

SOUTH AFRICAN HUMAN RIGHTS COMMISSION

Final Report of the Inquiry on incomplete
and inadequate RDP houses in the
North West





SOUTH AFRICAN HUMAN RIGHTS COMMISSION

FINAL REPORT OF THE INQUIRY ON INCOMPLETE
AND INADEQUATE RDP HOUSES IN THE
NORTH WEST

SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

NW/2223/0041

In the matter between:

ANDREW MATHE

SELINAH MOOROSI

YEKIWE TINYANE

EPHRAIM DITHIPE

CHRISTOPHER SCHALKWYK

OFENTSE SOMOLEKANE

RACHEL RAMBAO

LENTIKILE PHUTIAGAE

NEO MABOTE OBO THE DEMOCRATIC ALLIANCE
IN THE NORTH WEST

And

NORTH WEST DEPARTMENT OF HUMAN SETTLEMENTS

JB MARKS LOCAL MUNICIPALITY

RUSTENBURG LOCAL MUNICIPALITY

MADIBENG LOCAL MUNICIPALITY

MAHIKENG LOCAL MUNICIPALITY

CITY OF MATLOSANA LOCAL MUNICIPALITY

MAQUASSI HILLS LOCAL MUNICIPALITY

NORTH WEST OFFICE OF THE PREMIER

NORTH WEST DEPARTMENT OF TREASURY

FIRST COMPLAINANT

SECOND COMPLAINANT

THIRD COMPLAINANT

FOURTH COMPLAINANT

FIFTH COMPLAINANT

SIXTH COMPLAINANT

SEVENTH COMPLAINANT

EIGHTH COMPLAINANT

NINTH COMPLAINANT

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

FIFTH RESPONDENT

SIXTH RESPONDENT

SEVENTH RESPONDENT

EIGHTH RESPONDENT

NINTH RESPONDENT

FINAL INQUIRY REPORT

TABLE OF CONTENTS

Acronyms	6
Executive Summary	8
Introduction	9
Parties	10
Background	14
Investigative Methodology	18
Site inspections	22
Inquiry submissions	28
Summary of Submissions from the Complainants, Human Rights Champions and the Commission	30
Summary of Submissions from the Office of the Auditor General South Africa	31
Summary of Submissions from the Office of the Public Service Commission	33
Summary of Submissions from the Office of the Public Protector	34
Summary of Submissions from the City of Matlosana	35
Summary of Submissions from the Maquassi Hills Local Municipality	37
Summary of Submissions from the Mahikeng Local Municipality	38
Summary of Submissions from the North West Department of Human Settlements	40
Summary of Submissions from the Rustenburg Local Municipality	45
Summary of Submissions from the North West Department of Treasury	46
Summary of Submissions from the North West Office of the Premier	48
Summary of the reports from the Portfolio Committee and Subsequent Complaints received	50
Legal Framework	54
Analysis and Discussion	62
Findings	70
Directives	74
Comments on the Provisional Inquiry Report	78

ACRONYMS

AGSA
AO
CESCR
COMLM
DHS
DLM
EA
GTLM
HSDG
HSS
IA
ICESCR
IGR
JBMLM
KKDM
KLM
KMLM
LTLM
MEC
MHLM
MKLM
MLM
MMLM
MSKLM
MTLM
NHBRC
NLM
NMMDM
NW COGHSTA

NW GOGTA

NW DHS
NW OTP
NWPO
PPSA
PSC
RDP
RLM
RMLM
RTL
SAHRC
TLM

Auditor General South Africa
Accounting Officer
Committee on Economic, Social and Cultural Rights
City of Matlosana Local Municipality
National Department of Human Settlements
Ditsobotla Local Municipality
Executive Authority
Greater Taung Local Municipality
Human Settlements Development Grant
Human Settlements Subsidy System
Internal Audit
International Covenant on Economic, Social and Cultural
Inter-Governmental Relations
JB Marks Local Municipality
Dr Kenneth Kaunda District Municipality
Kgetlengrivier Local Municipality
Kagisano Molopo Local Municipality
Lekwa-Teemane Local Municipality
Member of the Executive Council
Maquassi Hills Local Municipality
Mahikeng Local Municipality
Madibeng Local Municipality
Mamusa Local Municipality
Moses Kotane Local Municipality
Moretele Local Municipality
National Home Builders Registration Council
Naledi Local Municipality
Ngaka Modiri Molema District Municipality
North West Department of Co-operative Governance, Human
Settlements and Traditional Affairs
North West Department of Co-operative Governance and
Traditional Affairs
North West Department of Human Settlements
North West Office of the Premier
North West Province Office of the SAHRC
Public Protector South Africa
Public Service Commission
Reconstruction and Development Programme
Rustenburg Local Municipality
Ramotshere Moiloa Local Municipality
Ratlou Local Municipality
South African Human Rights Commission
Tswaing Local Municipality



“Housing is the basis of stability and security for an individual or family. The centre of our social, emotional and sometimes economic lives, a home should be a sanctuary—a place to live in peace, security and dignity.”¹



¹Special Rapporteur on Housing <https://www.ohchr.org/en/special-procedures/sr-housing/human-right-adequate-housing> (accessed 24 June 2024).

EXECUTIVE SUMMARY

This report concerns the South African Human Rights Commission's investigation into the pervasive challenge of incomplete and inadequate Reconstruction and Development Programme ("RDP") houses in the North West province. The complaints, dating from 2021, underscore a systemic problem affecting housing projects across the province. The Commission's inquiry substantiates the complaints, revealing that the challenges are systemic and widespread, impacting all municipalities in the province. Despite efforts to gather comprehensive data, discrepancies in information provided by stakeholders hinder a precise assessment of the issue's full scope, pointing to a lack of coordination in delivering housing projects in the North West.

The investigation finds that the North West Department of Human Settlements ("**NW DHS**") has failed to fulfil its mandate within reasonable timeframes and prescribed quality standards, thereby infringing upon beneficiaries' constitutional rights to adequate housing and human dignity as per sections 26(1) and 10 of the Constitution. Specific violations include delays in issuing title deeds, undermining beneficiaries' security of tenure, and deficiencies in housing design that compromise privacy and accessibility for persons with disabilities.

The root causes identified include mismanagement, inadequate planning, contractual disputes, and insufficient oversight by the North West Department of Treasury ("**NW DOT**") and the North West Office of the Premier ("**NW OTP**"), exacerbating the situation. To address these challenges, the report directs amongst others that the NW DHS must within 90 days furnish a comprehensive progress report detailing completed houses, repairs conducted, and consequence management measures taken against non-compliant contractors and personnel. Within 90 days, NW DHS is also required to devise a comprehensive plan to address incomplete and inadequate RDP houses in the North West, detailing specific steps, budgets, timelines, and measures to address the challenge. The plan must incorporate stakeholder input and necessitate quarterly progress reporting thereafter. Stakeholder consultation, meaningful engagement and verification of project data are also mandated to enhance accountability and planning. Municipalities and oversight departments are required to submit action plans and bi-annual progress reports to address land availability issues and bolster oversight.

The directives aim to rectify current deficiencies, promote transparency and accountability, as well as restore public trust in RDP housing delivery in the North West province. Continuous monitoring and stakeholder engagement are pivotal for sustained improvement and upholding beneficiaries' rights to adequate housing and dignity.



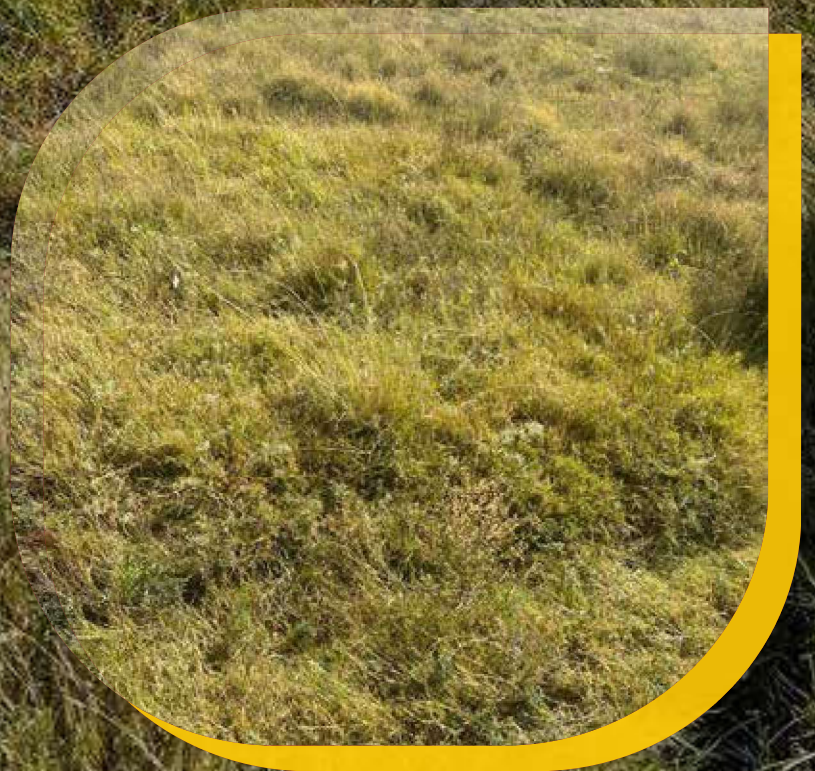
INTRODUCTION

- 1.1 The South African Human Rights Commission (“**The Commission**” or “**SAHRC**”) is an independent state institution established in terms of section 181 of the 1996 Constitution of the Republic of South Africa, 1996 (“**The Constitution**”). The Commission is mandated to strengthen constitutional democracy in South Africa. Specifically, in terms of section 184(1) of the Constitution, the Commission is required to promote respect for human rights and a culture of human rights; promote the protection, development and attainment of human rights; and monitor and assess the observance of human rights in the Republic.
- 1.2 The Commission is empowered to investigate and report on the observance of human rights in the Republic of South Africa and to take steps to secure appropriate redress where human rights have been violated².
- 1.3 The North West Province Office of the Commission (“**NWPO**”) identified the challenge of incomplete and inadequate RDP houses in the North West as one of the human rights issues requiring systemic intervention at a systemic level. This was in response to the complaints it had received on the subject matter.
- 1.4 This systemic intervention took the form of an investigation and an inquiry. The purpose of the investigation and inquiry was to:
 - 1.4.1. Assess the prevalence of the challenge of incomplete and inadequate RDP houses in the North West;
 - 1.4.2. Examine the root causes of the challenge of incomplete and inadequate RDP houses in the North West;
 - 1.4.3. Assess the impact of the challenge of incomplete and inadequate RDP houses on the subsidy beneficiaries, including the vulnerable groups under sections 9, 10, 25(1), and 26(1) of the Constitution.
 - 1.4.4. Examine the State’s plans to address the challenge of incomplete and inadequate RDP houses in the North West;
 - 1.4.5. Explore the role that various actors can play in bringing about the desired changes; and
 - 1.4.6. Make findings, recommendations and directives to address the North West’s housing challenges.

² Section 184(2) of the Constitution and section 13 of the South African Human Rights Commission Act 40 of 2013 (“SAHRC Act”)

02

PARTIES

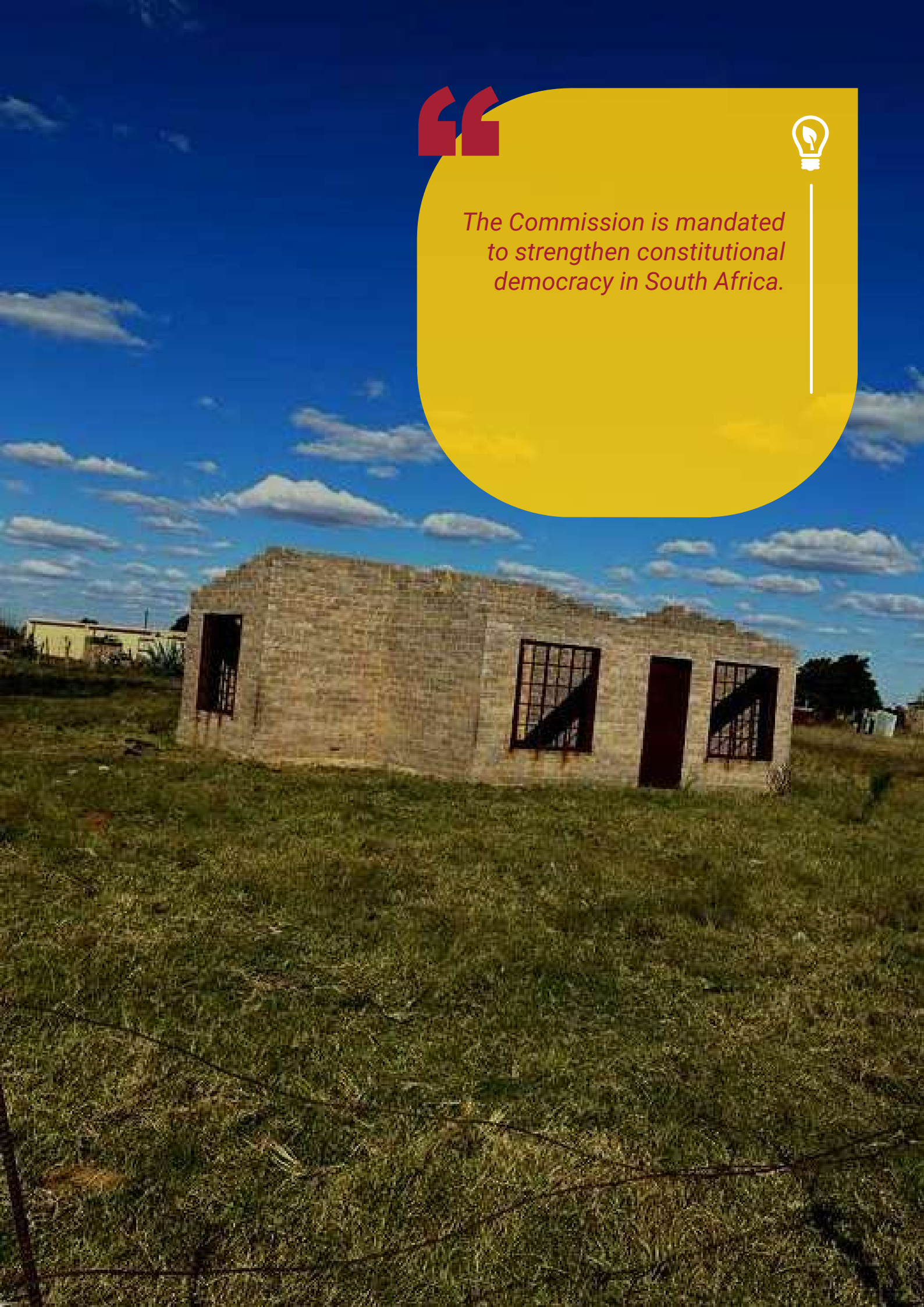


- 2.1 The First Complainant is Andrew Mathe ("**Mathe**"), an adult male residing in Kaalpan Village within the Mahikeng Local Municipality. Mathe lodged the complaint on his own behalf and on behalf of the other residents of Kaalpan Village affected by the incomplete RDP housing project in that village.
- 2.2 The Second Complainant is Selinah Moorosi ("**Moorosi**"), an adult female residing in Orkney within the City of Matlosana. Moorosi lodged the complaint on her own behalf.
- 2.3 The Third Complainant is Yekiwe Tinyane ("**Tinyane**"), an adult female residing in Masakeng Village within the City of Matlosana. Tinyane lodged the complaint on her own behalf.
- 2.4 The Fourth Complainant is Ephraim Dithipe ("**Dithipe**"), an adult male residing in Kanana Village within the City of Matlosana. Dithipe lodged the complaint on his own behalf.
- 2.5 The Fifth Complainant is Christopher Schalkwyk ("**Schalkwyk**"), an adult male Ward Committee Member residing in Toevlug within JB Marks Local Municipality. Schalkwyk lodged the complaint on behalf of the residents of Toevlug affected by the incomplete RDP housing project in that community.
- 2.6 The Sixth Complainant is Ofentse Somolekane ("**Somolekane**"), an adult male residing in Lethabong Village within Rustenburg Local Municipality. Somolekane lodged the complaint on behalf of his mother and the other residents of Lethabong Village affected by the incomplete RDP housing project in that village.
- 2.7 The Seventh Complainant is Rachel Rambao ("**Rambao**"), an adult female residing in Segwaelane Village within the Madibeng Local Municipality. Rambao lodged the complaint on behalf of the residents of Segwaelane Village affected by the incomplete RDP housing project in that village.
- 2.8 The Eighth Complainant is Lentikile Phutiagae ("**Phutiagae**"), an adult male residing in Wolmaransstad within the Maquassi Hills Local Municipality. Phutiagae lodged the complaint on his own behalf.
- 2.9 The Ninth Complainant is Neo Mabote ("**Mabote**"), an adult male Councilor residing in Bethel within the Mahikeng Local Municipality. Mabote lodged the complaint on behalf of his political party, the Democratic Alliance, and the residents of Mooipan and Weltevreden villages affected by the incomplete RDP housing projects in those villages.
- 2.10 The First Respondent is the North West Department of Human Settlements ("**NW DHS**"), a provincial government department responsible amongst others for promoting, planning and coordinating integrated and sustainable human settlements in the province. Their main office is situated on the 1st Floor of the West Wing, University Drive, Garona Building.
- 2.11 The Second Respondent is JB Marks Local Municipality ("**JBMLM**"), a public entity established in terms of the Local Government Municipal Structures Act, 117 of 1998, with its main offices situated at 35 Wolmarans Street, Potchefstroom, 2531.
- 2.12 The Third Respondent is Rustenburg Local Municipality ("**RLM**"), a public entity established in terms of the Local Government Municipal Structures Act, 117 of 1998, with its main offices situated at Mpheni House, 159 Nelson Mandela and Beyers Naude, Rustenburg.

