

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



**PUBLIC PROTECTOR  
SOUTH AFRICA**

**REPORT NO 28 OF 2008/09**

**REPORT ON AN INVESTIGATION OF A COMPLAINT BY RESIDENTS OF UNITS R AND  
S LEBOWAKGOMO AGAINST THE DEPARTMENT OF LOCAL GOVERNMENT AND  
HOUSING, LIMPOPO PROVINCE, IN CONNECTION WITH APPLICATIONS FOR  
HOUSING SUBSIDIES**

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## EXECUTIVE SUMMARY

- (i) The Public Protector investigated a complaint by Councillor F J Letwaba, acting on behalf of the residents of Units R and S Lebowakgomo (the Complainants), in connection with their applications for Reconstruction and Development Programme (RDP) housing subsidies.
- (ii) The Complainants applied for housing subsidies during 1996 to 2006. Their applications were approved by the Department of Local Government and Housing (the Department) at amounts ranging between R9 500 and R16 000. The subsidy program under which the applications were approved was called Project Linked Subsidy.
- (iii) The Department allegedly failed to build the houses or to supply building materials to the Complainants so that they could build their houses.
- (iv) The OPP investigated the matter and made the following findings:
  - (a) The Complainants' applications for housing subsidies were approved from 1997 to 2006 in the subsidy program called Project Linked Subsidy;
  - (b) The project was allocated to a company called COMDEV, which failed to build houses or provide building materials to the Complainants;
  - (c) Some houses were partly built and only half of the materials were delivered to some beneficiaries;
  - (d) Some Complainants decided to put up some shelters at their own expense, whereas others finished the incomplete houses using their own resources;
  - (e) Some of the Complainants' houses are still incomplete or not built at all; and
  - (f) One complainant is now employed and has built a modern house.

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- (v) It is recommended that the Department should:
- (a) Build houses for all the Lebowakgomo Units R and S beneficiaries whose applications were approved on or before 2006;
  - (b) Complete the houses which were abandoned before they could be completed;
  - (c) Supply building materials to all the beneficiaries who were approved for such materials;
  - (d) Assist the Complainants who have started building their own houses, but are unable to complete them;
  - (e) Use the subsidy amounts which are currently applicable to assist the Complainants, as the prices of building material have increased over the years; and
  - (f) Compensate all the Complainants who have built their houses without the assistance of the Department, after they were approved as beneficiaries.

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## **REPORT ON AN INVESTIGATION OF A COMPLAINT BY RESIDENTS OF UNITS R AND S LEBOWAKGOMO AGAINST THE DEPARTMENT OF LOCAL GOVERNMENT AND HOUSING, LIMPOPO PROVINCE, IN CONNECTION WITH APPLICATIONS FOR HOUSING SUBSIDIES**

### **1. INTRODUCTION**

- 1.1 This report is submitted to the Member of the Executive Council responsible for Local Government and Housing in the Limpopo Provincial Government, the Head of the Department of Local Government and Housing and Lepelle Nkumpi Municipality (Municipality), Limpopo Province, in terms of section 182(1)(c) of the Constitution, 1996 (Constitution) and section 8(1) of the Public Protector Act, 1994.
- 1.2 It relates to an investigation of a complaint in which residents of Units R and S Lebowakgomo (the Complainants) applied for housing subsidies under the program called Project Linked Subsidy.

### **2. THE COMPLAINT**

- 2.1 The Office of the Public Protector (OPP) received a complaint from Councillor F J Letwaba acting on behalf of fifteen Complainants, against the Department of Local Government and Housing (Department). The Complainants alleged that they applied for housing subsidies and their applications were approved, but the Department failed to build the houses or supply them with building materials depending on the type of subsidy.
- 2.2 The Complainants who were afforded full subsidy (R15 000 or R16 000) were supposed to receive fully built houses, and those who were partially subsidised (R9 500) were supposed to receive building materials. Twelve applications of the Complainants were approved for full subsidy and three were supposed to receive building materials.

