as the CAC was not functional.
- 5.1.1.5 The CAC vehemently denied that there was an agreement on DWAF's final offers. They further indicated that it was this lack of agreement that led to the dissolution of the CAC by DWAF, which thereafter dealt directly with claimants.
- 5.1.1.6 The OPP requested the National Department of Agriculture to investigate a reasonable amount of compensation in the circumstances. They came up with a higher figure of R12 170 per ha for loss of arable land. DWAF attributed the difference to inflation fluctuation. During the CRC meetings, DWAF maintained its stance in this regard.

Findings

- (i) Notwithstanding arguments by DWAF on the amount of compensation, the difference of R1053.02 cannot just be explained off on the basis of inflationary variation within the period of less than a year.
- (ii) It is also clear from the investigations and the evidence submitted during the public hearing, as well as deliberations during CRC meetings that there was no agreement on the amount of compensation payable for loss of land. The decision by DWAF to stop recognizing the CAC as the main channel of communication exacerbated the situation as it is apparent that there was confusion

amongst affected individuals who did not understand how the amount of compensation was formulated. DWAF did not consult sufficiently before coming to the final conclusion on this issue. Opting to engage individual claimants just because there was no agreement with the CAC was counterproductive.

Recommendations

- (i) It is recommended that DWAF revisits the issue relating to the amount of compensation for loss of arable.
- (ii) It is further recommended that in future DWAF must fully engage beneficiaries through recognized community structures before deciding on any form of compensation.

5.1.2 Alternative land as a form of compensation

5.1.2.1 The agreement embodied in the relocation action plan states that land required for the project should be replaced with alternative land of equivalent production potential, and that Territorial Councils would reallocate land in their area of jurisdiction to users who are required to evacuate land previously allocated to them by the Councils for grazing, maize or other crop production or for orchards. The cost for developing such land would be borne by DWAF.

5.1.2.2 During the public hearing submissions were made that the complainants, more particularly those of Budeli, Mphego and Tshilungoma, would have preferred alternative land as a form of compensation instead of monetary compensation. The sentiments were echoed by the Provincial Department of Agriculture, which

indicated that they never supported the idea of monetary compensation, as it was not sustainable in the long term.

5.1.2.3 DWAF indicated that alternative land as a form of compensation was also their first preference. However, the idea was not pursued further as there was no alternative land available in close vicinity of the affected communities. They further pointed out that Madzivhandila Agricultural College was almost non-functional and occupies land that is big enough to accommodate the needs of Budeli people. This was also supported by the representative of the Budeli community. However, DWAF conceded that they never entered into negotiation with the Department of Agriculture which runs the College, or the Mphaphuli Tribal Authority which holds the land in trust.

5.1.2.4 It also transpired during the public hearing that only tribal land at Mulennzhe, Tshitomboni, Khakhanwa, Tswinga and Dididi is big enough and close to Budeli, Mphego and Tshilungoma to can cater for the agrarian needs of these communities. This option was also not explored.

5.1.2.5 During the CRC deliberations, the OPP undertook to take the matter of the availability of land further with different tribal authorities, and to liaise with DWAF on the outcome of such an engagement.

Finding

From the evidence presented at the public hearing, and the long-standing request by the Budeli community for an alternative land, it is clear that

this option can go a long way in satisfying the need by communities for sustainable subsistence. The CAC indicated that the matter was still under discussion when the structure was allegedly dissolved.

It can therefore be concluded that the option of an alternative land was not exhausted by the stakeholders, and due to its importance there is a need to revisit this issue.

Recommendation

It is recommended that DWAF reaffirms its undertaking to assist communities with the cost of developing the land if it can be acquired.

5.1.3 Payment of compensation money

Even though BKS made payments directly to individual claimants, not everyone was paid.

5.1.3.1 Budeli village

After the intervention by the OPP, payments were made to over 50 claimants at Budeli village alone. However, at the time of the public hearing there were still five claimants who have not yet received their payments at this village, as they did not lodge their claims with the OPP at the time.

Finding

After deliberations at the CRC, DWAF paid two of these claimants, and was in the process of paying the remaining three when the CRC concluded its activities in November 2007.

Recommendation

It is recommended that DWAF finalizes the remaining payments within two months of the issue of this report as the process has taken too long.

5.1.3.2 Mphego village

It was indicated during the public hearing that 5 claimants were not paid at Mphego village, although their fields were surveyed.

Finding

The Mphego village representative did not attend most of the CRC meetings as he was ill, and there no alternative person to provide information on the claims.

Recommendation

It is recommended that the Mphego village representative provides DWAF with the details of the claims within 60 days of the issue of this report, and upon receipt thereof DWAF to investigate and finalize the claims.

5.1.3.3 Mulenzhe

At Mulenzhe 21 people were not paid compensation at all as their fields were not measured.

Finding

DWAF requested for more details at the CRC meeting, and this was provided on 15 June 2007.

Recommendation

It is recommended that DWAF investigates and finalizes the matter within 60 days of the issue of this report.

5.1.3.4 Tshilungoma

It was indicated at the public hearing that 3 claimants were not paid for the loss of their agricultural fields at Tshilungoma. Some residents were paid for fields that did not belong to them, and for a lower number of hectares.

Finding

It was resolved by the CRC that the Tshilungoma representative would provide DWAF with the relevant information in this regard. Such information was provided to DWAF through BKS on 04 June 2007.

Recommendation

It is recommended that DWAF should investigate and finalize the matter within 60 days of the issue of this report.

5.1.3.5 Tshitomboni

At Tshitomboni village it was indicated that 15 claimants whose fields were located between the full supply level line (that is the area where the water level is expected to reach when the dam is at full capacity) and the purchase line (a buffer area between the full supply level and community land) were not fully compensated as it was envisaged by DWAF that they would still be able to utilize their fields. However, such fields are now completely submerged in water.

The community representative of Tshitomboni further alleged that payment of compensation for the fields was also irregular. One person who lost 0, 94 ha of land was offered R4 000, 00, whereas another one who lost the equivalent number of hectares was offered R1 000, 00.

Findings

- (i) It was not possible to inspect such fields as they are said to be completely submerged under water;
- (ii) DWAF was provided with a full list of complaints regarding the above-mentioned fields; and
- (iii) Concerning the issue of same measurement but different payments: DAWF indicated to the CRC that although fields could have been of similar size, they were affected differently, particularly by the purchase line. The CRC accepted this explanation.

Recommendation

It is recommended that DWAF investigates and finalizes the matter within 60 days of the issue of this report.

5.1.3.6 Dididi

It was further alleged that at Dididi 46 families whose fields were affected by the construction of the road were paid for lesser measurements, as the road was wider than in the original plan.

Findings

DWAF was presented with the list after the resolution by the CRC that it be provided with detailed information.

