



**PUBLIC PROTECTOR**  
MOSIRELETSI WA BATHO • MOŠIRELETSI WA BATHO  
MUSIRHELELI WA VANHU • MUTSIRELEDZI WA VHATHU  
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**Please quote this reference in your reply: Report No. 13 of 2010/11**

2010-06-25

Mr S Tanana  
PO Box 123  
**LUSIKISIKI**  
**4820**

Dear Mr Tanana,

**REPORT NO. 13 OF 2010/11: AN INVESTIGATION INTO ALLEGED UNDUE DELAY OR REFUSAL BY THE DEPARTMENT OF MINERALS AND ENERGY TO FACILITATE AND ENSURE THAT THE MZINTLAVA COMMUNITY IS COMPENSATED FOR LOSSES SUFFERED AS A RESULT OF THE MINING OPERATIONS OF THE MZINTLAVA QUARRY**

Attached hereto is my report on an investigation in respect of the above for your information.

Best wishes

**ADV T N MADONSELA**  
**PUBLIC PROTECTOR**  
**OF THE REPUBLIC OF SOUTH AFRICA**



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2010-06-25

Ms Thandiwe Biyela:Regional Manager: Eastern Cape  
Department of Mineral Resources  
Private Bag X6076  
**PORT ELIZABETH**  
**6000**

Dear Ms Biyela,

**REPORT NO. 13 OF 2010/11: AN INVESTIGATION INTO ALLEGED UNDUE DELAY OR REFUSAL BY THE DEPARTMENT OF MINERALS AND ENERGY TO FACILITATE AND ENSURE THAT THE MZINTLAVA COMMUNITY IS COMPENSATED FOR LOSSES SUFFERED AS A RESULT OF THE MINING OPERATIONS OF THE MZINTLAVA QUARRY**

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**Please quote this reference in your reply: Report No. 13 of 2010/11**

2010-06-25

The Hon Minister: Ms. Susan Shabangu  
Department of Mineral Resources  
Mineral Centre  
234 Visagie Street  
**PRETORIA**  
**0001**

Dear Minister Shabangu

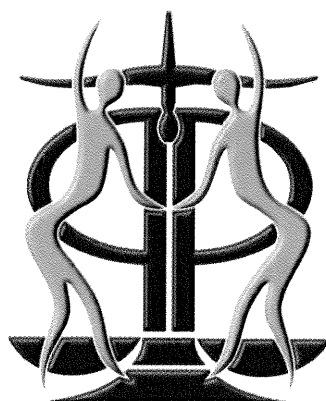
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**PUBLIC PROTECTOR**  
**OF THE REPUBLIC OF SOUTH AFRICA**

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



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NO. 13 OF 2010/11**

**REPORT ON AN INVESTIGATION INTO ALLEGED UNDUE DELAY OR REFUSAL BY THE DEPARTMENT OF MINERALS AND ENERGY TO FACILITATE AND ENSURE THAT THE MZINTLAVA COMMUNITY IS COMPENSATED FOR LOSSES SUFFERED AS A RESULT OF THE MINING OPERATIONS OF THE MZINTLAVA QUARRY**

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## Executive Summary

- (i) The Public Protector investigated a complaint in connection with the alleged undue delay or refusal by the Department of Minerals and Energy (the Department) to facilitate and ensure that compensation claims are paid to the Mzintlava community by Mzintlava Quarry (the Quarry) for the losses incurred when their homesteads were demolished to provide space for the operations of a quarry.
  
- (ii) The Public Protector found the following:
  - (a) The Regional Director erred in issuing the applicant with the mining permit without first satisfying herself that all issues raised during the consultations were addressed by the applicant, in particular, compensation of the homestead owners whose homesteads had to be demolished in order to provide space for the quarry;
  
  - (b) No concise and clear procedure manual for the processing of mining permit applications exist;
  
  - (c) The officials from the Department did not attend the consultation meetings to guide the community about the intricacies of the process, or to inform them of their available legal remedies should there be a violation of the agreements reached and/or undertakings made by the applicant during those consultations;
  
  - (d) The claims for compensation by the homestead owners is justified and supported by the applicable legislation; and