- 2.13 The Fourth Respondent is Madibeng Local Municipality ("**MLM**"), a public entity established in terms of the Local Government Municipal Structures Act, 117 of 1998, with its main offices situated at 53 Van Velden Street, Brits.
- 2.14 The Fifth Respondent is Mahikeng Local Municipality ("**MKLM**"), a public entity established in terms of the Local Government Municipal Structures Act, 117 of 1998, with its main offices situated at CNR University Drive & Hector Peterson Street, Mmabatho.
- 2.15 The Sixth Respondent is the City of Matlosana Local Municipality ("**COMLM**"), a public entity established in terms of the Local Government Municipal Structures Act, 117 of 1998, with its main offices situated at 1 Bram Fischer Street, Klerksdorp.
- 2.16 The Seventh Respondent is Maquassi Hills Local Municipality ("**MHLM**"), a public entity established in terms of the Local Government Municipal Structures Act, 117 of 1998, with its main offices situated at 9 Kruger Street, Wolmaransstad.
- 2.17 The Eighth Respondent is the North West Office of the Premier ("**NW OTP**"), a provincial government department responsible, amongst others, for facilitating integrated governance and planning as well as accelerating service delivery in the province. Their main office is situated at Garona Building, South Wing, 3rd Floor, Dr James Moroka Drive, Mmabatho.
- 2.18 The Ninth Respondent is the North West Department of Treasury ("**NW DOT**"), a provincial government department responsible, amongst others, for financial management in the province. Their main office is situated at Garona Building, East Wing, 2nd Floor, CNR James Moroka & University Drive, Mmabatho, 2735.



The Commission is mandated to strengthen constitutional democracy in South Africa.



03:

BACKGROUND



As indicated above, the Commission received several complaints relating to incomplete and inadequate RDP houses in the North West starting in 2021.

- 3.1 Mathe lodged the first of the complaints on 7 June 2021. In the complaint, he alleged that an RDP housing development project was approved in respect of Kaalpan village in 2018 for the construction of 26 homes. Kaalpan village falls within MKLM. The construction of the 26 homes commenced in 2018, with the contractor abandoning the site after the digging of foundations for the 26 homes and the delivery of steel re-enforcement for the foundations. He further alleged that the community made several enquiries regarding the status of the project from MKLM and NW DHS to no avail.
- 3.2 Moorosi lodged the second of the complaints on 15 August 2022. In the complaint, she alleged that an RDP housing development project was approved in respect of her community in Extension 11, Orkney, within COMLM. She is one of the beneficiaries of the housing development project. Moorosi's RDP home was constructed in and around 2015 but was not completed. To this end, windows, doors, toilet facilities, sinks and ceilings were not installed. She lodged numerous complaints with the NW DHS concerning her plight, and she was repeatedly told that the contractor would come back on-site to complete the project to no avail.
- 3.3 Tinyane lodged the third of the complaints on 15 August 2022. In the complaint, he alleged that an RDP housing development project was approved in respect of his community in Masakeng, Orkney, within COMLM. He is one of the beneficiaries of the housing development project. His RDP home was constructed in and around 2014 but was not properly plastered. He was told that the contractor would attend at his home and fix the plastering before he moved into the house but this was not done. He has now moved into his home, but the plastering has still not been fixed.
- 3.4 Dithipe lodged the fourth of the complaints on 15 August 2022. In the complaint, he alleged that an RDP housing development project was approved in respect of his community in Kanana, Orkney, within COMLM. He is one of the beneficiaries of the housing development project. His RDP home was constructed in and around 2019 but was not completed. He reported the matter to his ward councilor to no avail. He currently lives in a shack and wants the construction of his home to be completed so that he can move out of his shack house.
- 3.5 Schalkwyk lodged the fifth of the complaints on 18 August 2022. In the complaint, he alleged that an RDP housing development project was approved in respect of his community in Toevlug, within JBMLM, in 2019. As part of the project, 365 houses were supposed to be built but only 100 houses were completed. The completed 100 houses were already presenting some faults. Some of the faults include plumbing defects, wet and moldy walls due to water leakages, and extremely high foundations without steps to enter and exit the homes. In addition to the infrastructural faults mentioned concerning the completed RDP houses, people with disabilities have been handed over RDP houses which are not accessible and fit for purpose for their specific needs. With regards to the incomplete houses, some of the incomplete houses were left with only foundations. These challenges and issues were reported to the JBMLM and the ward councilor to no avail.

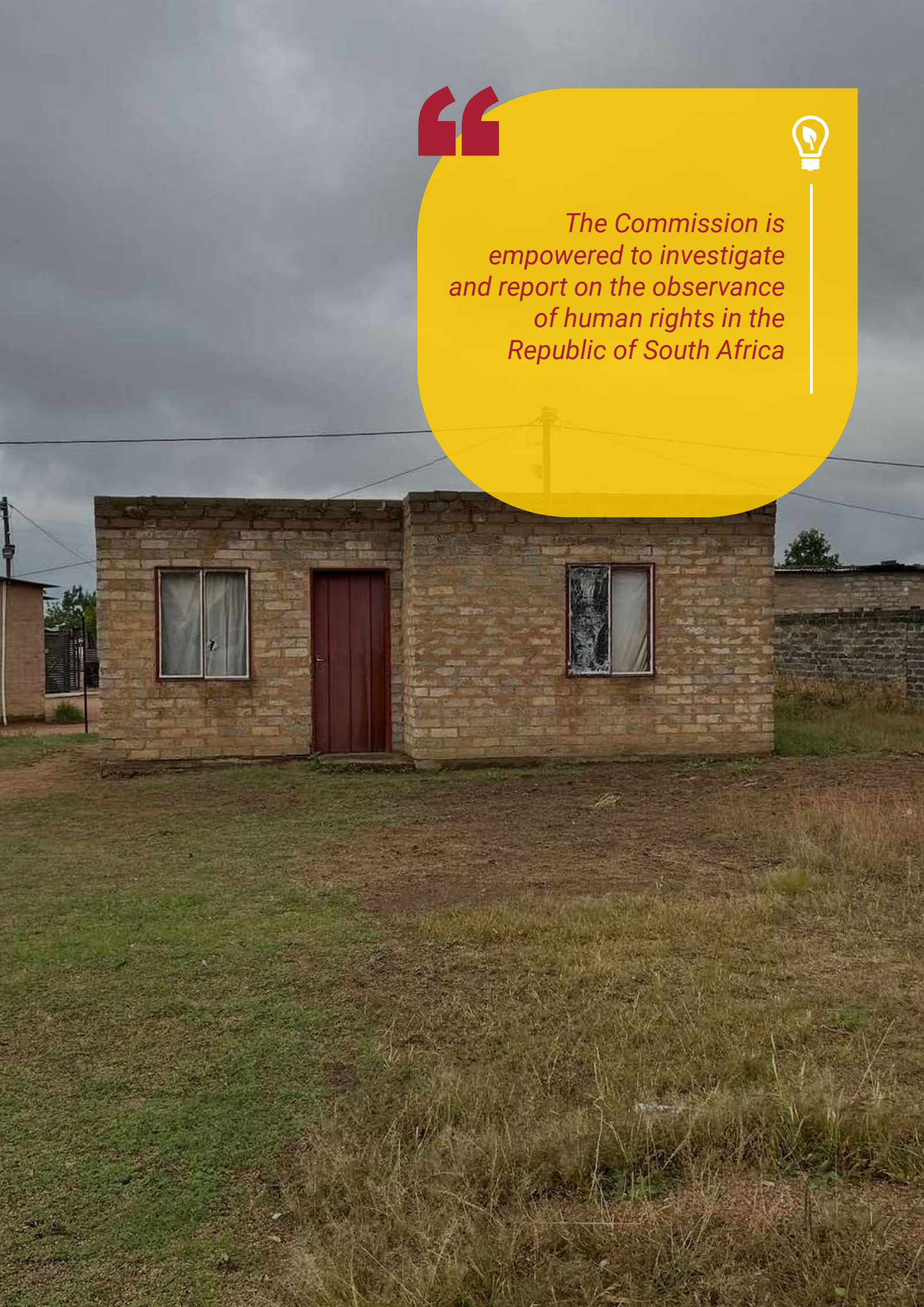
- 3.6 Somolekane lodged the sixth of the complaints on 17 November 2022. In the complaint, he alleged that an RDP housing development project was approved in respect of his village, Lethabong, within RLM in 2019. Somolekane's mother is one of the beneficiaries of the housing development project. Approximately 100 houses were supposed to be constructed as part of the project yet construction of some of the houses was not completed. Some houses were constructed to the half-way point, whilst others had only foundations. He reported the matter to his ward councilor in 2019. The ward councilor advised that the matter was being attended to. The ward councilor however no longer responds to his enquiries when he follows up on developments in the matter.
- 3.7 Rambao lodged the seventh of the complaints on 18 November 2022. In the complaint, she alleged that an RDP housing development project was approved in respect of her community Segwaelane, Brits, within MLM, in 2017. She was a ward committee member at the time and participated in the process of identifying beneficiaries for the housing development project. However, out of the 50 houses that were supposed to be built, only 30 houses were built, with the construction of the remaining houses being abandoned after holes were dug. The dug holes are posing a danger to children in the community. Some of the RDP houses that were constructed are already presenting with structural issues such as cracking walls and leaking roofs.
- 3.8 Phutiagae lodged the eighth of the complaints on 6 December 2022. In the complaint, he alleged that an RDP housing development project was approved in respect of his community, extension 17 and 18 in Wolmaransstad, within MHLM, 3 years before the complaint. He is one of the beneficiaries of the housing development project, with house number 8960. Only a foundation slab was built. Phutiagae's RDP house is not the only house that has been left incomplete. Many houses have been left incomplete. Other RDP houses had been constructed but not handed over to the beneficiaries, resulting in those houses being vandalized. He reported the matter to the Member of the Executive Council ("MEC") for NW DHS and Minister Kubayi's Office, the Minister of Human Settlement, to no avail.
- 3.9 Mabote lodged the ninth of the complaints on 18 April 2023. In the complaint, he alleged that more than 10 years ago, RDP housing development projects were approved in respect of Weltevreden, Mooipan and Louisdal within MKLM. As part of the project, 15 RDP houses were supposed to be built in Weltevreden and 14 in Mooipan and Louisdal. Mabote alleged that more than 10 years later, the construction of the houses has not been completed, in violation of the beneficiaries' right of access to housing.

Noting the systemic nature of the issues complained of, the above complaints were consolidated into one complaint, and the Commission determined to investigate the complaints at a systemic level. Accordingly, whilst the investigation covered the specific complaints lodged by the Complainants, it went beyond the specific complaints.

Following the decision to investigate the issues complained of at a systemic level, the Commission made a public call for submissions. In response to the public call for submissions, the Commission was informed of additional areas which are allegedly affected by the challenge of incomplete and inadequate RDP houses. These areas included Lethabile in Brits. All these areas fall within the MLM.



The Commission is empowered to investigate and report on the observance of human rights in the Republic of South Africa