Recommendation

It is recommended that DWAF investigates and finalizes the matter within 60 days of the issue of this report.

5.1.3.7 Tswinga

- (i) The representative of Tswinga village pointed out that when the relocation process commenced all fields were supposed to be measured by DWAF. However, some fields were not measured and therefore owners were not compensated. Not all owners whose fields were measured received compensation. Even the people who were paid were not satisfied with the amount paid as compensation.
- (ii) He further stated that one resident whose crops were destroyed by a grader was not compensated even though DWAF inspected and photographed the area. Another resident whose irrigation pipes were damaged was also not compensated.

- (iii) The third resident whose field was within the full supply line was paid the rate of a field within the purchase line.
- (iv) The other complaint from Tswinga village was that compensation for registered and unregistered fields was the same. It was alleged that this was not supposed to be the case as those who owned registered fields paid taxes whereas those with unregistered fields did not.

Finding

At the CRC meeting DWAF requested the Village Representative to provide it with full information regarding all the above-mentioned complaints so that it could be investigated. The information was provided to DWAF through BKS.

Recommendation

It is recommended that DWAF investigates and finalizes the matter within 60 days of the issue of this report.

5.1.3.8 Mutoti village

- (a) At Mutoti village it was alleged that two residents who owned two different fields were made to share compensation of one resident whose field had submerged into water.
- (b) One resident had to refund about R15 000 to DWAF as overpayment for compensation, and it was not clear if this money did indeed reach DWAF.

- (c) The other complaint from this village related to compensation for old aged people who lost agricultural fields. It was alleged that compensation was paid to these people by grouping them into one field, and were made to share the proceeds of one payment.
- (d) It was further alleged that one person was not compensated even though his field was measured.

Findings

- (i) The claim that two residents were paid for one field could not be substantiated;
- (ii) The complainant who alleged that he was made to refund DWAF acknowledged the debt;
- (iii) The complaint that several old people were paid from one field could not be substantiated; and
- (iv) As for the complainant whose field was measured but never paid, the village representative provided DWAF with full details.

Recommendation

It is recommended that DWAF to investigate and finalize the matter within 60 days of the issue of this report.

5.1.3.9 Maniini

- (a) In Maniini village, one individual, R.P Baloyi, was allegedly not paid compensation for his 0,2ha field.
- (b) MM Dali was allegedly not compensated for his 0.62ha fruit trees.

Finding

At the CRC meeting DWAF requested for information on these complaints so that it could attend to the matters. The information was supplied to BKS on 15 June 2007.

Recommendation

It is recommended that DWAF finalizes this matter within 60 days of the issue of this report.

5.1.4 Compensation for domestic fruit trees (details for other trees needed)

- 5.1.4.1 The agreement between DWAF and the affected communities was that each affected individual would be compensated for every fruit tree in their residential sites. According to the communities, the initial agreement was that an amount of R344 would be payable per mango tree, to mention but one example. It was alleged that DWAF unilaterally changed this amount to R220 plus a sapling per fruit tree. This applied to all other fruit trees, although they differed in the amount of compensation.
- 5.1.4.2 Three complainants were allegedly not paid at all for the loss of domestic fruit trees at Mulenzhe village, and seven at Tshiulungoma.

Findings

- (i) During the investigation DWAF indicated that the amount was agreed upon with the CAC and the Provincial Department of Agriculture. Both the CAC and the Department of Agriculture vehemently denied this during the public hearing;

The above difference of opinion shows that there was no agreement on this issue, and that there was a problem of communication between DWAF and the main stakeholders;

- (ii) The OPP requested the National Department of Agriculture to give expert advice on the appropriate rate of compensation. This Department came up with the figure of R400 as the reasonable amount payable. DWAF again indicated that the difference between this amount and their offer could be the result of inflationary variation, as their figures were produced in 2004. However, this assertion is found to be highly improbable taking into consideration that the difference is too wide, and their figures were produced just under a year earlier;
- (iii) The provision of saplings was rejected by most community members, especially at Budeli Village, and therefore it is not a viable option; and
- (iv) DWAF was provided with full lists of complaints in this regard during the CRC process.

Recommendations

It is recommended that

- (i) DAWF pays the originally agreed amounts for different tree types, and discontinues the provision of saplings; and
- (ii) DWAF investigates and pays the outstanding amounts within 60 days of the issue of this report.

5.1.5 Compensation for commercial fruit farms or orchards

5.1.5.1 Commercial fruit farms or orchards were compensated as per hectare and not per fruit tree, at the rate of R11 116.98 per ha. The initial understanding by the complainants was that owners of commercial fruit farms and orchards would be compensated for the loss of land, equipment and fruit trees. They therefore objected at being paid at the same rate as those who owned maize fields as these claimants basically lost only the land rights, whereas they lost equipments and fruit trees. Five people were affected at Muledane location, and one at Budeli village.

On the issue of paying the same amount of compensation money for commercial farms as that of maize fields DWAF indicated that they used this formula in order to avoid competition amongst farmers as some of them had very few trees in their orchards.

At the CRC meeting DWAF insisted that the formula used for the payment of orchard owners was fair. However, DWAF was

prepared to look into the issue of destroyed or lost equipments with the view of paying the necessary compensation.

5.1.5.2 At Tswinga and Muledane villages 2 complainants were allegedly not compensated for irrigation pipes and fruit trees that were damaged by a grader during the opening of the purchase line route.

5.1.5.3 At Muledane orchard owners alleged that they were advised by DWAF to continue using the fields despite the fact that dam water was not far from these orchards. At the time of the public hearing it was alleged that some of the fruit trees were already submerged in water. They argue that they were compensated on the basis that they could still use parts of the orchards, which were submerged under water at the time of the public hearing.

5.1.5.4 At Mphego village it was alleged that orchards and fruit trees were damaged by a grader and no compensation was paid to the farmers. It was also alleged that one resident was dissatisfied with compensation of R4 483, 85 for his 200 ha orchards.

5.1.5.5 At Maniini village Mr K.G. Munyai was allegedly not compensated for the destruction of the fences of his two orchards of 3 and 3.2 ha. Mr. Mudau was also not compensated for the destruction of the fence of his 2.5 ha orchard.