- 2.3 The applications were lodged as early as 1996 and were approved between 1997 and 2006. The Complainants were not informed of the approvals and only found out when they enquired about their applications.
- 2.4 The Complainants allegedly made several enquiries at the Department and the Municipality, but no official could explain how the Department was going to deal with their situation. They were allegedly informed that the project was suspended.

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

3.1 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 operational requirements of the Office of the Public Protector are provided for by the Public Protector Act, 1994.

3.2 Section 182(1) of the Constitution provides that the Public Protector has the power

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice;*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action.*

3.3 The matter complained against therefore falls within the jurisdiction of the Public Protector to investigate.

### **4. THE INVESTIGATION**

The investigation was conducted in terms of Section 7 of the Public Protector Act, 1994 and comprised the following:

- 4.1 Correspondence with the Department;
- 4.2 Meeting with the Special Investigating Unit (SIU);
- 4.2 Inspection *in loco*; and
- 4.4 Consideration of the relevant legislation, the Constitution and Housing Act, 1997.

## **5. CORRESPONDENCE WITH THE DEPARTMENT**

- 5.1 The OPP communicated with the Department, but the Department did not have any record to refer to, except the approvals in their electronic systems and the name of the developer, COMDEV.
- 5.2 It was indicated that some documents were handed over to the SIU which was investigating maladministration in the Reconstruction and Development Programme (RDP) projects.
- 5.3 Later the Department responded and indicated that it wanted to investigate the matter internally and would report on the outcome to the OPP. However, the Department failed to report at the date of issue of this report.

## **6. MEETING WITH THE SPECIAL INVESTIGATING UNIT**

- 6.1 The matter was pursued with the SIU in a meeting of 4 July 2008, with the purpose of obtaining more information and documents which were allegedly handed over to them by the Department.
- 6.2 The SIU indicated that it was struggling to obtain all relevant documents from the Department. However, it undertook to consider this particular project and to decide if it could take over the investigation. It later transpired that the project did not fall under its mandate.

## **7. INSPECTION *IN LOCO***

The failure by the Department to report on its investigation and not being in possession of records made it difficult to fully understand the extent of the complaint. In order to have a better understanding of the situation, an inspection *in loco* was carried out on 5 September 2008.

### **7.1 Parties involved during the inspection**

The inspection *in loco* was carried out at Lebowakgomo units R and S and it was attended by an investigator from the OPP, officials from the Department, an official from the Municipality, Councillor Letwaba, the Complainants and some affected community members.

### **7.2 Manner of inspection**

7.2.1 A meeting was held at the Lepelle Nkumpi Municipal offices, in which all the above mentioned stakeholders, excluding the Complainants and other community members were present. The meeting agreed that parties should proceed to Unit S where the Complainants and other community members with similar problems were waiting.

7.2.2 Another meeting was held at Unit S and all the above-mentioned people attended. The Investigator from the OPP explained the purpose of the meeting and the meeting agreed on the procedure to be followed through out the inspection process.

7.2.2 All fifteen affected properties were inspected. On arrival at each property, the owners were given opportunities to state their concerns.

7.2.3 Properties of people who did not appear on the list of OPP's Complainants were not visited, but their problems were noted as they were similar to those of the Complainants. There were eight such complaints.

### **7.3 Observations and findings of the inspection**

- 7.3.1 In one residential stand there was nothing at all, but just a shack.
- 7.3.2 Two Complainants received half of the building materials they were promised and started to build their own houses, which are still incomplete.
- 7.3.3 One Complainant who is now a pensioner started building his house using a loan, which he had to use his pension benefits to repay it, but the said house is still incomplete.
- 7.3.4 Two Complainants have houses which were built by their children, but they feel that the Department owes them the amount they were approved for.
- 7.3.5 Three Complainants have built houses on their own, but the structures are poorly constructed and partly roofed.
- 7.3.6 One Complainant is currently employed and has built a big house on her own.
- 7.3.7 Three Complainants had to finish the buildings on their own, and want the Department to compensate them.