04

INVESTIGATIVE METHODOLOGY

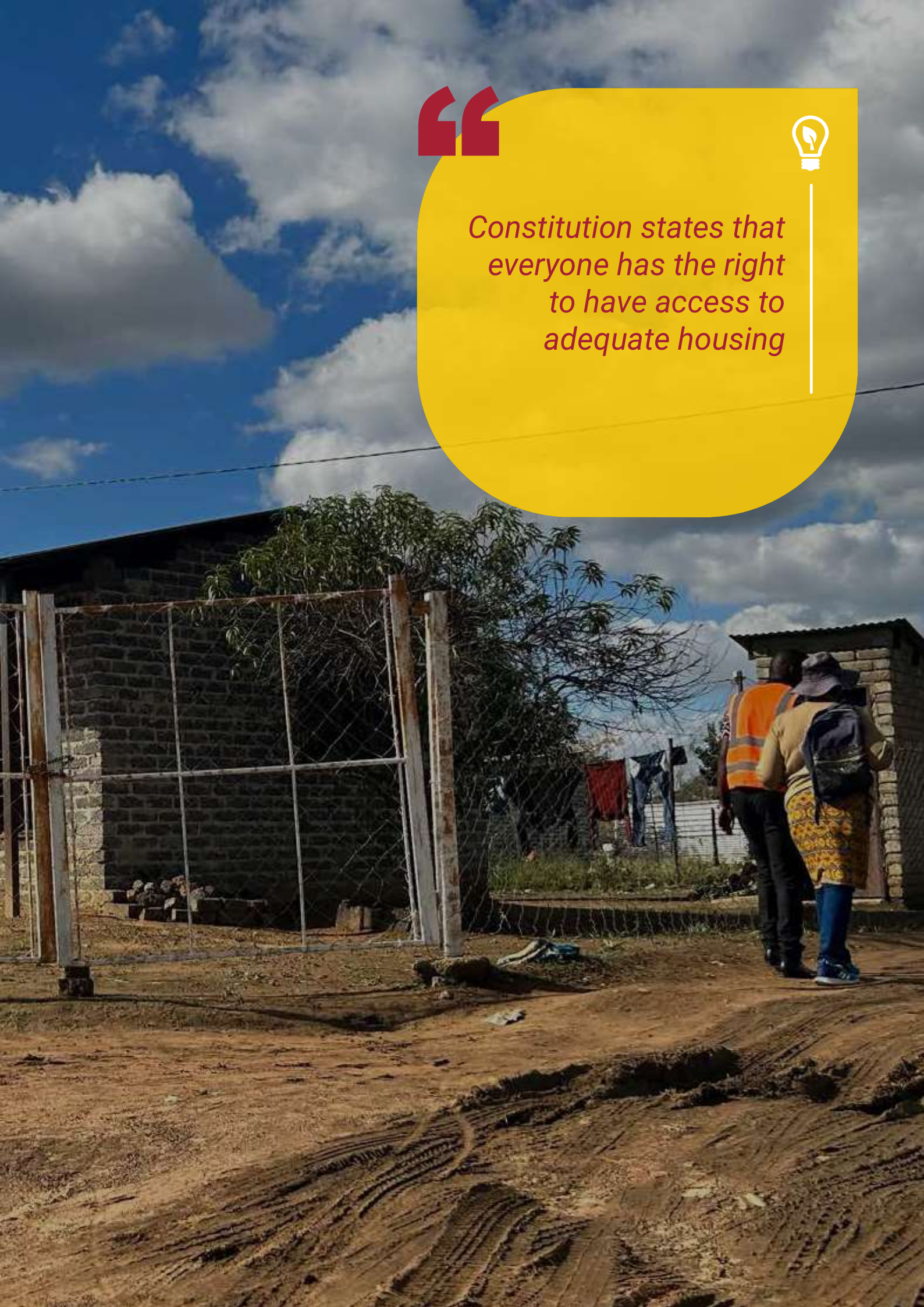


- 4.1 The Commission investigated the complaints principally by way of written correspondence with the Respondents, site inspections in the affected communities and an investigative inquiry. The first sitting of the investigative inquiry was conducted on 10 to 12 May 2023 at Seasons Conference and Wedding Venue in Mahikeng, whilst the second sitting of the investigative inquiry was conducted on 8 August 2023 at the Commission's North West Provincial Offices in Rustenburg.
- 4.2 Submissions were received from the Complainants, the Human Rights Champions, the Commission, the office of the Auditor General South Africa ("AGSA"), the Office of the Public Service Commission ("PSC"), the Office of the Public Protector South Africa ("PPSA"), COMLM, MHLM, MKLM and NW DHS on the first sitting of the inquiry. Additional submissions were received from RLM, the NW DOT, and NW OTP on the second sitting, following the institution of subpoena proceedings against the Accounting Officers of RLM, NW DOT, NW OTP, who failed to present themselves at the first sitting of the inquiry. Although the Accounting Officers of MLM and JBMLM were also subpoenaed to appear before the Inquiry on the second sitting of the Inquiry, they did not present themselves before the Commission. No reasons were furnished to the Commission for their non-appearance. Notwithstanding their non-appearance, the Commission is of the view that it has sufficient information before it to make investigative findings on the issues which formed the subject of the inquiry. The course the Commission proposes to take in respect of the Accounting Officers of MLM and JBMLM is set out below.
- 4.3 Prior to convening the investigative inquiry, the Commission addressed correspondence to the erstwhile Head of the Department ("HOD") for DHS regarding six of the complaints, namely, the complaints lodged by Mathe, Moorosi, Tinyane, Dithipe, Schalkwyk and Somolekane. The erstwhile HOD was given until 10 January 2023 to respond to the correspondence but failed to do so.
- 4.4 The Commission also conducted site inspections in the affected communities. The site inspections were conducted on 14 April 2023, as well as 5, 8 and 9 May 2023.
- 4.5 On the other hand, the investigative inquiry was convened on 10, 11 and 12 May 2023 and 8 August 2023. The first sitting of the inquiry held on 10, 11, and 12 May 2023 was chaired by Commissioner Philile Ntuli, whilst the second sitting of the inquiry held on 8 August 2023 was chaired by Commissioner Jonas Sibanyoni.
- 4.6 The investigative inquiry was inquisitorial and allowed the Complainants, community members and representatives of the Respondents to give evidence through written and oral submissions under oath and be cross-questioned on the evidence given in an attempt to get to the truth. The chairpersons of the investigative inquiry were assisted by Shirley Mlombo, the Provincial Manager of the NWPO as a panelist.





Constitution states that everyone has the right to have access to adequate housing



05:

SITE INSPECTIONS



- 5.1 As indicated above, as part of the investigation of the complaints, site inspections were conducted in the communities reported to be affected by the challenge of incomplete and inadequate RDP houses.
- 5.2 During the various site inspections, the Commission made observations and engaged with the affected residents. Other than in Toevlug and Weltevreden, the Commission was met with scores of incomplete RDP houses along with a stream of desperate, angry, disappointed and frustrated housing beneficiaries. In some of the areas visited, only foundation trenches had been dug, whilst other areas had foundation trenches with steel reinforcement mesh. In other areas visited, the Commission found foundation slabs, houses that had been built up to the roof level but without the roof, windows or plumbing and houses that had roofs but did not have windows, ceilings or plumbing. In other areas, the construction of the homes had been completed, but the houses had faults such as cracking and damp walls.
- 5.3 In the table below, we summarise the key observations made and the information received from the community members the site inspection teams engaged with.

Key Observations

DATE	AREA	MUNICIPALITY	KEY OBSERVATIONS AND INFORMATION RECEIVED
14 April 2023	Toevlug	JB Marks Local Municipality	Although there were still houses that remained incomplete, the construction of many houses had been completed since the lodgement of the complaint with the Commission, with other houses being in the process of being finished, including the houses that had high foundations with no stairs or stoops, to make them accessible.
5 May 2023	Lethabong	Rustenburg Local Municipality	<p>The residents reported that the project to build RDP houses was initiated in 2019. The contractor-built houses without roofs in 2019 and absconded.</p> <p>The households cannot utilise the houses because they are not suitable for human habitation due to the absence of roofing and installation of windows. As a result, residents still reside in shacks and their right to adequate housing has remained unrealised.</p>
08 May 2023	Segwaelane, Brits	Madibeng Local Municipality	<p>It was observed that contractors had merely dug holes where the RDP houses were supposed to be built and absconded. These holes pose a serious hazard to the health and wellbeing of households, particularly children, the elderly and persons living with disabilities.</p> <p>It was also observed that some of the completed houses had cracked walls inside and outside. This pointed to shoddy workmanship and called into question whether these houses were quality assured prior to the recipients taking occupation.</p> <p>All of the recipients of the RDP houses indicated that they had not received title deeds despite these houses being handed to them in 2018/19.</p>
08 May 2023	Lethlabile Block C & Block I, Brits	Madibeng Local Municipality	<p>It was observed that several houses had only foundation slabs, whilst others were only built up to the roof level, without roofing. All the incomplete houses did not have plumbing or electricity connections.</p> <p>In one house, foundation trenches were dug with steel re-enforcement mesh. The steel re-enforcement mesh had exposed sharp edges, which posed a danger to residents of that home. It was reported to the Commission that a child once tripped over one of the exposed edges of the steel re-enforcement mesh and gravely injured themselves.</p> <p>The Construction of the incomplete houses in the visited areas commenced more than 5 years ago and has remained incomplete for many years since then. The only residents who were prioritised for the completion of the houses were those who repeatedly reported their plight to the municipality and forcefully asserted their rights.</p> <p>With regards to the finished houses, some residents advised that their houses cracked immediately after being handed over. In some houses, it was observed that the walls are cracked, as a result, rainwater seeps through the walls when it rains, resulting in the interior walls being damp.</p> <p>The older RDP houses did not have sub-divisions inside but were built as one big room. Residents made make-shift attempts to divide the house using curtains, which does not provide for the privacy of residents. One resident reported that she lives in the house with her children. As a result of the lack of privacy, she cannot have her boyfriend stay over at her house and must always go to her boyfriend's house if she wants to enjoy personal time with him.</p>

DATE	AREA	MUNICIPALITY	KEY OBSERVATIONS AND INFORMATION RECEIVED
09 May 2023	Extension 9, 10, 11, and 13 Kanana	City of Matlosana	<p>It was observed that most houses visited were left without proper flooring, plastering, roofing, ceilings, doors, and windows. In some areas, it was observed that the contractors only dug holes without constructing the foundation slabs. It was further observed that some of the houses have cracks that have not been attended to.</p> <p>One elderly disabled resident was interviewed during the site inspection. He advised that he had to demolish his shack in order to affix roofing and makeshift windows on his RDP house, which was left without roofing or windows, and currently, he resides in the house without windows.</p> <p>Several residents advised that up to 3 contractors had worked on their houses, but the houses remained incomplete.</p> <p>The community liaison officers and one foreman employed by the main contractor in the area advised that the main challenge, as reported to them by the contractors, is that contractors have not been able to make money from the projects due to the escalating costs of construction. They are trying to secure "top-up" funding from the NW DHS to complete the construction, which is not forthcoming.</p>
08 May 2023	Extensions 17 and 18 Wolmaransstad	Maquassi Hills Local Municipality	<p>It was observed that many houses are incomplete as they do not have windows and roofs. Several houses were observed with only foundation slabs, whilst others were built up only to the roof level, without roofs. All the incomplete houses did not have plumbing or electricity connections. Houses that have been completed do not have access to water. As such, there is a challenge with sanitation, and the residents have to use pit toilets.</p> <p>The Commission observed at Wolmaransstad that out of 3422 houses that were supposed to be built in Wolmaransstad Ext 17 and 18, there are less than 200 houses built in the area.</p> <p>Residents reported that there is a high crime rate in the area due to incomplete houses, as criminals hide in those houses. Further, according to the residents, the houses were left incomplete since 2020 and there is no communication from the NW DHS and MHLM.</p> <p>The residents further reported that there had been at least 5 contractors in the community who were supposed to finish the houses, but all abandoned the projects, some because they were not paid.</p>
09 May 2023	Weltevreden, Mafikeng	Mahikeng Local Municipality	<p>It was observed that all RDP houses were complete except one house. There was also a house with cracked walls. The house with cracked walls potentially poses serious risks to the health and well-being of the household occupying the house.</p>
09 May 2023	Louisdal, Mafikeng	Mahikeng Local Municipality	<p>Several incomplete RDP houses were observed. Residents reported that the houses were left incomplete for over 10 years.</p> <p>The contractor built the houses without roofs and absconded. The houses are not suitable for human habitation due to the absence of roofs and windows. As a result, households still reside in shacks and their right to adequate housing has remained unrealised.</p>
09 May 2023	Mooipan, Mafikeng	Mahikeng Local Municipality	<p>Similarly to Louisdal, it was observed that most houses in the area were incomplete.</p> <p>Residents reported that one house in the area of Mooipan had partially collapsed as a result of being left incomplete for over ten years.</p>
09 May 2023	Kaalpan village	Mahikeng Local Municipality	<p>Similarly to Segwaelane, it was observed that the contractors merely dug holes where the RDP houses were supposed to be built and absconded.</p> <p>Residents reported that the contractor was supposed to build 26 houses in the village of Kaalpan but, to date, no single house has been built.</p>





Housing Act give meaning and content to the constitutional right of access to adequate housing in section 26(1) of the Constitution.



06

INQUIRY
SUBMISSIONS



- 6.1 The inquiry opened with the opening remarks from Commissioner Philile Ntuli. In her opening remarks, she explained that the inquiry would be conducted in an inquisitorial manner and outlined the context within which the investigative inquiry is being conducted, which included the looming 110 anniversary of the Natives Land Act 25 of 1913 ("**Natives Land Act**"). The Natives Land Act consolidated the land dispossession of black and indigenous people, limiting African land ownership to 7% of the arable land in South Africa and thereby rendering the majority of the South African population landless. The Natives Land Act heralded the mass evictions and relocation of black people to poor homelands and poorly planned and serviced townships. The Natives Land Act also stipulated that Black people could live outside the reserves only if they could prove that they were in employment. The Natives Land Act, therefore, restricted black people from buying or occupying land except as employees of a white master.
- 6.2 The Chairperson's opening remarks were followed by the presentations of some of the Complainants and Human Rights Champions affiliated with the Commission. The presentations of the Complainants and the Human Rights Champions were followed by the presentation of Zamathuli Luthuli ("**Luthuli**"), the Senior Legal Officer in the NWPO, and other stakeholders who have a similar mandate as the Commission, namely, the Office of the Auditor-General South Africa, the Office of the Public Service Commission and the Office of the Public Protector. After this set of presentations, presentations were received from the named Respondents. Both written and oral presentations were made in some instances.

Summary of Submissions from the Complainants, Human Rights Champions and the Commission

- 6.3 Out of the 9 Complainants who lodged complaints with the Commission, only 3 were available to give evidence before the investigative inquiry. The Complainants who testified were Rambao, Solomekane and Mabote. The Complainants re-iterated the contents of their complaints to the Commission as already set out above. However, Mabote provided the inquiry with additional information which shed some insights on the working dynamics within MKLM. In his presentation, he advised that although he is a Proportional Representation (“PR”) Councilor and a member of the Municipal Public Accounts Committee (MPAC) in MKLM, he has been unable to access any official information and documentation regarding the abandoned RDP housing projects in Louisdal, Mooipan and Weltevreden. The only information he has obtained on the subject matter is from members of the public, who complained to him and MPAC about this matter. On receipt of the complaints from members of the public, MPAC requested official information and documentation regarding the abandoned projects from officials in the administration of the MKLM to no avail. Given the limited information at the disposal of MPAC on the matter, MPAC merely recommended in its 2022 report that the incomplete RDP housing projects in MKLM should be revisited. Council accepted the recommendation and, in turn, passed a resolution that all incomplete projects in MKLM, including the RDP housing projects, should be revisited. At the time of giving the evidence, the resolution of the Council had not been implemented by the officials of MKLM. He has no confidence that the resolution will be implemented, noting that officials of MKLM have not implemented many other resolutions of the Council. For this reason, he decided to report the matter to the Commission.
- 6.4 The presentations of the Complainants were followed by presentations from Kgomotso Rapasha (“**Rapasha**”) and Theo Matlawe (“**Matlawe**”), who are both members of Legal Advice Centers who form part of the Commission’s Human Rights Champion program.
- 6.5 In her presentation, Rapasha re-iterated the issues already set out above relating to the observations made by the Commission during its site inspections in Letlhabile. She also confirmed that she is one of the residents who live in RDP houses that do not have internal subdivisions. The houses in question were built in and around 2005. She also narrated the impact this has had on her and her family. On the other hand, in his presentation, Matlawe also reiterated the issues already set out above in relation to the observations made by the Commission during its site inspection in Kanana. He indicated that he has been able to identify at least 93 incomplete RDP houses in Kanana. Some of the causes of this challenge include rogue contractors, as well as the phenomenon of contract mafias within the COMLM who insist on being awarded contracts or sub-contracts they cannot fulfil. Other challenges include the late payment of contracts, resulting in them abandoning their allocated projects. He highlighted that contractors were also complaining about top-up funding.
- 6.6 In her presentation, Luthuli provided a summary of the complaints received by the Commission on the subject matter, the steps taken by the Commission to investigate the complaints and the observations made by the Commission during the various site inspections as already set out above. Luthuli’s presentation corroborated the evidence given by the Complainants and the Commission’s Human Rights Champions.