5.1.5.6 At Tshilungoma 11 farmers were allegedly not compensated at all or partly compensated.

Findings

- (i) The decision to pay commercial farmers only for the loss of right to land use and not for their actual fruit trees as well their equipments appears to be unfair. This is because the R11 116.98 is similar to the amount paid to individuals who lost the right to land use for planting of maize and other seasonal crops for subsistence. These claimants were further paid R2 181 or R3 705 for loss of production. This was not applicable to commercial farmers who could not harvest their fruit from the time a moratorium was declared and the time for payment;

Furthermore, on comparing the value of a standard maize field, which is only cultivated seasonally once a year, and a fruit orchard equipped with irrigation equipments and fencing, and with fruit trees which have a monetary value of their own, the objection by fruit farm owners is sustainable. The argument by DWAF that they used this formula in order to avoid competition does not hold water, as the monetary value of fruit trees and equipments is easily quantifiable;

Commercial orchard farmers were therefore only compensated for the loss of land rights, but not for the loss of fruit trees, equipments, fences and loss of production. This approach cannot be justified;

- (ii) During the CRC meeting Tswinga and Muledane Representatives were required to provide DWAF with details of the complainants who were allegedly not compensated for irrigation pipes and fruit trees that were damaged during the opening of purchase lines, as

well as details of farmers who were not compensated at all or partly compensated. The information was provided to DWAF through BKS;

- (iii) There was no contention from DWAF's side on the allegations by Muledane orchard farmers that all their fruit trees were submerged under water, and that their rates of payment were determined on the assumption that they would still be able to utilize some parts of the fields that were not affected by the Dam; and
- (iv) At the CRC meetings DWAF also requested to be provided with details of complainants whose fences were allegedly destroyed or damage, and same was furnished on 15 June 2007.

Recommendations

It is recommended that

- (i) DWAF revises the rate of payment for fruit farmers and pays them on a higher scale, or considers making separate payments for the loss of land rights, fruit trees, loss of production, agricultural equipments and fences;
- (ii) DWAF pays compensation to the Tswinga and Muledane complainants whose irrigation pipes and fruit trees were allegedly damaged by a grader during the opening of a purchase line route;
- (iii) DWAF to revisit the Muledane orchards in order to verify the allegations that parts of the fields which it was assumed that they would not be affected by the dam is now completely submerged

under water. If this is the case then the payment scales may need to be reconsidered;

- (iv) The Mphego Representative provides DWAF with full details of complainants whose fruit trees were damaged by a grader and they were not compensated within 30 days of the issue of this report, and DWAF to investigate and finalize this matter within 60 days of the receipt of such information. DWAF to also investigate and finalise the matter of a complainant who allegedly received only R4 483.85 for a 200 ha orchard; and
- (v) DWAF investigates and finalizes the complaint of 11 farmers who were allegedly not paid or partly paid at Tshilungoma Village.

5.1.6 Compensation for maguvha (mud yard walls)

The agreement was that all maguvha or mud yard walls which were constructed in the old households would be compensated for in cash. It is alleged that no such payments were made by DWAF. There were 11 complaints at Mulenzhe and 2 at Budeli villages.

Finding

Documents provided to the CRC indicated that compensation was payable for yard walls. Information on specific complaints was provided to DWAF.

Recommendation

It is recommended that DWAF should finalize this matter within 60 days of the issue of this report.

5.2 Houses

5.2.1 According to the RAP agreement a total number of 405 houses were to be built at the following areas: Mulenzhe (263), Budeli (94), Tshilungoma (3) and Dididi (45). It was further agreed that building contractors would be appointed and supervised by a project manager appointed by DWAF. DWAF would also provide inspectors to assist the project manager to ensure that acceptable standards of construction and materials were maintained in accordance with plans and specifications, and would issue certificates of approval to the project manager for payment of the work done and to ensure recourse in the event of poor workmanship.

Several complaints relating to the new houses were raised in the initial complaint as well as during the public hearing.

5.2.2 The Budeli community representative indicated that the original agreement was that 120 houses would be provided for his community, but DWAF erected only 101 houses. This consequently resulted in some families not being relocated. He also indicated that many houses were incomplete in that there were no gutters, down pipes; fischer boards, etc, as well as houses that were not painted, had cracks and defective doors. Some houses were leaking, causing damages to ceilings and furniture.

5.2.3 DWAF indicated that only 94 houses were supposed to have been constructed at Budeli location. However, for various reasons more houses were constructed. As for the defects in the houses, DWAF indicated that they were prepared to remedy any defects it is proven that such defects were caused by negligence on the part of the Department, its officials or agents.

- 5.2.4 The same undertaking by DWAF applies to Mulenzhe village where newly constructed houses were alleged to have the following defects: cracks, not painted, water emerging from the ground, leaking roofs and gutters, incomplete houses, falling badge boards, missing keys, falling cornice, no aprons, no burglar bars, broken window panes, no toilets, no septic tanks, termites mounds inside houses, and some house screets are falling apart. 183 houses were affected at Mulenzhe.
- 5.2.5 At Tshilungoma, 12 houses were reported to be leaking and 8 not painted. 3 families allegedly used to have two sites each, but were compensated only for one site each. Although DWAF did not challenge the evidence by the Tshilungoma community representative, the undertaking to remedy all defects upon presentation of proof covered all complaints.
- 5.2.6 There was a complaint by the representative of Mutoti village that a church and at least two houses sustained huge cracks due to dynamite blasting during the construction of the Dam. This allegation also arose at Budeli but without specifying the number of houses that were affected. DWAF indicated that the type of blasting used at the Dam was such that it could not cause any damage to houses that were outside the purchase line. This assertion was supported by experts from DME. Furthermore, during the *inspection in loco* one house was inspected at this village to verify the damage allegedly caused by the blasting during the construction of the Dam.
- 5.2.7 The CRC appointed a task team to inspect all the houses complained about, and report on its findings with a view to establish which damages are readily ascertainable so that DWAF could start with the repairs. It was envisaged that only where there were disputes a professional inspector would be engaged. Almost all houses at Budeli and Tshilungoma were

inspected, except a few where owners were not available. About 70% were inspected at Mulenzhe, and the process was still on when the CRC term came to an end. Efforts to coordinate the finalization of the process outside the CRC were not successful, although the process was still ongoing at the time of issue of this report.

Findings

- (i) The cracks observed at Mutoti village were of ordinary in nature and there was no indication that they were caused by the effects of blasting;
- (ii) Three houses that were visited at Budeli village during the *inspection in loco* were found to have leaking roofs with resultant damages to wall paints and ceilings. One house was not painted both inside and outside. Another house had huge cracks, which seemed to be affecting the entire structure. Some houses had no gutters, down pipes and fischer boards;
- (iii) Preliminary results by the task team indicate that most complaints relating to house defects are genuine; and
- (iv) DWAF was provided with all lists of complaints regarding defects on houses.

Recommendations

- (i) DWAF should coordinate the finalization of the inspection of the remaining houses at Mulenzhe Village within 30 days of the issue of this report. The inspection report will only serve as a guideline to both the OPP and DWAF;

- (ii) DWAF should draft a plan of action within 60 days of the issue of this report, which plan of action will indicate the manner and time period in which the defects on the houses complained about will be attended to; and
- (iii) DWAF to repair all the houses which were inspected during the public hearing and found to have defects with immediate effect. These houses are: B63, B28 and B40.