- 
- (e) The constitutional right of the complainants in relation to housing and property ownership was unjustifiably compromised by the Department.
- (iii) The remedial action to be taken is that:
- (a) The Regional Director must ensure that the Quarry compensates all the affected persons for the loss they suffered as a result of the mining operation.
- (b) In pursuance of the above remedial action it was agreed in a meeting held on 19 May 2010 between the Quarry, the Department of Mineral Resources and the Public Protector that the Quarry's legal representative would consult with home owners in order to reach compensation agreements which will later be signed by all parties involved. It was further agreed that the Quarry will submit the final report to the Department by the 20 June 2010. Furthermore, it was agreed that Section 93 of the Mineral and Petroleum Resources Development Act, 2002 will be invoked in the event of the Quarry failing to submit the report as agreed.
- (c) The Regional Director must ensure that the Quarry compensates, at market value, all the affected persons for the loss they suffered as a result of the mining operation;
- (d) The Department must develop a concise and clear procedure manual for the processing of mining permit applications; and
- (e) The National Department of Mineral Resources should consider rendering the expertise, technical support, and guidance to provincial offices when consultations of this nature take place.

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**REPORT OF THE PUBLIC PROTETOR ON AN INVESTIGATION INTO ALLEGED UNDUE DELAY OR REFUSAL BY THE DEPARTMENT OF MINERALS AND ENERGY TO FACILITATE AND ENSURE THAT THE MZINTLAVA COMMUNITY IS COMPENSATED FOR LOSSES SUFFERED AS A RESULT OF THE MINING OPERATIONS OF THE MZINLAVA QUARRY**

**1. INTRODUCTION**

1.1 This report is submitted to the Complainants and the Minister of Mineral Resources in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (the Constitution) and section 8(1) of the Public Protector Act, 1994 (the Public Protector Act). It relates to an investigation into allegations of undue delay or refusal by the Department of Minerals and Energy (the Department) to facilitate and ensure that the Mzintlava community is compensated for the losses incurred when their homesteads were demolished to provide space for operations of the Mzintlava Quarry (the Quarry).

**2. BACKGROUND**

2.1 The Mzintlava Community members approached the Public Protector for assistance after experiencing difficulties in obtaining compensation from the owners of the Quarry for losses suffered as a result of the demolishing of their homesteads.

**3. THE COMPLAINT**

3.1 On 13 July 2007 the Public Protector received a complaint lodged by Mr S Tanana, on behalf of Mzintlava community members (the Complainants) whose homesteads were demolished.

- 3.2 The Complainants were requested by the Quarry to relocate their homesteads, to allow the latter to carry out the operations of a quarry in the locality.
- 3.3 In one of the meetings, there was allegedly an agreement that the homesteads surrounding the quarry site be demolished to provide for mining operations, and subsequently, the Complainants would be compensated.
- 3.4 According to the alleged agreement the local chief allocated new sites to the affected community members.
- 3.5 A bank was to provide market related values for the affected homesteads, to ensure fairness of the compensation.
- 3.6 Apparently, in an attempt to avoid delays in the process, where possible, community members were encouraged by Ms Mzoboji, an official from the Department, to carry their own relocation costs, with an undertaking to be reimbursed at a later stage.
- 3.7 During one of the said facilitation meetings, the Complainants were allegedly assured by the Department that the issuing of the mining license would not be finalised until the condition relating to the compensation of the Complainants was fulfilled by the Quarry.
- 3.8 On the basis of the said undertakings, the community members demolished their homes. Some acquired low cost houses, and others built shacks on the alternative sites that were identified by the local chief.
- 3.9 The Quarry started its operations in the vacated area, without paying any compensation to the Complainants.

- 3.10 The Complainants made inquiries about the compensation to the local chief, the Department, and the Managing Director of the Quarry, but were unable to resolve the matter.
- 3.11 According to the Complainants, after countless endeavors to contact the Department, Ms Mzoboji, an official from the Department, informed them that the Department had no role in facilitating, and ensuring that the Complainants were compensated by the Quarry and that the Complainants had no basis for the compensation claims because they did not have title deeds for the homesteads that were demolished.

#### **4. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR TO INVESTIGATE THE COMPLAINT**

- 4.1 The Public Protector is one of a cluster of constitutional institutions established by Chapter 9 of the Constitution to strengthen constitutional democracy.
- 4.2 These institutions are independent and subject only to the Constitution and the law and must be impartial and exercise their powers and perform their functions without fear, favour or prejudice.
- 4.3 In terms of section 182 of the Constitution, the Public Protector has the power to investigate any conduct in state affairs or in the public administration in any sphere of government that is suspected to be improper or to result in any impropriety or prejudice.
- 4.4 On conclusion of an investigation, the Public Protector has to report on the conduct investigated and take appropriate remedial action.