Summary of Submissions from the Office of the Auditor General South Africa

- 6.7 Julio Camm ("**Camm**"), a Senior Manager within the Office of the Auditor General South Africa ("**AGSA**"), made a presentation on behalf of the AGSA. In his presentation, he outlined the mandate of the AGSA and how it contributes to the accountability ecosystem. The role of the AGSA within the accountability system bolsters the role that other players should play such as the Senior Management team, the Accounting Officer ("**AO**"), the Executive Authority ("**EA**") and the Internal Audit Unit ("**IA**") within any institution.
- 6.8 In his presentation, Camm further advised that since 2017/2018, the NW DHS has admittedly underperformed against its pre-determined targets, with the NW DHS failing to achieve even 50% of its pre-determined targets in some instances. These pre-determined targets include the construction of new RDP houses and the registration and transfer of title deeds to housing beneficiaries. Of concern is that even the reported performance could not be verified due to material misstatements caused by inadequate monitoring and oversight mechanisms to track performance.
- 6.9 Further challenges noted in the NW DHS' administration of its housing program in the last five years include underspending on the Human Settlements Development Grant ("**HSDG**"), overpayment of suppliers and non-completion of housing projects within the defined time-frames, which in turn, necessitate payment variations in some instances. Notably, in 2021/2022, AGSA flagged the overpayment of R10 036 369 (ten million and thirty-six thousand, three hundred and sixty-nine rands) to Geotech and R6 764 697 (six million, seven hundred and sixty-four thousand and six hundred and ninety-seven rands) to Barzani project in respect of a housing project in Wolmaransstad for work that was yet to be completed. Similar findings were made in 2019/2020 and 2018/2019 wherein AGSA found overpayment of R134 289 929 (one hundred and thirty-four million, two hundred and eighty-nine thousand and nine hundred and twenty-nine rands) for goods and services that were not received and payment for completed milestones on housing projects where the milestones paid for had not been reached. A material irregularity was raised in respect of the Barzani project overpayment, resulting in the recovery of the full value of the overpaid amount.
- 6.10 Other notable findings made by AGSA over the last five years relating to the NW DHS administration of its housing projects include the awarding of contracts to suppliers prohibited from doing business with the state; procurement of contracts without following a competitive bid process; contracts extended without approval by a delegated official; and awarding of contracts to bidders who did not meet the minimum qualifying score for functionality. Camm highlighted inadequate planning, ineffective project implementation, lack of consequence management, as well as ineffective project management and oversight as some of the factors contributing to the challenge of incomplete and inadequate RDP houses in the North West.

6.11

During engagements with the presentation and following probing questions from the Panel, Camm provided the following additional evidence. The AGSA had issued two MIs against the NW DHS, one related to the Barzani Project and the other related to Kingsley and Associates, which was on the outsourcing of the project management unit. On the question of whether the AGSA has engaged with the Accounting Officer of the DHS on the findings made against the department, Camm cited leadership instability within the DHS, with the position of the Accounting Officer only having been filled at the beginning of 2023. Further, Camm highlighted the apparent lack of commitment within the NW DHS in addressing the audit findings raised with them, resulting in the recurrence of many of the findings. For instance, the NW DHS had put up a post-audit plan in response to the findings, but despite this, recurring problems are being observed, which shows that the root causes are not being addressed. Camm further stated that inadequate project management was a key contributor to the perpetual underspending by the NW DHS on their allocated budget.

Summary of Submissions from the Office of the Public Service Commission

- 6.12 Professor Mandla Makhanya (“**Makhanya**”), a Commissioner at the Public Service Commission (“**PSC**”), made a presentation on behalf of the PSC. In his presentation, he advised that the PSC did not, at that time, have any recorded complaints relating to incomplete and inadequate RDP houses in the North West. The RDP-related complaints were related to alleged irregularities in the processing of RDP housing applications and the allocation of those houses.
- 6.13 This notwithstanding, Makhanya advised that, in his view, some of the factors contributing to the challenge of failing housing projects in the North West include poor project management; failure to pay contractors on time, resulting in contractors abandoning their housing projects before the completion of the projects; litigation; absence of a clear delineation of responsibilities between municipalities and the NW DHS in respect of housing project; and protest action by communities because of inadequate consultations and contestation over local employment and local content requirements.
- 6.14 To address the noted challenges, Makhanya proposed the adoption of the following measures:
- 6.14.1 The NW DHS should prioritise the appointment of qualified project managers to oversee their housing projects;
 - 6.14.2 The NW DHS should ensure the payment of providers/contractors within 30 days;
 - 6.14.3 The clarification of the roles and responsibilities between the NW DHS and the municipalities;
 - 6.14.4 The NW DHS should strengthen the consultation mechanisms with local Traditional Leaders and communities to avoid delays due to protest action and land availability challenges; and,
 - 6.14.5 The NW DHS should develop a clear policy on the employment of locals in mega and small housing projects.
- 6.15 During deliberations on his presentation, Makhanya further advised that the challenge of failed housing projects in the North West highlighted weak intergovernmental collaboration and erosion of accountability mechanisms. Moreover, he advised that the persisting challenge points to an abdication of responsibilities by the NW DHS, particularly on contract management, which raises the question of what role inspectors play in monitoring housing projects. Finally, he advised that the RDP housing problem in the North West presents a microcosm of the national picture and should trigger the National Minister to take decisive action to address the RDP housing challenges at a national level.

Summary of the Submissions of the Office of the Public Protector

- 6.16 Dithange Titus Motlake ("**Motlake**"), a senior investigator in the Office of the Public Protector South Africa ("**PPSA**") in the North West, made a presentation on behalf of the PPSA. In his presentation, he presented the mandate of the PPSA, highlighting the powers of the PPSA to investigate and take remedial action. He also highlighted the findings and recommendations made in the PPSA's 2018 advisory report on RDP housing challenges throughout the country. The advisory report relates to complaints concerning RDP houses dating as far back as 2011/2012.
- 6.17 The specific complaints received in relation to the North West related to incomplete and blocked housing projects, allocation of RDP houses, defective RDP houses and delays in the transfer of title deeds to beneficiaries. Special mention was made in the report of the blocked housing projects in the COMLM and Naledi Local Municipality ("**NLM**"). In its 2014 response to the PPSA's investigation, the NW DHS advised that the challenge of incomplete housing projects in the province was due to municipalities diverting RDP housing grants to other priorities; houses being built without identified beneficiaries; and houses being constructed on dolomitic land due to poor planning on the part of the NW DHS and Municipalities. With regards to defective houses, the NW DHS acknowledged the challenge and advised that it had embarked on a project to repair the defective houses.

Summary of Submissions from the City of Matlosana

- 6.18 The COMLM was represented by its Municipal Manager, Lesego Seametso (“**Seametso**”), and its Director for Planning and Human Settlements, Baganne Choche (“**Choche**”). In their presentation, they outlined the role of the city in housing projects and advised that their role is limited to making land available for housing projects. They, therefore, denied having played any role in the failed housing projects within their jurisdiction. They further outlined 10 housing projects within the jurisdiction of COMLM that were still underway. The projects were meant to have been completed in 2020, but as of the date of the hearing, only one project had been completed for the construction of 951 houses in Matlosana, Alabama, Extension 4. The remaining projects were at varying stages of completion, with contractors either making slow progress or having abandoned the project sites. Seametso and Choche advised that the slow pace of completion of the active projects is due to poor performance by contractors, contractors abandoning the construction sites, construction on clay soil, cash flow challenges on the part of the contractors, and the escalation of construction costs, amongst others.
- 6.19 Seametso and Choche also advised of the existence of 9 housing projects that the NW DHS had blocked. Many of the houses in the blocked projects are incomplete, with construction having been halted at the foundation or wall plate stage. The key factors that contributed to the projects being blocked include material cost escalations, up-front payment to contractors for work that has not been completed, the appointment of unqualified contractors, delays in the payment of top-funds to contractors, illegal occupation of stands, poor contract management, construction on clay soil, and mismanagement of funds by contractors, resulting in them being unable to complete their allocated projects.
- 6.20 To address some of the highlighted challenges, Seametso and Choche recommended, amongst others, the appointment of new service providers to complete incomplete projects, the allocation of additional funding for the completion of incomplete projects, reallocation of high-performing service providers to complete incomplete projects, and allowing beneficiaries to re-apply for housing benefits to ensure the provision of additional funds. Seametso and Choche further advised that COMLM had made an application to the MEC for Co-operative Governance, Human Settlements & Traditional Affairs (“**COGHSTA**”) for accreditation to undertake the housing project, which is still pending final approval.

6.21 During engagements on the presentation of Seametso and Choche, the Panel requested them to provide clarity on the number of RDP housing projects within the jurisdiction of COMLM, the number of housing projects that have been blocked and the number of the intended beneficiaries in view of the apparent contradictions between the NW DHS' and the COMLM's presentations on that issue. The Panel also required them to comment on the justifiability of the demand for top-up funding in many of the projects within its jurisdiction and the allegations relating to the operation of gangsters within the COMLM who demand to be allocated contracts. In response, Seametso and Choche requested a further opportunity to respond to the question relating to the discrepancy between their report and that of NW DHS relating to the pending housing projects. On the issue of top-up funding, however, Seametso and Choche advised that the need for top-up funding is sometimes justified due to the escalation of construction costs and, therefore, not always an abuse of state resources. They, however, advised that the ultimate responsibility for adjudicating such requests lies with the NW DHS, which must adjudicate such requests on a case-by-case basis. With regards to the allegation of the operation of gangsters within the COMLM who demand the allocation of contracts, they advised that they were not aware of such operations and advised that many of the disputes relate to the allocation of 30% of housing construction contracts to local contractors.

6.22 The Panel also inquired whether the COMLM played a liaison role on behalf of beneficiaries and assisted beneficiaries with their housing challenges. Further, the Panel inquired about the COMLM's audit outcomes and its readiness to take additional responsibilities for the provision of housing to residents whilst still facing its own challenges relating to the delivery of basic services to its residents. Furthermore, the Panel inquired about the role the COMLM plays in verifying the work undertaken by contractors before the final sign-off on projects. In response to the above, Seametso and Choche advised that COMLM engages with the NW DHS on behalf of beneficiaries in an effort to address beneficiaries' housing queries and challenges. They further denied COMLM having challenges with the delivery of basic services to its residents and asserted COMLM's readiness to take on the additional responsibility related to housing provision within its jurisdiction. In further support of their claims in this regard, they advised that the COMLM had unqualified audit opinions for two successive years. Furthermore, they advised that the COMLM is working closely with the NW DHS to verify reported performance milestones by service providers, which is bearing fruit.

- 6.23 On 11 July 2023, COMLM submitted revised reports on its housing projects. Other than to vary its submissions in respect of Matlosana Kanana Ext 13³, Matlosana Jourberton Infills Ext 2⁴, and Matlosana Alabama Ext 5⁵ incomplete projects, COMLM re-affirmed the submissions in its initial report. The COMLM also provided additional documents, evidencing its engagements with the NW DHS on the incomplete and blocked housing projects, as well as the deliberations on this matter by its Council.

Summary of Submissions from Maquassi Hills Local Municipality

- 6.24 The MHLM was represented by Nokuthula Mbonani (“**Mbonani**”), the Municipal Manager of MHLM and Vincent Sebekedi (“**Sebekedi**”), the Divisional Head of Community Services for the MHLM. In their presentation, Mbonani and Sebekedi advised that the NW DHS had contracted 5 developers to construct 2 404 units in both extensions 17 and 18. Only 470 of those houses had been completed as of the date of the inquiry.
- 6.25 Some of the challenges that contributed to the incompleteness of the projects included the delayed payment of contractors and approval of variation orders. Mbonani and Sebekedi proposed the establishment of Project Steering Committee meetings with all stakeholders to address challenges as they come and the implementation of consequence management measures against contractors for poor performance.
- 6.26 During the deliberations on the evidence submitted, the Panel asked about the reliability of the Human Settlements Subsidy System (“**HSS**”), noting that the figures provided by MHLM did not tally with those provided by the NW DHS. The Panel also asked about other factors that may be contributing to the incompleteness of housing projects within MHLM.
- 6.27 In response thereto, Mbonani and Sebekedi advised that the HSS system had not been working for 3 years. On the other factors contributing to the incompleteness of projects, Mbonani and Sebekedi advised that developers are prioritizing the construction of foundations as they get paid more for constructing foundations than any other phase of the build. The payment model for housing construction, therefore, needs to be revisited. Measures also need to be taken to ensure the implementation of consequence management measures against non-performing contractors, along with measures for strengthening intergovernmental relations.

³ In the initial report, COML reported that in respect of the Matlosana Kanana Ext 13 project, 124 houses were at the foundation phase, 253 houses were at the wall plate stage, whilst 40 of the houses were completed, bringing the completion percentage to 32%. In the revised report, COML reported that in respect of the Matlosana Kanana Ext 13 project, 125 houses were at the foundation phase, 234 houses were at the wall plate stage, whilst 61 of the houses were completed, bringing the completion percentage to 49%.

⁴ In the initial report, COML reported that in respect of the Matlosana Jourberton Infills Ext 2, 3 and 7 project, 125 houses were at the foundation phase, 80 houses were at the wall plate stage, whilst 20 of the houses were completed, bringing the completion percentage to 7%. In the revised report, COML reported that in respect of the Matlosana Jourberton Infills Ext 2, 3 and 7 project, 125 houses were at the foundation phase, 80 houses were at the wall plate stage, whilst 18 of the houses were completed, bringing the completion percentage to 6%.

⁵ In the initial report, COML reported that in respect of the Matlosana Alabama Ext 5 project, 523 houses were at the foundation phase, 479 houses were at the wall plate stage, whilst 253 of the houses were completed, bringing the completion percentage to 34%. In the revised report, COML reported that in respect of the Matlosana Alabama Ext 5 project, 531 houses were at the foundation phase, 491 houses were at the wall plate stage, whilst 296 of the houses were completed, bringing the completion percentage to 39%.

- 6.28 The MHLM was provided with an opportunity to make further submissions on the issues raised during the engagement with its presentation. In their further submissions, MHLM listed some 25 housing projects that had been implemented within its jurisdiction.⁶ The 25 housing projects are related to 11 982 housing units. Of the 25 housing projects, 9 had been completed, whilst 9 were blocked, and 7 were incomplete but ongoing. The MHLM also provided additional documents evidencing its attempts to engage with the NW DHS on the incomplete and blocked housing projects.

Summary of Submissions from Mahikeng Local Municipality

- 6.29 The MKLM was represented by the Municipal Manager, Dineo Mongwaketse (“**Mongwaketse**”) and Collin Rabothata (“**Rabothata**”), the Housing Admin Coordinator. In their presentation, Mongwaketse and Rabothata advised that housing delivery falls within the competency of the national and provincial governments and that the local government sphere was only responsible for the allocation of project beneficiaries and land for housing construction. The MKLM is not yet accredited for any provincial housing competency. Accordingly, the appointment of housing contractors and the construction of low-cost houses falls within the provincial government’s competency.
- 6.30 Mongwaketse and Rabothata reported some 19 housing projects that have been commissioned in respect of MKLM since 2013. The housing projects relate to 3 842 housing units.⁷ Of the 19 housing projects commissioned, only 1 project was completed, with the remaining projects at various stages of construction. Included in the remaining projects is the project in respect of Montshioa Ward 8 where the construction of the houses had been completed, but the project itself remains incomplete due to challenges with the subdivision of the land on which the houses were constructed.
- 6.31 Some of the factors contributing to project failures include an inactive Project Steering Committees, which should be holding poor-performing contractors accountable; poor workmanship; delays in the payment of contractors by the NW DHS; delays in project enrolment by the National Home Builders Registration Council (“**NHBRC**”); and land invasions.
- 6.32 Mongwaketse and Rabothata advised that some of the efforts taken by MKLM to address the challenges of incomplete housing projects included compiling a list of incomplete houses and engagements with officials from the NW DHS on the incomplete housing projects on various platforms. To address these persisting challenges, they proposed the resuscitation of Project Steering Committees within the MKLM. They also proposed that the NW DHS and the MKLM should work jointly in monitoring the appointment of subcontractors and that the NW DHS should appoint capable contractors for the projects and ensure that they are paid timeously.