5.3 Unrelocated Homesteads

5.3.1 This complaint came from Budeli, Mulenzhe, Dididi and Tshilungoma. It was alleged that some homesteads were very close to the Dam water and there was fear that they may be affected by the water during flood periods. Another main concern was that due to their close proximity to the dam water, such families were exposed to the danger of water animals such as hippos and crocodiles, as the Dam is not fenced off or provided with any protection. The Tshitomboni representative even cited an incident where a crocodile was spotted at a residential site just a few days before the public hearing took place.

5.3.2 Three homesteads were reported to be at the distance of between 150 to 500 meters from the water level at Budeli. At Muledane a farmhouse was said to be 450 meters from the Dam. The Mulenzhe representative indicated that about 25 houses were at a distance of between 80 to 105 meters from the Dam water. At Dididi it was alleged that houses which are about 150 meters from the Dam water were not relocated. It was also indicated that at Tshilungoma several families were located only about 100 meters from the Dam water. The Tshitomboni representative

reported that 5 families were located about 90 meters from the Dam water, and that a church was only 40 meters from the water.

There were suggestions by all the representatives of affected communities that the families that are close to the Dam should be relocated.

5.3.3 DWAF indicated that the houses which were said to be close to the dam were unlikely to be affected even in the event of the worst flood as they are placed on higher grounds or higher elevations. DWAF further indicated that they were not certain if it was their responsibility to secure the Dam in order to protect the community from dangerous water animals, as this could be the function of the Department of Environmental Affairs.

5.3.4 The Department of Environmental Affairs indicated that their main concern was the protection of both human beings and animals, and could only act if an incident was reported to them. They could not comment on the fencing of the dam, as that was part of construction and therefore the domain of DWAF.

Findings

- (i) During the *inspection in loco* it was observed that some of the homesteads were close to the dam water as alleged. But it was also evident that such houses were at higher grounds and unlikely to be reached by the water;
- (ii) The CRC established that houses number T26 and T35 which are constructed in a valley were not built by DWAF. However these houses are under immediate threat of the water;

- (iii) Although the church at Tshitomboni was found to be far away from the Dam to be directly affected by the water, children will not be safe due to the proximity of the church to the water level. This also applies to the reported five houses, which although they are far enough not to be reached by the water, their proximity to the Dam poses a real danger to children and domestic animals. There were reports of crocodiles being found in the residential yards;
- (iv) During an inspection *in loco* at Budeli Village three homesteads were found to be approximately 150-200 meters away from the Dam water level. Although DWAF's argument is that these houses are on a higher ground and therefore highly unlikely to be directly affected by the water, their proximity to the water level poses danger to these families and their domestic animals. There are recent reports of crocodiles and hippos being spotted in the residential yards. Children may easily drown (were?) living so close to the water;
- (v) An inspection *in loco* was conducted at Mulenzhe, and it was confirmed that indeed some homesteads were just over 100 meters away from the dam water;
- (vi) There are also homesteads at Tshilungoma which are very close to the water, albeit situated on higher grounds. The lives of people living in the households are in obvious danger from crocodiles and hippos, as well as drowning of children;
- (vii) The primary school at Mulenzhe is very close to the water, thereby endangering the lives of the school children who may stray to the dam; and

(viii) DWAF was provided with all lists of complaints in this category.

Recommendations

It is recommended that:

- (i) DWAF, in consultation with the Department of Environmental Affairs, erects physical barriers around the dam in order to prevent crocodiles and hippos from straying into residential sites which are adjacent to the Dam, and to prevent children and domestic animals from accessing the Dam which might lead to drownings and killings by crocodiles and hippos; alternatively; and
- (ii) DWAF relocates all homesteads and structures which are within 500 meters from the Dam water, and erect a fence around the Dam in order to restrict hippos from straying into residential yards.

5.4 Toilets

The OPP also investigated the issue of pit toilets that were not erected at all, and those that were erected in other households' sites. An *inspection in loco* was also conducted together with BKS and community representatives.

According to the agreement it was DWAF's responsibility to ensure that basic amenities such as toilets are provided for in the new settlements. Pit toilets were erected in most residential sites.

- 5.4.1 It was alleged that there is one site without a toilet at Budeli location. The owner initially had two sites adjacent to each other. Although the

sites were fenced in together, each had its own toilet as they were acquired at different periods. When the household was relocated DWAF agreed to provide complainants with two separate sites. Both new sites were fenced, and for some unclear reasons, only one site was provided with a toilet.

Finding

It is incomprehensible why DWAF agreed to provide the complainants with two sites, but declines to provide one site with a toilet, even though there were two toilets in the original sites. DWAF is bound by policy to compensate the complainant to at least what he had originally, if not better. DWAF's argument that it is not obliged to provide a toilet for a vacant stand is not sustainable.

Recommendation

It is recommended that a pit toilet be erected on stand number B34.

- 5.4.2 The other problem was the issue of two sets of toilets constructed on one stand and therefore depriving the other household of toilet facilities. There are five such instances at Budeli village.

BKS acknowledged this and indicated that the error was committed by contractors who apparently could not establish the correct site boundaries as pegs were removed. They further indicated that it would be expensive to erect new toilets in the correct stands, and that the best they could do was either to install an access gate so that the household without a toilet could use the facility that has been constructed in someone's property; or

to shift the fence and encroach on someone's piece of land so as to allow the other family to have access to a toilet.

These approaches have caused a lot of conflict, as some households do not want others to enter into their yards and utilize the toilets. All the complainants who had their land encroached upon are unhappy to lose a piece of land. These sentiments were made clear during an *inspection in loco*.

DWAF conceded during the public hearing that the situation was as complained about, but they believed that State resources could better be utilized through the approach that they adopted. DWAF also indicated at the CRC that that it preferred to deprive the affected homesteads of some piece of land as the new residential stands would still be bigger than the stands that complainants owned before relocation.

Finding

It is improper for DWAF to disregard the need to respect, maintain and protect privacy and dignity of individuals. It is equally improper to create conflict situation on the pretext that it would be costly to construct proper toilet facilities.

The argument that complainants could be deprived of a piece of land just because their original stands were smaller than the new stands cannot be sustained. Everyone who was relocated got a bigger stand, and why should the complainants be prejudiced for the error of the DWAF?

Recommendation

It is recommended that the five toilets complained about be built into proper stands.

- 5.4.3 At Tshilungoma the complaint was that no toilet seat was fitted at site number T45.

Finding

Details concerning this complaint were provided to DWAF on 04 June 2007.

Recommendation

It is recommended that DWAF inspects the house and finalizes the matter within 60 days of the issue of this report.