4.5 The additional powers of the Public Protector are provided for in the Public Protector Act.

4.6 The matter complained about therefore falls within the jurisdiction of the Public Protector.

## **5. THE INVESTIGATION**

5.1 The investigation was conducted in terms of sections 6 and 7 of the Public Protector Act, and it comprised perusal and consideration of the following:

5.1.1 The minutes of consultative meetings between the Department, the Quarry and the Complainants;

5.1.2 Correspondence with the Quarry;

5.1.3 Correspondence with the Regional Director of the Department;

5.1.4 On site perusal of the Department's file;

5.1.5 Meeting with the Acting Regional Directors, Mr Van den Berg and Mr Van Ass, respectively;

5.1.6 Meeting with Chief Mali and the Complainants at the Great Place, Lusikisiki;

5.1.7 Consideration and application of the relevant provisions of the Constitution, Public Protector Act, and the Mineral and Petroleum Resources Development Act, 2002.

## **6. MINUTES OF THE CONSULTATIVE MEETINGS BETWEEN THE MZINTLAVA QUARRY AND THE COMPLAINANTS**

- 6.1 In the minutes of the consultative meeting with the community on 30 September 2001, it was recorded that, Ms Mzoboji was introduced by the chief as the head of the project known as Women's Consortium. Ms Mzoboji informed the meeting that as the consortium, they wanted to open a mine on the site where Rumdel Construction used to mine crushed stone. This project was, according to Mzoboji, going to alleviate poverty. After the presentation by Mzoboji the community wanted to know what was going to happen to the people neighboring the quarry. Her response was that those people would have to move and make way for the quarry. The Complainants agreed, and the chief undertook to allocate alternative sites to those who would be affected.
- 6.2 From the minutes of the meeting held on 29 October 2001 it appears that the Complainants and other people neighboring the quarry site raised their concerns in respect of the evaluation of their property by the bank, especially if they were not represented during the evaluation process. The meeting then agreed that an *ad hoc* committee will be formed to attend to the issue of evaluation of the homesteads.
- 6.3 In the minutes of the meeting held on 2 November 2007 it is recorded that Ms Mzoboji had, in her response to the concern registered by the affected homesteads owners, explained the procedure that would be followed regarding compensation of owners of homesteads adjacent to the quarry. She informed the meeting that a banking institution would evaluate the homesteads and determine how much they would be paid. On the basis of her explanation, the people living next to the quarry agreed to move and seek new sites to rebuild their new homes. It was in this meeting that the nomination of the *ad hoc* committee took place.

**7. MEETING WITH CHIEF MALI AND THE COMPLAINANTS AT THE GREAT PLACE, LUSIKISIKI**

7.1 The meeting was held at the Great Place on 19 October 2007. Almost all the affected community members attended and those who could not, sent their representatives. Ms Mzoboji did not attend and nor tender an apology for her non-attendance.

7.2 The chief and the royal council members reiterated the position espoused by the Complainants.

**8. PERUSAL OF THE MZINTLAVA QUARRY FILE AT THE DEPARTMENT'S OFFICES**

8.1 On 6 December 2007 the investigator met with Ms Charleen Le Roux who was duly instructed by the Regional Director to assist in accessing of the file.

8.2 On perusal of the file, evidence of the said minutes of the meeting was discovered, as well as correspondence from the Office of the Assistant Director: Environment Eastern Cape Region and the Director: Mineral Development: Eastern Cape.

8.3 In correspondence dated 25 January 2001 from the Assistant Director that, *inter alia*, related to noise, the Department requested that the distance to the nearest residences should be provided, in order to support the proposed mitigation action. It was suggested that the proposed relocation can be seen as a mitigating measure for noise. The Quarry was also asked to indicate which huts were to be relocated.

8.4 In correspondence from the Regional Director, dated 2 July 2001 the Quarry was advised that its application for a mining permit was granted and that it was to be issued once the relevant Environmental Management Program was approved by the said Director.