⁶ In its submission, the NW DHS listed 9 housing projects in respect of MHLM since 2016. The information is therefore at variance with the submissions from NW DHS.

⁷ In its submission, the NW DHS listed 4 housing projects in respect of MHLM since 2015. The information is therefore at variance with the submissions from NW DHS.

- 6.33 In deliberations over the evidence given, the inaccuracy of the data on HSS was once again highlighted. On the issue raised by Mabote regarding information about incomplete RDP houses that was withheld from Councilors despite their request for such information through MPAC, Mongwaketse and Rabothata advised that Councillors made no such request and that had such request been made, the information would have been provided to Councilors. Mongwaketse and Rabothata committed to keeping the Councilors informed about the progress of RDP housing projects within MKLM going forward. Mongwaketse and Rabothata also committed to continued engagements with the NW DHS on the incomplete housing projects.
- 6.34 Mongwaketse and Rabothata were provided with an opportunity to make further submissions on the issues raised during the engagement with their presentation. In their further submissions, they submitted a revised list of 15 blocked housing projects, which were commissioned for the construction of 1719 RDP houses. They advised that of the 1719 houses that were supposed to be built, only 617 were built. Accordingly, they advised that their housing backlog stood at 1102 in total. They also confirmed that the issue of incomplete RDP housing projects within Mahikeng was not tabled with the Council by MPAC. They, however, re-iterated their commitment to having the issue of incomplete RDP houses as a standing item in the ordinary meetings of Council. They also submitted evidence of engagements with the NW DHS on the blocked housing projects.

Summary of Submissions from the North West Department of Human Settlements

- 6.35 The NW DHS was represented by the MEC for NW COGHSTA, Nono Maloyi (“**Maloyi**”), Kgomotso Mahlobo (“**Mahlobo**”), the Head of Department for the NW DHS and Mokedi Simon Bole (“**Bole**”), the Head of Department for the North West Department of Cooperative Governance and Traditional Affairs (“**NW COGTA**”).
- 6.36 In their submission, they presented the Commission with a list of some 145 housing projects⁸ that had been commissioned in respect of the North West since 2016 across all local municipalities in the North West, including municipalities in respect of which the NWPO had not received complaints. The 145 projects related to the construction of approximately 27 793 housing units. Of the 145 projects commissioned, only 56 were completed, whilst 89 of the projects remain incomplete. The 56 completed projects were for the construction of 7 239 housing units, which were later reduced to 7 211 housing units, whilst the incomplete projects were for the construction of 20 554 housing units. In addition to the housing units which formed part of the completed projects, 7 766 housing units which formed part of the incomplete projects were completed,⁹ bringing the number of completed housing units to 14 977.
- 6.37 In their submissions, contrary to the submissions of various municipalities, Maloyi and Mahlobo denied that any of the incomplete projects were abandoned but averred that some of the projects were multi-year projects which were underway, whilst others could not be completed on time due to the poor performance of contractors.
- 6.38 In their submissions, Maloyi and Mahlobo also denied having knowledge of housing units that were not accessible to persons with disabilities. Moreover, they denied that the government incurred any losses as a result of the commissioned housing projects, as payment for work is done based on completed milestones.
- 6.39 Insofar as the root causes of the reported challenges are concerned, Maloyi and Mahlobo advised that some of the root causes include price escalations, general poor performance of contractors, contractors having skill sets which fall below their CIDB Grading, and delays in the payment of contractors caused by contractors not submitting adequate information for the purposes of processing their claims. It is noteworthy that all these factors are external to the NW DHS. Thus, the NW DHS did not take any direct responsibility for the delays in the completion of projects.

⁸ 2 of the housing projects were in respect of Lekwa Teemane Local Municipality (“**LTLM**”); 17 of the projects were in respect of Tswaing Local Municipality (“**TLM**”); 19 of the projects were in respect of RLM; 12 of the projects were in respect of the Moretele Local Municipality (“**MTLM**”); 21 of the projects were in respect of Moses Kotane Local Municipality (“**MSKLM**”); 7 of the projects were in respect of the COMLM; 9 of the projects were in respect of MHLM; 2 of the projects were in respect of Ditsobotla Local Municipality (“**DLM**”); 11 of the projects were in respect of Ramotshere Moiloa Local Municipality (“**RMLM**”); 6 of the projects were in respect of Ratlou Local Municipality (“**RTL**”); 4 of the complaints relate to Greater Taung Local Municipality (“**GTL**”); 2 of the complaints relate to JBMLM; 2 of the projects are in respect of the whole province; 5 of the projects are in respect of Kagisano Molopo Local Municipality (“**KMLM**”); 5 of the projects are in respect of MKLM; 10 of the projects are in respect of MLM; 6 of the projects are in respect of Naledi Local Municipality (“**NLM**”); 2 of the projects are in respect of Kgetlengrivier Local Municipality (“**KLM**”); and 3 of the projects are in respect of Mamusa Local Municipality (“**MMLM**”). There is a discrepancy between the figures presented by the NW DHS and the Municipalities, which was not resolved by the additional submissions made by the respondents. For example, in its submissions, the COMLM reported on 19 housing projects that have been commissioned in respect of the COMLM, 9 of which are blocked projects. The NW DHS however reported on only 7 housing projects in respect of the COMLM.

⁹ These are houses which formed part of projects that are considered incomplete due to the delays in the issuing of title deeds to beneficiaries, amongst others, even though the construction of the houses was completed.

- 6.40 To address these challenges, the NW DHS issued letters to poor performing contractors, placing them on terms, as well as terminating or scaling down some of the contracts. The NW DHS also intends to strengthen the project management of RDP housing projects, as well as consolidate the old projects for recapitalization. However, support is required from the National Department of Human Settlement (“DHS”) in strengthening the project management of housing projects in the North West, as well as support from the NHBRC in assessing the structural integrity of incomplete housing units. Additional financial support is also required to affect the required rectifications on some of the projects and address the blocked projects. To this end, Maloyi advised that the NW DHS will convene a housing summit on 26 and 27 May 2023 in the hope of attracting investors to assist the NW DHS in completing the blocked housing projects. In view of this intervention, Maloyi expressed hope that the challenge of blocked housing projects will be resolved by the end of the 2023/2024 financial year.
- 6.41 During the engagement on the submissions made, the Panel once again raised concern regarding discrepancies in the list of projects as provided by the municipalities and the NW DHS. In response to this concern, Mahlobo advised that some of the discrepancies could be caused by the fact that when projects are approved, a certain number of beneficiaries may have been identified by the municipality. However, at the implementation stage of the project, some of the beneficiaries may no longer qualify for RDP housing due to changes in their circumstances.
- 6.42 The Panel also inquired about the state of Inter-Governmental Relations (“IGR”) between the NW DHS and municipalities in view of the evidence presented by the municipalities. In response thereto, Mahlobo advised that the NW DHS is working on strengthening IGR between itself and municipalities. To this end, PSCs are in place in respect of each project. PSCs are comprised of representatives from the municipalities, contractors, NW DHS and the community. PSCs meet regularly to ensure that all stakeholders are kept abreast of developments in the housing projects.
- 6.43 The Panel further inquired about the allegations of the building of units which are not accessible to persons with disabilities. In response thereto, Mahlobo denied knowledge of units being built for persons with disabilities that do not cater for their needs. In this regard, she advised that when information about a beneficiary’s disability is made available, such needs are taken into consideration when the houses are constructed. The Panel referred Maloyi and Mahlobo to the RDP housing project in Toevlug, Ventersdorp, within the JB Marks Local Municipality. Mahlobo advised that she is not aware of the project. The Panel further asked whether units ought not to be built in accordance with universal design. Mahlobo stated that the NW DHS builds houses in accordance with the National Housing Code. If a beneficiary becomes disabled after the handover of the housing unit, the responsibility for accommodating the needs of the beneficiary falls outside the mandate of the NW DHS.

¹⁰ The Housing Code was promulgated in 2009.

- 6.44 The Panel further inquired about the allegations of poorly constructed houses that present structural challenges soon after their handover. In response thereto, Mahlobo and Maloyi advised that on completion of housing units, happy letters are issued to recipients, which certify the beneficiaries' satisfaction with the construction of their homes. Additionally, every project is enrolled with the NHBRC, which has a five-year warranty cover that beneficiaries can claim against. Before enrolling a project for cover, they assess the integrity of the structure, and inspectors on site issue a certificate to confirm the integrity of the structure. With regards to shoddy workmanship on incomplete projects, Mahlobo advised that when the NW DHS identifies blocked projects, it works with the NHBRC to develop a remedial plan before work on the project can continue.
- 6.45 The Panel also inquired on whether the NW DHS experienced losses as a result of incomplete RDP houses. In response, therefore, Maloyi and Mahlobo advised that they had not suffered losses because the NW DHS no longer makes tranche payments but rather pays per milestones. Maloyi and Mahlobo insisted that the NW DHS did not suffer any losses, even when they were pointed to the testimony from the complainants, as well as reports of the AGSA, PPSA and the North West Provincial Legislature Portfolio Committee on Premier, Finance, Cooperative Governance, Human Settlements and Traditional Affairs ("**Portfolio Committee**") which indicated that the NW DHS continues to pay contractors for milestones not achieved, resulting in losses to the NW DHS. Moreover, Maloyi and Mahlobo insisted that the NW DHS has not suffered any losses, despite having admitted to price escalations due to the delay in the completion of projects amongst others, and that some of the incomplete projects have been found to have structural defects which needed to be remedied before the projects could continue. Such remedial work undoubtedly requires additional funds, which constitute a loss to the NW DHS.
- 6.46 The Panel also inquired about whether the NW DHS took any responsibility for the incomplete RDP projects, noting that in its initial submissions, it only cited external factors as the reasons for the failed projects. In response thereto, Maloyi and Mahlobo conceded that project management capacity is lacking within the NW DHS, resulting in the poor management of housing projects. This is the reason the NW DHS is seeking help from the DHS in bolstering its project management capacity. The NW DHS is also in the process of re-establishing its Project Management Unit, which was previously disbanded, to provide administrative support and expedite the projects.
- 6.47 The Panel also inquired about how a project could be recorded as complete, yet there is a balance of R75 000 000 (seventy-five million rand). Maloyi and Mahlobo advised that this would be the case in instances where the construction of housing units is complete, but the registration of title deeds is outstanding.
- 6.48 The Panel further inquired about what could be fueling the phenomenon of projects being abandoned at the foundation phase. Maloyi and Mahlobo advised that the current payment model incentivises the construction of foundations, as contractors are paid more for the construction of foundations than the completion of the foundation milestones in comparison to the other milestones. The payment model is being revisited, however.

- 6.49 The Panel also raised concerns about the slow pace of issuing title deeds to beneficiaries. In response, Maloyi and Mahlobo advised that before 1994, houses were built in areas where township proclamation had not been made. Thus, it became difficult to register any property. The other challenge for the slow pace of issuing title deeds is that municipalities are not agreeing to give clearance certificates where there are arrears in rates and taxes. In an endeavour to address the pre-1994 title deeds backlog, for the 2023/24 financial year, the NW DHS had set a target to issue 15 000 title deeds to beneficiaries.
- 6.50 The Panel also inquired about the houses constructed in Letlhabile which did not provide for internal privacy. In response thereto, Mahlobo and Maloyi advised that they were not aware of those houses.
- 6.51 The Panel also noted that the AGSA had flagged the fact that the HSDG was not fully spent, yet one of the reasons proffered for the incomplete housing projects is insufficient funds. Maloyi advised that he was concerned about the phenomenon of roll-overs. To remedy this, he introduced weekly meetings and encouraged officials to ensure that legitimate claims were paid timeously.
- 6.52 The Panel further inquired about the measures the MEC had put in place to foster consequence management within the NW DHS. In response, Maloyi advised that he instructed the Heads of Departments to act against those who report to them. Further, he has instituted weekly meetings with the Executive Management team of the NW DHS.
- 6.53 The Panel finally inquired about whether the accreditation of municipalities to undertake housing projects could help address the challenge of the delayed conclusion of housing projects. In response thereto, Maloyi advised that the majority of municipalities cannot manage housing projects. Prior to 2009, municipalities were the housing implementing agents in their areas of jurisdiction, but they failed dismally, with monies earmarked for housing diverted to other functions. Therefore, NW DHS does not want to risk assigning the function to municipalities again unless it is satisfied that they can manage housing projects. Maloyi confirmed that the NW DHS had received applications for accreditation from the City of Matlosana, Rustenburg and JB Marks local municipalities, which it is in the process of considering.

6.54 The NW DHS was provided with an opportunity to make further submissions on the issues raised during the engagement with its presentation. In their further submissions, they indicated the following, amongst others:

- 6.54.1 Contrary to earlier submissions, NW DHS confirmed having received reports of poor workmanship in housing projects in the Ngaka Modiri Molema District Municipality ("NMMDM") and Dr Kenneth Kaunda District Municipality ("KKDM"). The reports specifically related to RDP housing projects in Lotlhakane Disaster houses (130 houses), Masutlhe (83 houses), Tigane (38 houses), and Kanana extensions 11 and 13 (153 houses). Whilst the costs of the housing projects were not specified for the projects in KKDM, the costs of the housing projects in NMMDM are R2 274 350.04 (two million two hundred seventy-four thousand three hundred fifty rand and four cents) for Disaster and R9 616 961 (nine million six hundred sixteen thousand nine hundred sixty-one rand) for Masutlhe.
- 6.54.2 Contrary to earlier submission, the NW DHS confirmed that there were losses suffered as a result of the underperformance of its RDP housing projects in the North West. In this regard, the NW DHS confirmed that it incurred losses for demolishing and rebuilding houses in Lotlhakane Disaster, Masutlhe, Tigane Extension 6 and Kanana Extension 11 and 13 in the amounts of R1 626 156 (One million six hundred twenty-six thousand one hundred fifty-six rand), R4 694 427.05 (four million six hundred ninety-four thousand four hundred twenty-seven rand and five cents), R1 576 570.15 (one million five hundred seventy-six thousand five hundred seventy rand and fifteen cents) and R5 368 781.35 (five million three hundred sixty-eight thousand seven hundred eighty-one rand and thirty-five cents), respectively. The total amount accrued in losses for the rebuilding of houses is therefore, R13 265 934.55 (thirteen million two hundred sixty-five thousand nine hundred thirty-four rand and fifty-five cents). The NW DHS also incurred losses in the overpayment of contractors in the amount of R13 070 808.29 (thirteen million seventy thousand eight hundred eight rand and twenty-nine cents). Moreover, the NW DHS incurred losses from payments made for work that was not done in the amount of R5 368 781.35 (five million three hundred sixty-eight thousand seven hundred eighty-one rand and thirty-five cents). Although also flagging audit findings relating to overpayments for project management services and the overpayment of contractors in Wolmaransstad extensions 17 and 18, these were not identified as losses.
- 6.54.3 The NW DHS also confirmed that the backlog in finalising the housing project has led to the delay in the implementation of other housing projects, including the housing project in Ditshilong Village within Greater Taung Local Municipality ("GTLM").
- 6.54.4 The NW DHS, however, denied the audit finding by the AGSA relating to the overpayment of Geotech in the amount of R10 036 369 (ten million thirty-six thousand three hundred sixty-nine rand).
- 6.54.5 The NW DHS also advised that the payment of R134 289 929 (one hundred thirty-four million two hundred eighty-nine thousand nine hundred twenty-nine rand) flagged by the AGSA for payment of goods not received was, in fact, raised as a payable to reimburse expenditure incurred on its behalf.