5.5 Access to the Dam

It was an agreed condition for the relocation that safe points would be created to provide communities with access to the river for washing, bathing and drinking points for livestock. This agreement was allegedly disregarded by BKS who was reported to have said that they could not remove people away from the water and then took them back again. During the public hearing BKS indicated that the matter could still be explored in consultation with traditional leaders.

DWAF indicated to the CRC that it was looking into the matter and consulting with other stakeholders on how to address the issue

Recommendation

It is recommended that DWAF provides safe access to the dam by surrounding communities and their livestock as stipulated in the relocation policies forthwith.

5.6 Debushing and Related Matters

There was an agreement between DWAF and the affected communities that the new residential stands would be ploughed and debushed, and that fertilizers would also be applied into the soil of the ploughed stands. Debushing involved the removal of bushes and trees as well as rocks and boulders.

At Budeli village 15 sites were reportedly not debushed at all. Heaps of concrete and stones were allegedly left in the open fields at Tswinga by contractors who constructed a bridge. It was also alleged that at Mulenzhe boulders and termite hills were left unattended, and that most residential sites were not debushed or ploughed at all, and a few were partly debushed. At Tshaulu contractors allegedly left rocks, soil and boulders on the fields, making it difficult to fully utilize those fields for ploughing.

Findings

An *inspection in loco* was carried out at Budeli village. It was clear when moving around that some stands were not debushed at all. Site number B28 was inspected from inside the yard, and there were tall bushes, trees, heaps of soil, rocks and boulders.

At the CRC, DWAF requested lists of sites which were not debushed in order to investigate the matter further. Affected villages provided the lists to DWAF.

Recommendation

It is recommended that DWAF commences with the debushing of the affected stands forthwith, including stand number B28 and T24.

5.7 Water Supply

It was alleged that the initial undertaking by DWAF was to install a water tap in every new residential site. The water supply would come from boreholes until the Dam was fully operational and providing water to all communities.

The taps were installed on the streets and not in the residential sites as allegedly undertaken initially.

DWAF disputed that it undertook to install taps in residential stands, and said that this was the function of municipalities. This was vehemently contrasted by village representatives and the former chairperson of the CAC. They indicated that DWAF consistently announced this in all meetings with the CAC and communities.

Finding

The allegations by the village representatives and the former chairperson of the CAC are found to be credible. Communities also confirmed that DWAF made the undertaking.

Recommendation

It is recommended that DWAF installs water taps into residential stands as undertaken.

5.8 Replacement of Domestic Animal Enclosures

5.8.1 The RAP document provided that all infrastructure including domestic animal enclosures for cattle, pigs, donkeys, goats and chickens would be replaced within 18 months after the start of the construction of the Dam.

5.8.2 Most of the structures, except fowl runs, were replaced, but the main complaint was the type of kraals provided. DWAF used steel wires instead of wooden poles, and these are said not to be suitable for cattle kraals. At Mulembe cattle kraals were said to be too small and no goats kraals were constructed or compensated for. No fowl runs or other structures that were used to keep them were replaced or compensated for.

5.8.3 At Tshilungoma goats, pig and cattle enclosures were not erected or compensated for. There are three complaints in this village.

5.8.4 DWAF indicated that there was no undertaking to replace or compensate for the fowl runs.

Findings

- (i) DWAF's submission and contestation is not supported by the relocation policy which clearly states that such facilities would be replaced by DWAF.

- (ii) Lists of complaints in this regard were provided to DWAF in June 2007.

Recommendation

It is recommended that DWAF replaces the abovementioned facilities or pays owners the necessary compensation.

5.9 Fences

5.9.1 According to the RAP all sites in the new settlement were to be fenced by DWAF. Residents were to be provided with fences of the same or better quality than they had before relocation.

5.9.2 All sites, except one at Budeli village, were provided with fences, but in most cases both the material and workmanship were of low quality. It was observed during an *inspection in loco* at Budeli that some fences were constructed using wooden poles instead of steel posts, e.g. site number B40. In one site a 1.2 meter fence was constructed whereas the owner previously had a high security fence. In some sites gates could not close, or they were constructed so high that animals such as dogs and goats could go through without hindrance. There was one site where there was no gate at all, and another where the footgate was not installed but owner was provided with a gate without poles to install it on his own.

5.9.3 At Tswana, Tshaulu, Maniini and Muledane there were complaints that fences which were used for the orchards were destroyed by graders when making purchase lines. Such fences were not replaced or compensated for.

- 5.9.4 During meetings with the OPP, BKS indicated that most residential sites fences were constructed temporarily and contractors who rendered shoddy work were not paid. The OPP contacted the contractors who constructed the fences, and all of them indicated that the fences were permanent and they had received all their payments.
- 5.9.5 As for the site without a fence at Budeli location, DWAF indicated that the two owners of the sites are brothers, and they agreed that one site should forfeit a fence so that the other one could have a high fence instead of a standard one. This was disputed by complainants.
- 5.9.6 At the CRC DWAF agreed to repair fences at Budeli Village, but only those which were jointly inspected and found faulty.

Findings

- (i) From the evidence and observations made during inspections, it was observed that DWAF failed to provide communities with quality service when it comes to fences;
- (ii) The gate without poles is still not installed; and
- (iii) Most faulty fences were not repaired.

Recommendations

- (i) DWAF should inspect and repair all fences which are alleged to be defective; and
- (ii) DWAF should provide poles and install the foot gate at site number B73.

5.10 Businesses

According to the RAP document, commercial value of businesses would be evaluated in a transparent manner acceptable to the businessperson concerned and the Relocation Subcommittee. It was also stated that the moratorium of August 1998, which was placed on further developments pending the commencement of the construction of the Dam, would be respected.

Mr Mudau of Budeli village complained that he relocated his business after a moratorium was placed on further developments, and the structure was still standing at the time of assessment by DWAF. He further alleged that DWAF declined to compensate him for his business structure even though its officials evaluated the structure and recommended for compensation. Mr Mudau produced documents to indicate that his structure was still standing at the time of assessment, although he had stopped trading and relocated somewhere else due to the moratorium.

DWAF indicated that Mr Mudau's business was no longer in operation at the time of assessment, and therefore could not compensate him.

Mr Mudau passed away in 2006, and further documents could not be obtained to substantiate his claim. The matter could not be taken any further.

5.11 Provision of Infrastructure

5.11.1 The documented agreement was that all infrastructure including houses, streets, domestic animal enclosures, electricity, storm water drains, sports facilities, telephone lines, street lighting, community halls, crèches, and roads linking villages would be built within 18 months after the commencement of construction. Household goods would be

removed at DWAF's cost. The needs of individuals such as traditional healers would be respected.