## **8. LEGISLATIVE FRAMEWORK**

### **8.1 The Constitution**

- 8.1.1 Section 26 of the Constitution provides that everyone has the right to have access to adequate housing, and the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- 8.1.2 The RDP housing programme was developed in furtherance of the above principle, and in order to benefit indigent people such as the Complainants.

## **8.2 The Housing Act, 1997, as amended**

### 8.2.1 Section 2 of the Act provides that:

- (1) National, provincial and local spheres of the government must –*
- (a) give priority to the needs of the poor in respect of housing development;*
  - (b) consult meaningfully with individuals and communities affected by housing development;*
  - (c) ensure that housing development is economically, fiscally, socially and financially affordable and sustainable;*

### 8.2.2 Section 4 of the Act provides that:

*"(1) The Minister must publish a code called the National Housing Code (in this section referred to as the "Code").*

*(2) The Code –*

- (a) must contain national housing policy;*
- (b) may, after consultation with every MEC and the national organisation representing municipalities as contemplated in section 163(a) of the Constitution, include administrative or procedural guidelines in respect of –*
  - (i) the effective implementation and application of national housing policy;*
  - (ii) any other matter is reasonably incidental to national housing policy."*

### 8.2.3 Section 7 of the Act provides that:

*"(1) Every provincial government must after consultation with the provincial organisations representing municipalities as contemplated in section 163(a) of the Constitution, do everything in its power to promote and facilitate the provision of adequate housing in its province within the framework of the national housing policy."*

### 8.2.3 Section 9 of the Act provides that:

*"(1) Every municipality must as part of the municipality's process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to –*

*(a) ensure that –*

*(i) the inhabitants of its area of jurisdiction have access to adequate housing on a progressive basis;*

*(ii) conditions not conducive to the health and safety of the inhabitants of its area of jurisdiction are prevented or removed;*

*(b) set housing delivery goals in respect of its area of jurisdiction;*

*(f) initiate, plan, co-ordinate, facilitate, promote and enable appropriate housing development in its area of jurisdiction.”*

## **9. OBSERVATIONS AND FINDINGS**

The following observations and findings were made from the investigation:

- 9.1 The Complainants' applications for housing subsidies were approved from 1997 to 2006 in the subsidy program called Project Linked Subsidy;
- 9.2 The project was allocated to a company called COMDEV, which failed to build houses or provide building materials to the Complainants;
- 9.3 Some houses were partly built and only half of the materials were delivered to some of the Complainants;
- 9.4 Some Complainants decided to put up some shelters at their own expense, whereas others finished the incomplete houses using their own resources;
- 9.5 Some of the Complainants' houses are still incomplete or not built at all; and
- 9.6 One Complainant is now employed and has built a modern house.

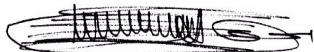
## **10. RECOMMENDATIONS**

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

- 10.1 Build houses for all the Lebowakgomo Units R and S beneficiaries, whose applications were approved on or before 2006;
- 10.2 Complete the houses which were abandoned before they could be completed;
- 10.3 Supply building materials to all the beneficiaries who were approved for such materials;
- 10.4 Assist the Complainants who have started building their own houses but are unable to complete them;
- 10.5 Use the subsidy amounts which are currently applicable to assist the Complainants, as the prices of building material have increased over the years; and
- 10.6 Compensate all the Complainants who have built their houses without the assistance of the Department, after they were approved as beneficiaries.

## 11. MONITORING

The OPP will monitor the implementation of the above recommendations quarterly.



**ADV M L MUSHWANA**  
**PUBLIC PROTECTOR OF THE**  
**REPUBLIC OF SOUTH AFRICA**

**DATE:**

Assisted by: MM Malatji: Senior Investigator

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