- 6.54.6 Regarding the audit findings made in respect of the 2018/2019 financial year, the NW DHS advised that the issues raised were historic and are being attended to.
- 6.54.7 Regarding the houses built in Letlhabile Block C, in Madibeng, the NW DHS advised that those houses were built in line with the policies applicable at the time.
- 6.54.8 The officials involved in the signing off of projects that were not completed in Kanana, COM, were in fact employees of PMU, who were dismissed.
- 6.54.9 Steps taken to hold contractors to account include the termination of the contracts of Xolmac, Boletha and Relay Construction. The matter with Relay Construction is currently in court. The NW DHS has also taken steps to recover overpayments made to Barzani.
- 6.54.10 Regarding its employees, the NW DHS has not taken any steps to hold its employees to account but undertook to do so going forward.

Summary of Submissions from the Rustenburg Local Municipality

- 6.55 The RLM was represented by Boikanyo Keaobaka (“**Keaobaka**”), the then Acting Municipal Manager and Donny Matshego (“**Matshego**”), the Head of Housing Provision at the RLM.
- 6.56 Like other municipalities, Keaobaka and Matshego underscored that the delivery of housing projects is the competency of the NW DHS and that RLM’s role in the delivery of housing projects is to coordinate and facilitate or promote housing development in its jurisdiction and provide bulk engineering services.
- 6.57 On the other hand, Matshego advised of 14 housing projects¹¹ commissioned by the NW DHS in respect of the RLM. Of the 14 RDP housing projects reported on, only 2 of those projects were reported as complete. One of the incomplete projects dates back to 2017, whilst the bulk of the projects are from 2019. Reasons proffered for the incomplete projects include contractual issues between service providers and the NW DHS; illegal occupation of houses in some of the housing projects; budget overruns; poor performance and workmanship by service providers; lack of human resource capacity, particularly in the area of project monitoring; political interference; alleged delays in payment of claims by the NW DHS; appointment of inexperienced developers with no financial resources; and contestations over the inclusion of local contractors in the housing project development processes which fuels community protests and lack of appetite to participate in Project Steering Committees.

¹¹ On the other hand, the NW DHS reported on 19 RDP projects in RLM. This number conflicted with the information in the RLM’s initial report which indicated 14 housing projects. Some of the projects listed in the representation made at the inquiry were not included in the 14 projects listed in the initial submission.

- 6.58 Matshego also cited the challenge of inadequate consultation in the implementation of housing projects, resulting in some projects being implemented in the absence of bulk infrastructure. In turn, the NW DHS is sometimes pressured to undertake housing projects in areas that are already occupied through illegal land invasions in the absence of the requisite bulk services due to popular demand. Illegal land invasions are on the other hand, fuelled by indecision within the government, resulting in land that can be developed for human settlement lying fallow, making it vulnerable to land invasions. Matshego underscored the importance of orderly and planned land occupation in addressing the current housing crisis, which will require speedy decision-making processes within the government.
- 6.59 Keabaka and Matshego also acknowledged that the RLM could do more to facilitate communication and information sharing on the incomplete housing projects in the Municipality. They, however, acknowledged that communication may not be effective in instances where the information shared does not address the urgent and desperate need of communities for access to housing.

Summary of Submissions from the North West Department of Treasury

- 6.60 The NW DOT was represented by Ndlela Kunene (“**Kunene**”), its Head of Department.
- 6.61 In his presentation, Kunene advised on the mandate of the NW DOT, which is to exercise control over the implementation of the provincial budget. To this end, it allocates budgets to departments and other government entities and exercises oversight over the utilisation of those project funds. Additionally, the NW DOT is responsible for the monitoring and evaluation of the performance of provincial departments, a function which previously lay with the NW OTP.
- 6.62 To enable it to monitor housing and other infrastructure projects in the North West, the NW DOT developed an Infrastructure Reporting Model, which is a tool for departments to capture information on their project budgets, expenditures, commencement dates and completion dates. Many departments have not been utilizing the tool, however, making monitoring project performance challenging for the NW DOT. In instances where the tool is used, the information is not always consistent with the information on the approved business plans. The NW DOT has engaged with departments on these challenges to no avail. Consequently, the NW DOT does not have complete information on housing projects in the North West or the status of those projects. The NW DOT also does not have information on accrued losses from housing projects, as these have not been reported upon. The NW DOT also does not have sufficient information at its disposal, such as the status of the housing products and the number of structures that need to be demolished and rebuilt due to poor workmanship or structural damage, to enable it to make the necessary calculations.

- 6.63 Regarding the steps the NW DOT is taking to hold the NW DHS accountable for the utilisation of the funds allocated to them, Kunene advised that it issues reports to the Provincial Executive Council, Audit Committee and Broader Extech on the financial performance of departments in which poor spending is highlighted. The NW DHS has given assurances to the NW DOT that it is looking into slow moving or blocked housing projects.
- 6.64 In terms of the steps that need to be taken to address the challenge of incomplete and inadequate RDP houses in the North West, Kunene proposed that underperforming contractors should be listed as defaulters on the national treasury database. He further proposed that consequent management steps be undertaken and that money be recovered from contractors. He further proposed that the NW DHS should avoid the pre-payments of contractors and should implement remedial measures in the early stages when it becomes apparent that the contractor may not be able to deliver on the project.
- 6.65 During the engagement with his presentation by the Panel, Kunene was questioned on how the NW DOT can discharge its legislative mandate of oversight in the absence of full and accurate reporting on project performance by the NW DHS and the power it has to hold departments to account for budget spend.
- 6.66 In his response, Kunene insisted that the NW DOT is still able to discharge its mandate and track budget spending notwithstanding the lack of complete information on projects. This was the case despite being unable to provide the Commission with crucial information on the projects it says it oversees, including the status of those projects and any losses incurred during the implementation of those projects.
- 6.67 He further advised that there are different layers of accountability within government, with the accounting and executive authority of any department being the first layer of accountability. The NW DOT's role is to ensure that public spending complies with the applicable prescripts. It primarily discharges this function through its advisory services to departments. In some instances, in the event of non-compliance by departments, the NW DOT can assume control over the department's finances and even suspend or restrict the transfer of funds to that department in extreme cases. When asked why the transfer of funds to the NW DHS has not been suspended, the NW DOT advised that even though it has the powers to do so, it has not done so in this case because of the potential impact of such a decision.
- 6.68 Kunene further confirmed receiving reports from the Provincial Legislature and the Auditor General in which overpayments and certain irregularities were highlighted.

Summary of Submissions from the North West Office of the Premier

- 6.69 The NW OTP was represented by Mosweu Paul Mogotlhe (“**Mogotlhe**”), the Director General of the NW OTP.
- 6.70 In his presentation, Mogotlhe advised that he did not have any direct knowledge of the issues that formed the subject of the inquiry. He was only notified of the issues when engaged by the Commission. From the information he has been able to gather, possible reasons for project failures include contractors abandoning work due to financial concerns or unpaid invoices, poor contractor performance, land invasion, geotechnical challenges, and misallocation of funds by municipalities. The steps taken by the NW OTP to address the challenge of incomplete and inadequate housing include urging the NW DHS to investigate blocked housing projects. A panel of experts on mega infrastructure projects was also appointed to revamp ageing or abandoned infrastructure. The work of this panel includes human settlement projects.
- 6.71 Mogotlhe then proceeded to explain the role of NW OTP within the accountability framework. He explained that the NW OTP is only responsible for overall performance monitoring and evaluation as reported by departments in line with their Annual Performance Plans. It, therefore, monitors and reports on the overall implementation and progress of infrastructure projects in the province, not on the details of projects. Consequently, it only receives generic reports on performance from departments. The NW DOT is responsible for monitoring housing projects more closely, with the NW DHS also having its internal monitoring unit to monitor the implementation of projects.
- 6.72 During engagements on his presentation, Mogotlhe was referred to the reports of the AGSA and the Portfolio Committee relating to irregularities in the implementation of housing projects in the North West. Mogotlhe denied having knowledge of those reports, as they are not provided to his office, and the NW OTP does not request such reports. This is because portfolio committees account to the Provincial Legislature and not the OTP. Matters are only referred to the NW OTP by the Legislature where there is a need for the NW OTP to intervene. With regards to the reports from the AGSA, the NW OTP engages with the AGSA at a more generic level and the engagements do not ordinarily go into the details of specific projects.
- 6.73 During engagements with his presentation, Mogotlhe conceded to historical weaknesses in the monitoring framework of his department due to a lack of sufficient human resources to verify reports from departments. His office therefore, used to take the reports of departments at face value. There are now some efforts to ensure physical monitoring of reported performance. This can only be done on a sample basis, however, due to capacity constraints.

6.74 Mogotlhe was further quizzed on the role of the NW OTP within the accountability framework during engagements with his presentation. In response, thereto, he explained that there are various layers of accountability when it comes to non-performance. The head of the department is ultimately responsible at the technical level for any shortcomings. The MEC overseeing the department should hold the head of the department accountable, which may involve taking disciplinary measures. This process begins with the MEC and the HOD signing a performance agreement, creating the initial framework for accountability. Therefore, the MEC should recommend appropriate actions to the premier based on the performance agreement. In the present matter, it is questionable why the relevant MECs did not take action against the relevant accounting officers. The role of the NW OTP is to facilitate these actions rather than initiate them. The NW OTP lacks the necessary capacity to intervene directly in all matters involving departments.

Summary of the reports from the Portfolio Committee and subsequent complaints received

6.75 In addition to the submissions of the parties and stakeholders, the Commission was favoured with the reports of the Portfolio Committee's investigation of various housing projects in the North West. The projects investigated by the Portfolio Committee include the following: the Khuma housing project in the COM¹², the Matlosana N12 Catalytic housing project in COM¹³, the Kanana housing project in COM¹⁴, the Bloemhof housing project in Lekwa Teemane Local Municipality ("LTLM"),¹⁵ the Ventersdorp N14 housing project in JBMLM¹⁶, the Appeldraai, Toevlug and Ga Mogopa housing projects in JBMLM¹⁷, the Ga Mogopa housing project in JBMLM¹⁸, the Kopela housing project in Tswaing Local Municipality ("TLM"),¹⁹ the Motlhabe housing project in Moses Kotane Local Municipality ("MKoLM"),²⁰ the Kamodisenyane housing project in Kagisano Molopo Local Municipality ("KMLM")²¹, the Bray housing project in KMLM,²² the Kgokgole housing project in KMLM,²³ the Witpoort housing project in MHLM,²⁴ the Lebaleng housing project in MHLM,²⁵ housing projects in Takaneng, Mokgareng and Lokgabeng in

¹² Two reports were provided on this project. One dated June 2021 and the other dated 2 June 2022. The key issues raised in the reports include concerns about the delays in the allocation of houses to the residents of Khuma.

¹³ Two reports were provided on this project. One dated June 2021 and the other dated 2 June 2022. The key issues raised in the reports include concerns over the appointment of MXN contractors as the sole developer and delays regarding the electrification of the houses.

¹⁴ The report is dated June 2021. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project. The Portfolio Committee called for stricter measures to hold contractors to account for the completion of housing projects.

¹⁵ The report is dated August 2021. In the report, the Portfolio Committee raised concerns about the delays in the finalisation of the project and the lack of services to the community.

¹⁶ The report is dated 2 June 2022. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project. The Portfolio committee was particularly concerned that monies were spent on the project but there was no development, yet neither the NW DHS nor the JBMLM could account for the state of affairs.

¹⁷ The report is dated 2 June 2022. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the projects

¹⁸ The report is dated June 2021. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project. Delays in the project were caused by the availability of suitable and acceptable land for the development.

¹⁹ The report is dated 17 June 2022. In the report, the Portfolio committee raised concerns about the criteria for the allocation of houses to beneficiaries in Kopela village, with priority ostensibly given to people who have well established structures, whilst some needy beneficiaries are disqualified.

²⁰ The report is dated October 2022. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project. The project was also found to be significantly underperforming, with poor workmanship.

²¹ The report is dated August 2022. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project which was abandoned by the contractor. The project started in 2008. There were also concerns raised about the dolomitic state of Tseoge village.

²² The report is dated August 2021. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project which was abandoned by the contractors and subsequently blocked. The project started in July 2014.

²³ The report is dated August 2021. In the report, the Portfolio committee raised concerns about the Department's failure to secure the occupation of 45 of the units built. Some beneficiaries refused to relocate from their residences.

²⁴ Two reports were provided on this project. One dated June 2021 and the other dated 2 June 2022. In the reports, the Portfolio committee raised concerns about the delays in the finalisation of the project, which commenced in 2014.

²⁵ Two reports were provided on this project. One dated June 2021 and the other dated 29 May 2020. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project. The Portfolio Committee was particularly concerned that monies had been paid for the project when there are only slabs on the site. The Portfolio Committee was also concerned that the responsible contractor, R/S Rekopane, was not blacklisted and continued to receive contracts for housing projects, despite having failed to deliver on previous contracts. The Portfolio Committee considered the conduct of the NW DHS to be unconscionable.

GTLM,²⁶ Ditshiping housing project in GTLM,²⁷ Glaudina housing project in MMLM and Lethabile housing project in MLM.²⁸

- 6.76 The reports of the Portfolio Committee paint a bleak picture of housing development projects in the North West. In this regard, the reports raise a myriad of challenges with housing projects in the North West, which include delays in the completion of projects, blockage of projects; poor performance and workmanship by contractors; with some contractors abandoning projects; unresolved contractual disputes; lack of accountability measures for holding contractors to account for poor performance or for abandoning projects; awarding of projects to contracts which previously failed to deliver on projects; lack of integrated planning for projects; and payment of contractors for work not done. To compound these challenges, the Portfolio Committee noted with concern the NW DHS's patent failure to take accountability for the delays in the completion of projects.
- 6.77 Since the inquiry, the Commission has continued to receive more complaints relating to incomplete housing projects in the North West. These complaints related to incomplete housing projects in Lethabong within RLM, Molatswane, Amalia in MMLM, Bray in KMLM, Bona Bona in KMLM, and Tshunyane in MKLM.
- 6.78 It has not been possible for the Commission to address these complaints individually, given the systemic nature of the issues raised in the complaints.

²⁶ The report is dated November 2022. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project, which have since been blocked due to contract disputes. The Portfolio committee called for the unblocking of projects and the resolution of contract disputes. It also called for the empowerment of women during housing projects.

²⁷ The report is dated August 2021. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project. The Portfolio Committee also raised concerns about the lack of consequence management measures against contractors who abandon projects.

²⁸ The report is dated October 2022. In the report, the Portfolio committee raised concerns about the delays in the finalisation of the project which was abandoned by the contractor in 2017. Prior to that, the project was underperforming, with poor workmanship. Demolitions were required to rectify the poor workmanship.





The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity



07

LEGAL

FRAMEWORK



- 7.1 Section 26(1) of the Constitution states that everyone has the right to have access to adequate housing”.
- 7.2 The importance of the right of access to adequate housing cannot be overemphasized within the South African context, given our history of land dispossession consolidated by the Natives Land Act, which left scores of Africans landless and homeless. This colonial and apartheid legacy continues, with many South Africans continuing to be landless, homeless or living in conditions of squalor and indignity in the many sprawling informal settlements in South Africa.
- 7.3 The right to housing is not only significant in South Africa but internationally as well, with the right to housing having been recognised in several international instruments, including the Universal Declaration of Human Rights, 1948 (“UDHR”),²⁹ the International Covenant on Economic, Social and Cultural Rights, 1966 (“ICESCR”),³⁰ the Convention on the Elimination of All Forms of Racial Discrimination, 1969 (“CEAFRD”),³¹ Convention on the Rights of the Child, 1989 (“CRC”),³² and the African Charter on the Rights and Welfare of the Child, 1999 (“ACRWC”).³³
- 7.4 Insofar as the content of the right of access to housing is concerned, in **Government of the Republic of South Africa and Others v Grootboom and Others 2000 11 BCLR 1169 CC (“Grootboom”)**, the Constitutional Court held that:



“The right delineated in section 26(1) is a right of “access to adequate housing” as distinct from the right to adequate housing encapsulated in the Covenant. This difference is significant. It recognises that housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all of these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, there must be a dwelling.”³⁴ (own emphasis).