**9. MEETING WITH THE ACTING DIRECTOR, MR SAMUEL VAN DEN BERG**

9.1 On 22 January 2008 during a meeting with Mr van den Berg the contents and evidence discovered during perusal of the Quarry file by the investigator, were discussed. On behalf of the Department, Mr van den Berg conceded that the permit was issued on the basis that the community was willing to relocate.

9.2 Furthermore, that the issue of compensation was a matter between the Complainants and the Quarry, and the Department could not wait for the matter of compensation to be finalised before it could grant the permit. It was sufficient if the community have agreed to relocate.

**10. CONSIDERATION AND APPLICATION OF RELEVANT PROVISIONS OF THE CONSTITUTION, 1996**

10.1 Section 2 of the Constitution, provides that the Constitution is the supreme law of the country, all obligations imposed by it must be fulfilled, and that any law or conduct which is inconsistent with it is invalid.

10.2 Section 25(1) provides that no one may be deprived of property except in terms of the law of general application, and no law may permit arbitrary deprivation of property.

10.3 Section 26(1) provides that everyone has the right to have access to adequate housing and subsection (3) provides that no one may have their homes demolished without a court order.

**11. CONSIDERATION AND APPLICATION OF THE RELEVANT PROVISIONS OF MINERAL AND PETROLEUM RESOURCES DEVELOPMENT ACT, 2002 (MPRDA, 2002)**

11.1 This Act, in its preamble, *inter alia*, recognises the need to promote local and rural development and the social upliftment of communities affected by mining.

11.2 Section 2(i) states that the objectives of the Act are to ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating.

11.3 Section 5(4)(c) provides that land owners or the lawful occupier of the land must be notified and consulted before any mining operations or any work incidental thereto may commence.

11.4 In terms of the provisions of section 16(4)(b), the applicant for a prospecting right, is required to notify in writing and consult with the land owner or lawful occupier and any other affected party and submit the results of the consultation to the Regional Manager within 30 days from the date of notice.

11.5 In terms of the provisions of section 54(3), the Regional Manager is obliged to ensure that, in instances where the land owner or lawful occupier has suffered or is likely to suffer losses or damage as a result of the reconnaissance, prospecting or mining operations, parties reach an agreement for the payment of compensation for such losses or damage.

- 
- 13.2 No concise and clear procedure manual for the processing of mining permit applications exist.
- 13.3 The officials from the Department did not attend the consultation meetings to guide the community about the intricacies of the process, or to inform them of their available legal remedies should there be violation of the agreements reached and/or undertakings made by the applicant during those consultations.
- 13.4 The homesteads owners' claim for compensation is justified and supported by the applicable legislation.
- 13.5 The constitutional right of the complainants in relation to housing and property ownership was unjustifiably compromised by the Department.

#### **14. REMEDIAL ACTION**

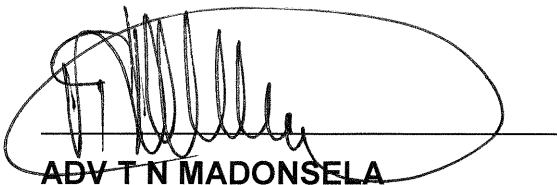
- 14.1 The Regional Director must ensure that the Quarry compensates all the affected persons for the loss they suffered as a result of the mining operation.
- 14.2 In pursuance of the above remedial action it was agreed in a meeting held on 19 May 2010 between the Quarry, the Department of Mineral Resources and the Public Protector that the Quarry's legal representative would consult with home owners in order to reach compensation agreements which will later be signed by all parties involved. It was further agreed that the Mzintlava Quarry will submit the final report to the Department by the 20 June 2010. Furthermore, it was agreed that Section 93 of the Mineral and Petroleum Resources Development Act, 2002 will be invoked in the event of the Quarry failing to submit the report as agreed.

14.3 The Department must develop a concise and clear procedure manual for the processing of mining permit applications.

14.4 The National Department of Mineral Resources should consider rendering the expertise, technical support, and guidance to the provincial offices when these consultations take place.

## 15. MONITORING

15.1 The Public Protector will monitor the implementation of the remedial action referred to in paragraph 14 at intervals of 3 months from the date of this report.



**ADV T N MADONSELA**

**PUBLIC PROTECTOR**

**OF THE REPUBLIC OF SOUTH AFRICA**

**DATE:** 25 JUNE 2010

Assisted by: R Z Molose, Investigator, Eastern Cape

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