- 5.11.2 There was a complaint from Mulenzhe village that a clinic and some buildings in the premises were not compensated for, or replaced. DWAF has indicated that a new clinic has been built in the area.
- 5.11.3 On further investigation, it became apparent that the clinic was relocated, although no further compensation was paid to the community, especially for houses which formed part of the clinic.
- 5.11.4 There was a complaint that some areas, such as parts of Dididi and Tshitomboni and Tswinga are not yet electrified after eight years since the commencement of the Dam development. It was allegedly agreed that since most villages lost places where they used to collect firewood, DWAF would interact with Eskom to facilitate the speedy installation of electricity in affected areas. This submission was also supported by the RAP.
- 5.11.5 There was also a complaint that storm water drains and access roads into residential sites were not in place at Budeli, Tshilungoma and Dididi.
- 5.11.6 Another complaint was about a small bridge that links the old and the new Budeli village. It was alleged that the bridge was very low and poorly constructed and it was usually flooded when it rains preventing children from the new village from going to the school which is situated in the old village. DWAF contended that the bridge was flooded due to blockages caused by rubble and other materials.

Findings

- (i) The CRC established that a new clinic was built by DWAF at Mulenzhe, and that compensation for other buildings was paid to the Mulenzhe Trust;
- (ii) At the CRC meeting DWAF still insisted that it could only install electricity supply if complainants had electricity supply in their former villages. Where there was none, their obligation was to facilitate the installation of electricity by ESKOM. This submission by DWAF is not convincing as DWAF did install electricity at Mutoti Village where there was no electricity supply before. The same principle that was applied at Mutoti Village should also apply at Tshitomboni and Dididi;
- (iii) At the CRC meeting DWAF agreed to repair the V-drains, but did not commit itself on access roads into residential sites; and
- (iv) The bridge is too low and constructed by soil without cement, and almost all the soil on the sides has been eroded and dumped under the bridge, contributing to the blockage.

Recommendations

- (i) For consistency, DWAF should install electricity supply at Tshitomboni and Dididi as it did at Mutoti village;
- (ii) DWAF should construct access roads into residential sites as provided for in the relocation policy, and to speed up the construction of culverts or v-drains as undertaken; and
- (iii) DWAF should construct a proper bridge, using cement and other durable materials, between the two villages.

5.12 Relocation of Graves

The Cultural and Graves Sub-committee was responsible for cultural affairs relating to identification, exhumation and reburial of all graves found within the project area. This included reburials of members of families to be relocated, preferably in a local cemetery but also in yards of houses in the relocation area in special circumstances. An amount of R600 was to be paid to each family who had graves to be reburied as a contribution to the cost of funeral ceremony. This rate also applied in cases of symbolic graves.

- (a) It was alleged that a grave which is situated inside a house in Tshilungoma was not relocated. DWAF did not indicate the reason for declining to relocate this grave. Seemingly special circumstances existed in this situation, and the grave should have been relocated.
- (b) Two graves were allegedly not relocated at Mulenzhe village.
- (c) Another serious contention was that of the amount of R600 for burial ceremonies. Affected people indicated that the amount was very low as it cannot cater for all the rituals, food and transport for the ceremony.
- (d) One person at Budeli village alleged that she did not receive the R600 compensation. DWAF indicated that the amount was advanced to the Headman, who denied having received the money. DWAF must ensure that the aggrieved individual receives her due compensation.

Findings

- (i) The CRC established that the grave which was alleged to be inside a house at Tshilungoma was that of a baby, and there was nothing in the grave except soil at the time of relocation. DWAF should have taken

part of the soil from the grave and placed it in the symbolic coffin for the family to conduct a symbolic burial;

- (ii) At the CRC meeting DWAF indicated that it had knowledge of the unrelocated graves at Mulenzhe, and it was in the process of relocating them;
- (iii) Concerning the compensation amount of R600 per grave, the CRC confirmed that the amount was agreed to in the relocation policy; and
- (iv) Concerning the payment of R600 compensation which was allegedly paid to the Headman instead of the complainant, the CRC established that no money was paid out at all as there was confusion over the symbolic items found in the grave. It was further established that the grave was not of a baby but of a child who was about 11 years old at the time of her death. DWAF confirmed that there were three graves which were unidentified and it was believed that the remains of the complainant's child could be in one of them. DWAF was working with the undertaker concerned in order to identify the right grave, after which the compensation will be paid to the complainant.

Recommendations

It is recommended that

- (i) DWAF pays the R600 compensation amount to the family whose baby's grave was not symbolically relocated so that the family can conduct symbolic burial rituals;
- (ii) DWAF finalises the relocation of the graves at Mulenzhe with immediate effect; and
- (iii) DWAF finalises the identification of a child grave at Budeli village, and pays the R600 compensation amount to the relevant person or family.

5.13 Mitigation of Negative Social and Cultural Impact

- 5.13.1 According to the RAP document specific provisions would be made to mitigate negative social and cultural impacts such as loss of medicinal plants, areas used for initiations and bathing places for their scholars, baptismal areas and washing and bathing places for the communities. Traditional healers would be assisted to recover medicinal plants and to transplant them in areas agreed to with Territorial Councils.
- 5.13.2 The complaint was that this agreement was not adhered to by DWAF. It was alleged that there were no secure or designated baptismal or bathing points and ritual places, as envisaged. There are also no nurseries for traditional medicinal plants.
- 5.13.3 DWAF acknowledged that no points were designated or secured for cultural and social activities that must be performed at the river. They further indicated that some traditional medicinal plants were transplanted but died out due to lack of care. DWAF also indicated their preparedness to discuss the issue with traditional leaders of the affected areas. (DWAF indicated that this was the responsibility of Matopo Consultants)
- 5.13.4 Another complaint from Mphego village was that DWAF failed to build a ritual place for the headman which was displaced or removed during the construction of the Dam.

Findings

- (i) No designated or secured points for cultural and social activities were established despite the fact that this was provided for in the relocation

policies. DWAF indicated to the CRC that it was consulting with relevant structures in this regard;

- (ii) Medicinal plants were replanted but died out for lack of care. DWAF did not make proper arrangement for a proper nursery when the plants were replanted; and
- (iii) The ritual structure for the Mphego Headkraal was not rebuilt or compensated for even though the relocation policy provides for this.

Recommendations

It is recommended that

- (i) DWAF, in consultation with the Department of Environmental Affairs, establishes the secured designated points for cultural and social activities as provided for in the relocation policies;
- (ii) DWAF establishes a proper nursery for medicinal plants; and
- (iii) DWAF consults with the Mphego Headman in order to replace the ritual structure or place which was in place before relocation.

5.14 Loss of Agricultural Equipments and Improvements

5.14.1 According to the RAP, fair and equitable compensation would be paid for existing improvements on land required for the project, including irrigation systems, camp fencing and stock watering points. Compensation would be in the form of replacements, and only where this was not possible or practical would compensation be made in the form of cash.