²⁹ Article 25(1) of the UDHR provides that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

³⁰ Article 11(1) of the ICESCR provides that “the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

³¹ Article 5(e)(iii) of the CEAFRD provides that “in compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ... economic, social and cultural rights, in particular... the right to housing...”

³² Article 27(3) of the CRC provides that “States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”

³³ Article 20(2)(a) of the ACRWC provides that “States Parties to the present Charter shall in accordance with their means and national conditions take all appropriate measures; (a) to assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing”.

³⁴ Grootboom, paragraph 35.

- 7.5 On the other hand, in its general comment on the right of access to adequate housing, the UN Committee on Economic, Social and Cultural Rights (“CESCR”) opined that:



“The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity... As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities all at a reasonable cost”. (own emphasis)³⁵

- 7.6 The CESCR further outlined seven features of the right of access to housing, which include security of tenure; access to services required for health, security and comfort such as water, lighting, heating source, sanitation, refuse disposal, amongst others; affordability; habitability; accessibility to vulnerable groups, including persons with disabilities; location in an area that allows access to job opportunities and other amenities such as educational and healthcare facilities; and construction of houses in a manner that allows for the expression of cultural identity. On this definition, adequate housing is more than just shelter and includes qualitative aspects such as the acceptability of the shelter from a quality, quantity, cultural and social standpoint.
- 7.7 Although the right to housing in the ICESCR is coined differently to “the right of access to housing” in the Constitution, the features of adequate housing in CESCR’s general comment on housing are nonetheless instructive in determining the “adequacy” element of the right in section 26(1) of the Constitution. The outlined features are also consistent with the ordinary understanding of the term “adequate”, which entails elements of being “sufficient for a specific need or requirement” and “good enough” or being of acceptable quality.³⁶
- 7.8 Unsurprisingly, several features of the CESCR’s definition of adequate housing have been incorporated into the definition of “housing development” in the Housing Act 107 of 1997 (“**Housing Act**”). In this regard, housing development is defined as the establishment and maintenance of residential environments that are habitable; located in stable and sustainable environments; located in areas allowing convenient access to economic opportunities and health, educational and social amenities; progressively provide for access to permanent residential structures with secure tenure, that allow for internal and external privacy and provide adequate protection against the elements; and progressively provide for access to potable water, adequate sanitation facilities and domestic energy supply.

³⁵ General Comment No.4 on the Right to Adequate Housing (Art. 11 (1) of the Covenant, CESCR (13 December 1991) UN Doc E/1992/23 (1991).

³⁶ Merriam-Webster Dictionary ‘adequate’ <https://www.merriam-webster.com/dictionary/adequate> (accessed 21 June 2024).

- 7.9 The National Housing Code further expounds on the right of access to adequate housing, particularly in the context of state-subsidised housing such as RDP houses. In this regard, the Technical and General Guidelines contained in the National Housing Code provide that RDP housing must be at least 40 square metres of gross floor area; contain at least two bedrooms, a separate bathroom with a toilet, a shower and hand basin, a combined living area and kitchen with wash basin and a ready board electrical installation where electricity supply is available; be built with material and in a manner that will not allow the penetration of water or damp into the building; be built with fire-resistant materials; allow for sufficient lighting and ventilation; allow for thermal efficiency; and connected to bulk services, amongst others.
- 7.10 Consistent with the definition of adequate housing in CESCR's general comment on housing, in terms of the Housing Act and Code, housing is more than just shelter and entails qualitative aspects of the shelter, which include its quality, size, tenure, access to basic services and proximity to other amenities, amongst others. It cannot be gainsaid that an incomplete housing structure is incapable of meeting the least of these requirements.
- 7.11 Insofar as the state's obligation to fulfil the right of access to housing is concerned, section 26(2) of the Constitution provides "*the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right*".
- 7.12 In **Grootboom**,³⁷ the Constitutional Court held that the state's obligations in fulfilling the right of access to adequate housing will depend on the circumstances of each case having regard to the different needs and economic levels of those in need of housing. In some instances, regulatory intervention from the state would suffice to facilitate access to housing, whilst, in some instances, a partial or full state subsidy would be required to facilitate access to housing.³⁸ The state's responsibility is greater in respect of individuals languishing in poverty and deplorable conditions.
- 7.13 Regardless of the precise nature of the state's obligation, in **Grootboom**,³⁹ the Constitutional Court confirmed that the state is not required to provide housing to citizens on demand. What is contemplated is for the state to take reasonable steps, on a progressive basis, to ensure the fulfilment of the right.
- 7.14 The "reasonableness" requirement requires that the measures taken to give effect to the right of access to housing should have appropriate financial and human resources available; be capable of facilitating the realisation of the right; be reasonable in both conception and implementation; be flexible; attend to crises; not exclude a significant segment of the affected population; and balance short, medium and long-term needs.⁴⁰

³⁷ Grootboom, paragraph 35.

³⁸ City of Cape Town v Commando and others [2023] JOL 57583 (SCA), paragraph 61.

³⁹ Grootboom, paragraph 45.

⁴⁰ Grootboom, Paragraphs 39, 41, 42, 43 and 64. See also *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (5) SA 721 (CC).

- 7.15 On the other hand, whilst the term “*progressive realisation*” envisages an incremental approach to the realisation of social-economic rights, it does not mean the full realisation of rights can be deferred indefinitely.⁴¹ The state is still required to “*move as expeditiously as possible towards the full realisation of the right*”⁴² Such steps are dependent on the availability of resources. Accordingly, the state cannot be required to do more than its resources permit.⁴³ In the present case, the charge levelled against the NW DHS precisely relates to its failure to take steps to expeditiously progress the completion of housing projects in the province.
- 7.16 The specific obligations for the fulfilment of the right of access to housing by the state are set out in the Constitution and the Housing Act. In this regard, schedule 4A of the Constitution makes housing the concurrent competence of the national and provincial spheres of government. Whilst housing is the concurrent function of national and provincial spheres of government in terms of Schedule 4A of the Constitution, the local sphere of government has a role, which includes making land available for housing development, facilitating building and town planning processes, as well as providing basic services as envisaged in Schedule 4B of the Constitution.
- 7.17 Specifically, in terms of section 3 of the Housing Act, the national sphere of government is responsible for determining national policies for housing development; setting national housing delivery goals; monitoring the performance of the national, provincial and local spheres of government against housing delivery and budgetary goals; providing support and assistance to provinces and municipalities to enable their optimal performance; establishing funding frameworks for housing development; and allocating funds for housing development programs.
- 7.18 On the other hand, in terms of section 7 of the Housing Act, the provincial sphere of government is responsible for establishing the provincial regulatory and policy framework for housing provision; providing support and assistance to local government; setting provincial priorities for the housing program; coordinating and administering housing development projects in the province; approving housing projects in line with policy; and approving disbursements of funds for housing projects.
- 7.19 Finally, in terms of section 9 of the Housing Act, through its integrated development planning processes, the local sphere of government is responsible for ensuring the availability of basic services such as water, sanitation, electricity, roads and transport; the identification and designation of land for housing development; the creation and maintenance of a public environment conducive to housing development which is financially and socially viable; and ensuring the proper management of land use and development, amongst others. Municipalities can also apply for accreditation to administer housing developments in terms of section 10 of the Housing Act.

⁴¹ The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/Cn.4/1987/17 (1987), Annex; And Human Rights Quarterly, Vol. 9 (1987), paragraph 21.

⁴² The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc. E/Cn.4/1987/17 (1987), Annex; And Human Rights Quarterly, Vol. 9 (1987), paragraph 21.

⁴³ Grootboom, paragraph 46. See also *Soobramoney v Minister of Health (KwaZulu-Natal)* 1997 12 BCLR 1696 (CC), paragraph 43.

- 7.20 From the above, it is apparent that all spheres of government have a role in the delivery of housing programs, and, therefore, the successful delivery of any housing program is dependent on the effective discharge of each sphere of government's mandate and role. That said, as the administrator and coordinator of housing programs, the provincial sphere of government is the strand that should hold all the different strands of housing development projects together.
- 7.21 The provisions of the Housing Act give meaning and content to the constitutional right of access to adequate housing in section 26(1) of the Constitution. The right of access to housing is, however, not the only right implicated by the complaints in this matter.
- 7.22 In this regard, given the indivisible and interrelated nature of rights, the link between the right of access to adequate housing and other rights has long been recognised. In **Grootboom**, the Constitutional Court held that *all the rights in our Bill of Rights are inter-related and mutually supporting. There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied those who have no food, clothing or shelter.*⁴⁴
- 7.23 Also, in **Beja & others v Premier of the Western Cape & others [2011] JOL 27172 (WCC) ("Beja")**,⁴⁵ the Western Cape High Court held that *"the right of access to adequate housing is not to be seen in isolation. It must be seen as a whole, in light of its close relationship with other socio-economic rights, all read together in the setting of the Constitution. It is unquestionable that the State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty and intolerably inadequate housing."* Some of the socio-economic rights implicated by the right of access to adequate housing include the right of access to water and healthcare services, as well as the right to basic education, as access to educational and healthcare facilities is to a large extent dependent on the proximity of one's home to those facilities.
- 7.24 In **Dladla and others v City of Johannesburg and another (Centre for Applied Legal Studies and another as amici curiae) 2018 (2) BCLR 119 (CC) ("Dladla")**, the Constitutional Court also established a link between the right of access to adequate housing and the right to human dignity and privacy.
- 7.25 Section 9 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 ("**Equality Act**"), on the other hand, considers denying or removing supporting and enabling facilities from persons with disabilities, the infringement of the code of practice or regulations of the South African Bureau of Standards that govern environmental accessibility; failing to eliminate obstacles that unfairly limit persons with disabilities from enjoying equal opportunities; and failing to reasonably accommodate the needs of persons with disabilities to be unfair discrimination of the ground of disability.

⁴⁴ Grootboom, paragraph 23.

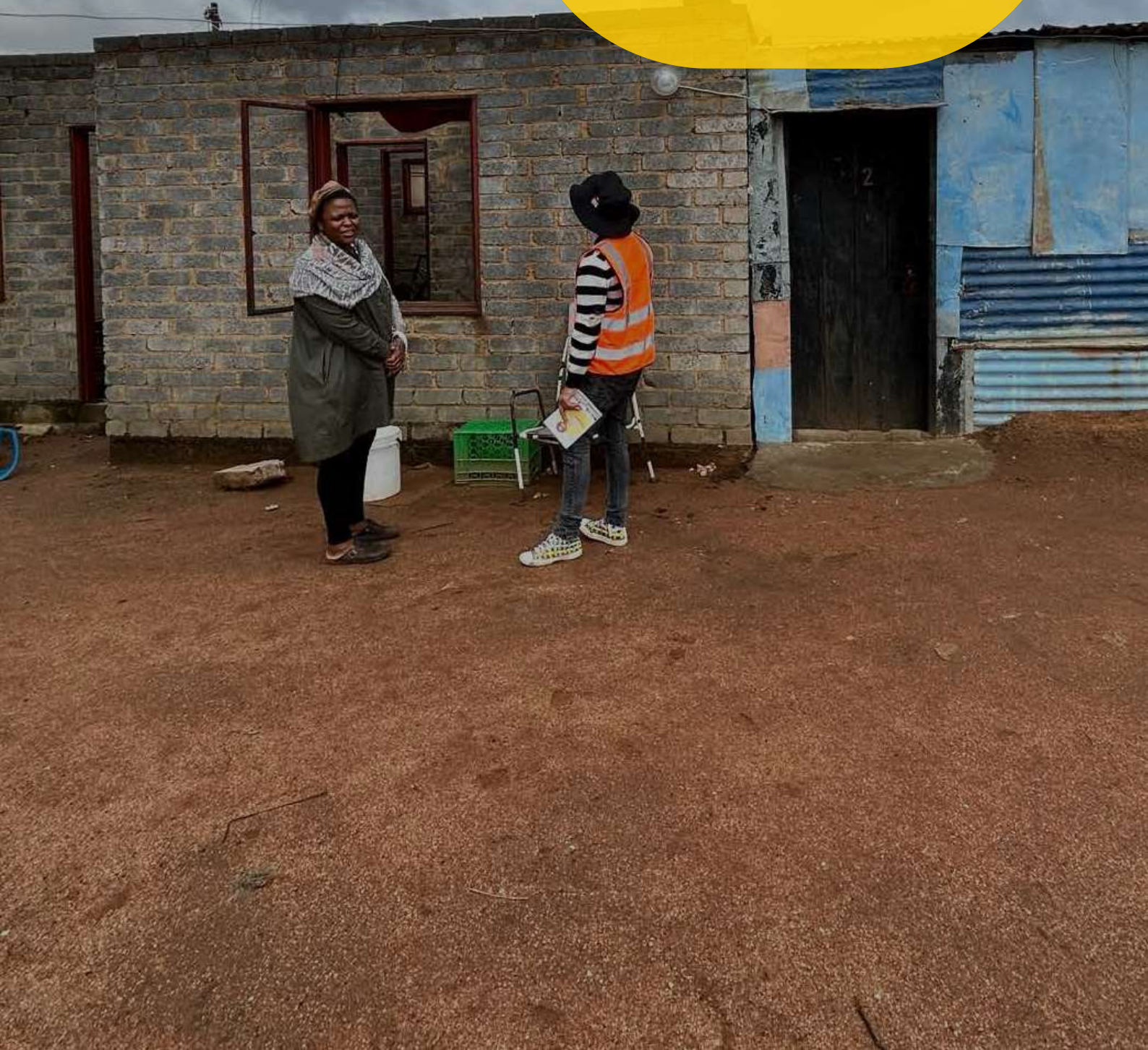
⁴⁵ Beja, paragraph 39.

7.26

Accordingly, the violation of the right of access to housing potentially violates other rights, including the right to human dignity enshrined in section 10 of the Constitution and other rights depending on the circumstances of each case such as the right to privacy enshrined in section 14 of the Constitution and the rights of access to water, healthcare services and basic education enshrined in sections 27(1)(a), 27(1)(b) and 29(1) of the Constitution. Moreover, in circumstances where housing provision fails to accommodate the needs of persons with disability, the right of equality enshrined in section 9 of the Constitution and PEPUDA is also implicated.