5.14.2 The Mutoti community alleged that it was not compensated for two boreholes and irrigation pipes at the communal irrigation scheme.

Finding

DWAF acknowledged to the CRC that there was a record of the two boreholes in its inventory and there was no indication that the complainants were compensated for such equipments. DWAF further demanded proof that the boreholes were functioning and that they indeed belonged to them and not the Government. The Mutoti representative provided evidence of the installation of those boreholes. The demand by DWAF was both unreasonable and unnecessary as it should have obtained that information when it compiled the inventory. This exercise seemed to be an attempt to avoid paying compensation for the loss of the equipment by complainants.

Recommendation

It is recommended that DWAF pays for the two boreholes at the Mutoti agricultural scheme without delay.

5.15 Show Houses

- 5.15.1 It was alleged by community representatives that the initial agreement between DWAF and communities was that a show house would be built in every village as a showpiece of how an average new house would look like. After the project such house would be used for a community facility such as a clinic.
- 5.15.2 The Dididi community indicated that no showhouse was built in their village. At Tshilungoma it was alleged that the house was incomplete.

- 5.15.3 DAWF disputed that there was an agreement that show houses would be built in every village, and that such houses would be turned into community structures.

Findings

DWAF indicated to the CRC that it was not a requirement that show houses should be built in all villages. It also indicated that all show houses which were not completed were handed over to tribal councils to use as they pleased. This version was not contrasted by village representatives.

5.16 Trust Funds

- 5.16.1 According to the RAP, cash compensation payable to groups or communities had to be paid into a trust fund, and be used for community development projects. Trust funds would be the responsibility of Tribal Councils.
- 5.16.2 During the public hearing all communities that made submissions indicated that they did not know what happened to their trust funds, as no developmental projects were taking place at their areas.
- 5.16.3 DWAF indicated to the CRC that once the funds were transferred to tribal councils or tribal authorities it was no longer its responsibility to monitor if such funds are utilised properly and for the intended purpose. This view was contrasted by the Provincial Treasury which indicated that these were public funds and DWAF was bound by the PFMA to monitor its utilisation and ensure accountability on part of tribal authorities.

Finding

It was DWAF's responsibility to ensure that accounting mechanisms were in place in order to monitor the usage of public funds by tribal authorities, e.g. audit reports to ensure that the funds were not mismanaged. Failure by DWAF to do this was in contravention of the PFMA.

Recommendation

It is recommended that the Minister of Water Affairs and Forestry investigates this issue with the intention to establish whether the PFMA was contravened or not, and thereafter to take steps to remedy the situation.

5.17 Incorrect Measurements of Fields

Several fields were incorrectly measured during relocation and this had a negative impact on the payment of compensation.

5.17.1 At Budeli village one complainant, Mr K.A. Nthangeni, who owned a 3 ha orchard was allegedly paid for 1 ha.

DWAF indicated that there was a dispute between the owner of the orchard and the traditional leader in the area as it is alleged that the owner gave part of his orchard to someone else, and therefore there could be a risk of making double payments.

5.17.2 At Mphego village 5 fields were remeasured by the Department of Agriculture and it was established that all of them had incorrect measurements. The 5 fields were taken as a sample and the complainants at Mphego want their fields to be remeasured.

5.17.3 At Maniini village 7 fields were remeasured by the Department of Agriculture and it was established that the complainants were paid for lesser hectares.

Findings

- (i) Payment for the orchard by DWAF should be based on the extent of the land as documented in the permission to occupy and verified by physical measurement if necessary and possible, not by what the Headman says; and
- (ii) DWAF indicated that they would only conduct another measurement of the fields if the complainants could indicate why they are of the view that their fields were incorrectly measured. In the case of Mphego and Maniini villages the Department of Agriculture measured the fields and came out with different measurements to those of DWAF. Therefore there is a basis for the complaints at this village.

Recommendations

It is recommended that

- (i) DWAF pays the complainant for all 3 ha of his orchard or provides proof that someone else was already paid for part of the same orchard; and
- (ii) DWAF conducts another measurement of fields complained about at Mphego village.

5.18 Miscellaneous Claims

(a) Maize storages

It was alleged by the complainants that DWAF agreed to erect maize storages for members of the community who were in possession of such storages before relocation, or to pay compensation for the loss of such storages.

Finding

DWAF informed the CRC that measurements for maize storages were incorporated into those of the houses and increased the square meters provided in the houses. No proof was provided in this regard.

Recommendation

It is recommended that DWAF pays compensation for the maize storages or provides proof that the measurements for these facilities were incorporated into the square meters of the houses.

(b) Play grounds

There was a complaint from Budeli village that the sports ground that had been provided was very small for a soccer ground, as there was no space for players to take corner kicks, and there was also a very steep precipice next to the touchline on the eastern side of the ground which posed injury risk to players and spectators. The western side was alleged to have a very high embankment which made it impossible or very awkward for someone to take a corner kick or

a throw-in. The ground was alleged to also have no space for soccer managers and spectators.

Findings

- (i) DWAF informed the CRC that the ground matched FIFA standards and there was no need to extend it. DWAF also indicated that there might not be enough land space even if it was willing to extend the ground; and
- (ii) The CRC conducted an inspection *in loco* and found that the allegations by the complainants were factually correct.

Recommendations

It is recommended that the ground be extended by at least 7 meters in width on the western side, and that the soil excavated from this area be used to fill up the precipice on the eastern side.

- (c) Gravel digging

At Dididi it was alleged that some fields were damaged during the digging of gravel for construction purposes, but the owners were not compensated. The land was also not rehabilitated. DWAF also allegedly promised to construct a road for free as part of compensation for the damage caused by the digging of gravel, but this was never done. There were similar complaints at Tshitomboni and Tshaulu.

Finding

DWAF informed the CRC that they were not in possession of a formal complaints in this regard, and if received they will give them the necessary attention.

Recommendation

It is recommended that village representatives of Dididi and Tshitomboni provide DWAF with the details of the complaints within 30 days of the issue of this report, and DWAF would finalise the matter within 60 days after receipt of the information.

(d) Public access to the Dam

During the public hearing there was a complaint that the public was prevented from accessing the Dam from the Mulezhe side because the Mulezhe Tribal Authority has put up a "toll gate", requiring members of the public to pay a fee to access the Dam area.

Finding

During the public hearing an inspection *in loco* was conducted and boom gates were found to be in place as alleged, and pedestrians were required to pay R5 and motorists R20 in order to access the Dam area from the Mulezhe side. This action by the Mulezhe Tribal Authority is illegal as no one is allowed to operate an activity for financial gain within the Dam area without permission from DWAF.

Recommendation

It is recommended that DWAF closes down the operation of boom gates alongside the Dam area which restrict public access to the dam without paying a fee.

(e) Bridge at Mulezhe

It was alleged that the government erected a bridge costing R500 000 at Mulezhe, and it was affected by relocation. The community would like DWAF to compensate it for the bridge.

Finding

Further inquiries by the OPP revealed that this was a small bridge between Mulezhe and Budeli villages over the Luvuvhu River. The entire area is now covered by the Dam water, and it is not possible to replace the bridge. Neither the Budeli nor Mulezhe community is entitled to any compensation for this bridge.

(f) Bricks project at Mulezhe

It is alleged that a borehole at a bricks project was removed during relocation and DWAF undertook to replace it, but this was never done.

Findings

DWAF conceded during the CRC meeting that it had the inventory for the borehole but could not pay compensation for it as it was not sure how deep it was. DWAF wanted the community representatives to provide

them with this information so that it could determine the amount it should pay. Such information was not available.

It is actually unfair for DWAF to request community representatives to provide it with information that it should have collected during inventory. It should have measured the depth of the borehole before it was submerged in water.

Recommendation

It is recommended that DWAF pays compensation for the borehole at Mulenzhe Brickyard without delay.

(g) Bridge at Tshiulungoma

It is alleged that a bridge was constructed inside the fields even though the pegs indicated that it had to be constructed outside. The bridge was allegedly surrounded by Dam water, and it may be flooded. This would cut communication between residents of Tshilungoma and Dididi.

Finding

On inspection it was discovered that the bridge was well constructed and was not about to be affected by the floods as feared by the community.

(h) Footbridge and weir at Tshaulu

It was alleged that a weir was constructed on the Luvuvhu River at Tshaulu. The weir was constructed at a ford, where people used to cross the river on foot. It was further alleged that DWAF was to construct a

footbridge, but this was not done. The Tshaulu community also wanted a weir to be fenced off as it posed danger to the community.

Finding

This matter could not be pursued as Tshaulu representatives did not attend CRC meetings despite several notifications.

(k) Houses for the indigent at Mulenzhe

It was alleged that there were 8 houses, 2 toilets and a kitchen intended to house indigent people, which were supposed to have been relocated, but were not. It was further alleged that the houses were submerged in the dam water.

Finding

During the CRC meetings it was established that compensation for houses for indigent people was paid to the Tribal Authority. The matter could not be taken further.

5.19 Safe Access and Usage of the Dam

5.19.1 Several instances of mishaps in the Dam and the dam areas were reported to the Public Protector in the past two years. By November 2007, seven death cases in the Dam were reported, all by way of drowning.

5.19.2 During the public hearing there was a report of crocodiles found in residential sites. In January 2008, several young crocodiles were reportedly found in a residential site at Budeli Village, and a fully grown crocodile was spotted in April 2008. This was reported to both the police and the Department of

Environmental Affairs. A hippo was also reportedly spotted in a residential site at Budeli Village in January 2008, and this was reported to the Department dealing with nature conservation.

Findings

- (a) There is no controlled access to the dam area, and the usage of the Dam for recreational and other purposes is not controlled or monitored; and
- (b) There are also no protective measures to prevent hippos and crocodiles from straying into residential sites, some of which are a mere 150 meters from the dam water.

Recommendations

It is recommended that

- (i) DWAF, in consultation with the Department of Environmental Affairs, implements measures to control access to the Dam area, and regulates the Dam usage; and
- (ii) DWAF, in consultation with the Department of Environmental Affairs, implements measures to restrict crocodiles and hippos from straying into residential sites.

5.20 False / Fraudulent Claim

The OPP received a complaint that one Mr Azwidohwi Ramagoma and his wife Rendani Joyce Tshikosi, both of Budeli Village, claimed compensation for two fields which did not belong to them. It was alleged that both husband and wife were newcomers in the area and had not yet acquired land at the time the claim was lodged.

Findings

Mr Ramagoma and his wife were interviewed by OPP officials in the presence of Headman Mphireleni. They conceded that the field that the wife claimed compensation for belonged to one Nyawasedza Mulibana and the one that the husband claimed for belonged to one Wilson Muvhulawa. The fields were borrowed to them during the 1997/8 season. They only ploughed once. They also indicated that they paid Mulibana an amount of R500 after receiving payments from DWAF. A total amount of R22 000 was paid by DWAF to both husband and wife.

Recommendations

It is recommended that

- (i) DWAF recovers the money that it paid to Mr Ramagoma and his wife due to a false claim; and
- (ii) The matter should be reported to the National Prosecution Authority for possible prosecution.

CHAPTER 6: KEY FINDINGS

Consequent to the aforesaid investigation, observations and findings, the following key findings and recommendations are made:

- 6.1 DWAF was afforded an opportunity through the CRC to answer to the allegations made against it by the complainants, and the interim findings by the Public Protector;
- 6.2 Most of the complaints by individuals and communities that have been affected by the development of the Dam were found to be genuine, and this was confirmed during the CRC process. Complaints which were found to be baseless were disposed of by the CRC;
- 6.3 DWAF has, through the CRC, attended, or undertook to attend to some of the minor complaints, leading to the resolution of some of these complaints;
- 6.4 An effort was taken by the CRC to inspect the defective houses, and such task was not completed due to its vastness and limited time;
- 6.5 No conclusion could be reached on the issue of alternative land. However DWAF was still willing to entertain the matter if such land could be found;
- 6.6 There is a need to protect affected communities and the public at large against dangers posed by the Dam;
- 6.7 DWAF needs to take full control of the dam area, and to establish controlled access to the dam area. DWAF, in consultation with the Department of Environmental Affairs, also needs to provide safe usage of the Dam;

- 6.8 Private individuals and entities were profiteering by charging members of the public to gain access to the Dam area. Such individuals and/or entities are not official DWAF agents; and
- 6.9 DWAF did not have a post-resettlement plan to deal with complaints raised by affected communities and individuals.

CHAPTER 7:

RECOMMENDATIONS

In terms of the provisions of section 182(1) (c) of the Constitution, 1996, and section 6 (4) (c) (ii) of the Public Protector Act, 1994 as amended, it is recommended that:

- 7.1 The Minister of Water Affairs and Forestry forms a task team which would ensure the implementation of all recommendations in this report within 2 months of the issue of this report;
- 7.2 The implementation of the recommendations should be completed within 12 months from the date of appointment of the task team referred to in paragraph 7.1 above; and
- 7.3 DWAF reports on progress to the Public Protector bi-monthly.

ADV ML MUSHWANA
PUBLIC PROTECTOR OF THE
REPUBLIC OF SOUTH AFRICA

DATE

Assisted by:

Adv. NH Mukwevho
Provincial Representative: Limpopo

Mr S. Mothupi
Senior Investigator: Pretoria