The Natives Land Act consolidated the land dispossession of black and indigenous people, limiting African land ownership to 7% of the arable land in South Africa and thereby rendering the majority of the South African population landless



08

ANALYSIS
AND
DISCUSSION



- 8.1 In the present case, it is apparent that there is a systemic and chronic challenge of incomplete and inadequate RDP houses in the North West. In this regard, many housing projects in the North West were left at the foundation and wall plate stages after contractors abandoned the projects. In some communities such as in Kanana, individual beneficiaries completed the housing projects themselves to make the structures habitable, although most of the finishes were not to the required quality standards. Moreover, some of the houses that were completed were inadequate due to poor workmanship, lack of internal privacy and poor accessibility to persons with disabilities in some instances.
- 8.2 Whilst the catalyst for the Commission's investigation was the complaints of incomplete and inadequate RDP houses in JBMLM, RLM, MLM, MKLM, COM and MHLM, it is apparent from the submissions of stakeholders and the parties to the complaints, including the NW DHS, that the reported challenge has engulfed housing projects in every municipality in the North West, with some incomplete RDP housing projects dating as far back as 2014, 2015 and 2016.
- 8.3 Although the systemic nature of the challenge has been established from the submissions of parties, the exact extent of the challenge could not be established given the discrepancies in the respective submissions of the parties. The discrepancies persisted even after parties were given an opportunity to make further submissions to the Commission. These discrepancies point to ineffective performance monitoring systems and poor coordination in the implementation of housing projects amongst stakeholders. In the Commission's view, the challenge of incomplete and inadequate RDP houses cannot be effectively addressed until the challenge can be accurately quantified.
- 8.4 Given the content of the right of access to adequate housing, it is apparent that the NW DHS has failed to ensure the fulfilment of this right in respect of the beneficiaries of incomplete housing projects and beneficiaries of complete but defective and inaccessible houses. This is because those houses, to a greater and lesser degree, are not habitable and cannot provide the peace and comfort expected of any home, as well as ensure adequate protection against the elements and access to services, amongst others. Moreover, the right of access adequate housing is compromised in circumstances where beneficiaries are not given title deeds to their homes, given that security of tenure is one of the defining features of the right. Title deeds offer the most secure tenure there is when it comes to housing.

8.5 Stakeholders and parties cited many reasons for the persistence of these systemic challenges. These reasons include:

- 8.5.1 Rogue contractors and the phenomenon of contract mafias who insist on being awarded contracts or sub-contracts they cannot fulfil;
- 8.5.2 Late payment of contractors, resulting in them abandoning their projects;
- 8.5.3 Mismanagement of funds by contractors, resulting in them being unable to complete their projects
- 8.5.4 Contractual disputes, including disputes over top-up funds for projects;
- 8.5.5 Inadequate planning, ineffective project management and implementation;
- 8.5.6 Lack of consequence management for failures in housing projects;
- 8.5.7 Absence of a clear delineation of responsibilities between municipalities and the NW DHS for housing projects;
- 8.5.8 Protest action by communities because of inadequate consultations and contestation over local employment and local content requirements;
- 8.5.9 Poor workmanship on contracts and material cost escalations;
- 8.5.10 Upfront payment to contractors for work that has not been completed;
- 8.5.11 Illegal occupation of stands;
- 8.5.12 Geotechnical challenges;
- 8.5.13 Inactive Project Steering Committees, which should be holding poor-performing contractors accountable;
- 8.5.14 Delays in project enrolment by the NHBRC as well as land invasions; and
- 8.5.15 Lack of integrated planning for housing projects, amongst others.

8.6 Other challenges with the implementation of housing projects in the North West include underspending on the HSDG and irregularities in the appointment of contractors for housing projects, which include awarding of contracts to suppliers prohibited from doing business with the state; procurement of contracts without following a competitive bid process; contracts extended without approvals by a delegated official; and awarding of contracts to bidders who did not meet the minimum qualifying score for functionality.

- 8.7 Barring a few projects in COMLM, RLM and MHLM where land issues in the form of land invasions and geotechnical issues were specifically cited as the cause of the delays in the finalisation of projects, the reasons for the incompleteness of housing projects mainly relate to contractual and project management issues, which fall squarely within the purview of the NW DHS, as the administrator of housing projects in the North West. Municipalities, as the sphere of government responsible for the provision of land for housing development, are, however, not exempt from responsibility where the delays in the finalisation of projects are due to their failure to live up to their obligations. Even at that, as the coordinator and administrator of housing projects in the North West, the NW DHS is required to provide support and assistance to municipalities to enable them to discharge their responsibilities in terms of the Housing Act. It is unclear if the NW DHS sought to provide such support to the implicated municipalities and, if so, the nature of support and assistance provided.
- 8.8 Also, although the national government's Housing Code was partly blamed for the phenomenon of contractors abandoning projects at the foundation phase as it was said that it allowed for contractors to be paid more for completing the foundations than any other phase of the housing project, which then incentivises contractors to prioritise the completion of foundations and abandon projects at the foundation phase, such apportionment of blame is not supported by the contents of the Housing Code. In this regard, the Technical and General Guidelines to the Housing Code make it clear that progress payment for the completion of project milestones is a contractual matter between the administrator of the housing project and the contractor. The Technical and General Guidelines to the Housing Code do not, therefore, prescribe the overpayment of contractors for the completion of the foundation phase of housing projects.
- 8.9 In any event, whilst all the above factors have, to a lesser or greater degree, played a role in bringing about and/or exacerbating the challenge of inadequate and incomplete RDP houses in the North West, at the heart of these failures is the NW DHS's failure to effectively manage housing projects in the North West. In this regard, the NW DHS failed to ensure that competent contractors with the necessary capacity are appointed for housing projects. On appointing contractors, the NW DHS failed to effectively manage those contracts to ensure that contractors deliver on projects within the agreed time frames and quality standards. In most of the projects, with the exception of a few projects, the NW DHS has also failed to hold contractors to account for the non-delivery of projects and in some instances, has re-appointed contractors who have failed to deliver on past projects. Critically, the NW DHS has failed to hold its officials to account for the mismanagement of housing projects in the North West. Accordingly, the NW DHS directly contributed to the systematic failures of housing projects in the North West through its direct actions and omissions. These systemic failures have resulted in inordinate delays in the finalisation of housing projects in the North West. In so doing, the NW DHS failed to ensure the progressive realisation of the right of access to adequate housing, which obligation by definition, requires expeditious movement or progress, which has not been the case in many housing projects in the North West.



- 8.10 Notwithstanding the centrality of its role in the collapse of many housing projects in the North West, in an attempt to escape accountability, the NW DHS sought to diminish its responsibility for the failed housing projects and attribute such failures to factors outside of its purview or control. Moreover, despite lamenting the failings of municipalities in managing housing projects previously allocated to them, the NW DHS has failed to critically reflect on its failures, despite also not fairs any better than municipalities in the management of housing projects. In the Commission’s view, unless and until the NW DHS takes full accountability for the systemic failures in the implementation of housing projects in the North West, it cannot begin to address these systemic failures in a meaningful way.
- 8.11 Although the NW DHS must principally shoulder the blame for these failures, other government departments that are meant to play an oversight role over the NW DHS, such as the NW DOT and NW OTP, have been complicit in these failures. They are complicit because they failed to take reasonable measures to hold the NW DHS to account and ensure that funds allocated to them for housing projects deliver value to the state and beneficiaries.
- 8.12 The impact of these failures has been devastating for RDP housing beneficiaries, many of which continue to live in inhabitable structures or in indignity and squalor in informal housing across the North West. Occupiers of inadequate RDP houses similarly continue to live in indignity and, in some instances, in conditions that are harmful to their health and well-being, as some of the houses are porous and do not provide privacy or protection from the elements. The delays in the completion of housing projects have also created fertile ground for the illegal invasion of RDP houses by unqualifying occupiers to the detriment of legitimate beneficiaries. The delays in the completion of RDP houses further compound the housing backlog in the North West, which stood at 318 605 as of 23 March 2023. In the words of the Portfolio Committee, this kind of suffering in the face of a department that has done very little to address their plight is unconscionable. Accordingly, the delays in the finalisation of housing projects in the North West not only violate beneficiaries’ right of access to adequate housing but also their right to human dignity, given the interrelated nature of the rights of access to adequate housing and human dignity. The challenges not only impact the rights of the beneficiaries of the delayed projects but also impact the rights of other beneficiaries still awaiting the allocation of houses, given the knock-on impact of the delays on the existing housing backlog in the province.
- 8.13 In the case of the houses built in Block C of Letlhabile in 2005, which did not provide for internal privacy, the NW DHS also violated the beneficiary’s right to privacy. In its defence, the NW DHS averred that the houses were constructed before the Housing Code and in accordance with the policies that were applicable at the time. However, it is noteworthy that the houses were constructed after 1997, when the Housing Act came into effect. In terms of the Housing Act, internal and external privacy is an integral component of the right to adequate housing. Therefore, the NW DHS violated the beneficiaries’ right to privacy.

- 8.14 Additionally, in the case of RDP houses built in Toevlug, which did not cater for the needs of persons with disabilities, the NW DHS violated the right of beneficiaries with disability to equality within the context of section 9 of the Constitution, read with section 9 of the Equality Act. Although the Commission subsequently received reports that contractors had started working on those houses to make them accessible, the Commission has not been appraised of the status of the project and whether the remedial work has now been completed.
- 8.15 As proposed by stakeholders, to address the reported challenges, priority must be given to:
- 8.15.1 The appointment of competent contractors that have the necessary skills, experience and expertise;
 - 8.15.2 Enhancing project management within the department;
 - 8.15.3 Strengthening consequence management measures against failing contractors and the officials of the NW DHS, including the head of the department and the MEC;
 - 8.15.4 Integrated planning and the resuscitation of Project Steering Committees; and
 - 8.15.5 Increased oversight on the NW DHS by the NW DOT and the NW OTP, coupled with timely interventions to ensure the completion of all the incomplete projects and the eradication of the current housing backlog, amongst others.





Colonial and apartheid legacy continues, with many South Africans continuing to be landless, homeless or living in conditions of squalor and indignity in the many sprawling informal settlements in South Africa.





FINDINGS



- 9.1 In view of the above, the Commission makes the following findings:
- 9.1.1 The complaints of incomplete and inadequate RDP houses in the North West are substantiated.
 - 9.1.2 The challenge of incomplete and inadequate RDP houses in the North West is not an isolated one, limited to a few projects in the cited municipalities, but systemic, impacting all municipalities in the North West.
 - 9.1.3 Although the systemic nature of the challenge has been established, the exact extent of the challenge of incomplete and inadequate RDP houses in the North West is unknown, given the discrepancy in the information provided to the Commission by different stakeholders.
 - 9.1.4 The NW DHS' failure to complete housing projects within a reasonable time and in line with the prescribed quality standards violates housing beneficiaries' right of access to adequate housing and their right to human dignity enshrined in sections 26(1) and 10 of the Constitution, respectively.
 - 9.1.5 The NW DHS' failure to issue title deeds to beneficiaries within a reasonable time also violates housing beneficiaries' right of access to adequate housing as it undermines beneficiaries' security of tenure in those houses.
 - 9.1.6 Additionally, the lack of internal privacy in the houses built as part of the 2005 Block C Letlhabile housing project violates the beneficiaries' right to privacy enshrined in section 14 of the Constitution.
 - 9.1.7 Moreover, to the extent that there remain houses that are inaccessible to persons with disabilities in Toevlug, such a state of affairs violates the beneficiaries' right to equality enshrined in section 9 of the Constitution and the Equality Act.
 - 9.1.8 Some of the reasons for these failures include rogue contractors and the phenomenon of contract mafias who insist on being awarded contracts or sub-contracts they do not have the capacity to fulfil; late payment of contractors, resulting in them abandoning their allocated projects; mismanagement of funds by contractors, resulting in them being unable to complete their allocated projects; contractual disputes, including disputes over top up funds for projects; inadequate planning, ineffective project management and implementation; lack of consequence management for failures in housing projects; absence of a clear delineation of responsibilities between municipalities and the NW DHS in respect of housing project; protest action by communities; poor workmanship on contracts and material cost escalations; upfront payment to contractors for work that has not been completed; illegal occupation of stands; geotechnical challenges; inactive Project Steering Committees, which should be holding poor performing contractors accountable; delays in project enrolment by the NHBRC and land invasions; and lack of integrated planning for housing projects, amongst others.

- 9.1.9 While many factors contributed to the challenge of incomplete and inadequate RDP houses in the North West, the NW DHS is central to these failings in that it failed to properly and effectively manage its housing projects and failed to hold itself, its staff and contractors to account for these failings.
- 9.1.10 Although not principally responsible for these failings, NW DOT and NW OTP, two of the departments that are meant to play an oversight role over the NW DHS, are complicit in these failings as they failed to take reasonable measures to hold the NW DHS to account and ensure that funds allocated to them for housing projects realise commensurate value to the state and beneficiaries.
- 9.1.11 Municipalities such as COML, MHLM, and RLM, who contributed to these failings by failing to effectively discharge their responsibilities insofar as the provision of land for housing development, are also complicit.
- 9.1.12 The challenge of incomplete and inadequate RDP houses has had a devastating impact on many beneficiaries who continue to live in informal housing and other conditions of poverty and squalor.
- 9.1.13 The non-appearance of the Accounting Officers of MLM and JBMLM before the Commission when they were subpoenaed to appear before the Commission prima facie constitutes a criminal offence within the contemplation of section 22(a) of the SAHRC Act, which provides that any person who without just cause, refuses or fails to comply with a notice under section 15(1)(c) of the SAHRC Act, shall be guilty of an offence and liable on conviction to fine or to imprisonment for a period not exceeding six months.



In terms of the Housing Act, internal and external privacy is an integral component of the right to adequate housing.

10

DIRECTIVES



- 10.1 In view of the above findings, the Commission makes the following directives:
- 10.1.1 Within 90 days of this report, the NW DHS should provide a detailed report on the progress made in addressing the challenge of incomplete and inadequate RDP houses in the North West since the conclusion of the inquiry in August 2023. The report should include details of:
 - 10.1.1.1 the number of RDP houses completed since the conclusion of the inquiry in August 2023, as well as the projects and municipalities under which those houses fall;
 - 10.1.1.2 the number of completed but defective houses repaired since the conclusion of the inquiry in August 2023, as well as the projects and municipalities under which those houses fall;
 - 10.1.1.3 the number of title deeds issued to beneficiaries since the conclusion of the inquiry in August 2023.
 - 10.1.1.4 the consequence management measures taken against any contractors since the conclusion of the inquiry in August 2023 in relation to incomplete and inadequate RDP housing projects;
 - 10.1.1.5 consequence management measures taken against any of its employees since the conclusion of the inquiry in August 2023 in relation to incomplete and inadequate RDP housing projects;
 - 10.1.2 Within 90 days of this report, the NW DHS should verify the information on incomplete and inadequate RDP houses on its HSS in consultation with relevant stakeholders. The importance of this exercise cannot be overstated, as one cannot fix what one does not know.
 - 10.1.3 Within 90 days of this report, the NW DHS should provide a detailed time-bound plan for addressing the challenge of incomplete and inadequate RDP houses in the North West. The plan should outline specific and measurable steps to be taken in each project, the budget implications of those steps and the applicable timelines. The plan should also include specific measures to address the plight of residents in Block C Letlhabile who continue to live in houses that do not accord them the privacy and dignity due to them, as well as plans for the issuing of the remaining title deeds to beneficiaries. The plan should be developed in consultation with all relevant stakeholders. Consideration should be given to the proposals made by stakeholders at the inquiry when developing the plan. Thereafter, the NW DHS is to provide quarterly reports on the progress it is making against that plan.
 - 10.1.4 The NW DHS should convene regular meetings, and at least bi-annually, with all stakeholders who have a role in their RDP housing projects with the view to findings shared solutions to ongoing challenges to the implementation of RDP housing projects in the North West. To ensure the effectiveness of these engagements, the engagements should not be juniorised but should be convened with senior stakeholder representatives who are capable of taking decisions on the issues to be discussed. These engagements should be in addition to the regular engagements of PSCs.

- 10.1.5 Within 90 days of this report, the NW DOT and NW OTP should provide a detailed report on the measures taken since the conclusion of the inquiry in August 2023 to support the NW DHS in the discharge of its mandate and ensure oversight and accountability for the completion of housing projects in the North West and the effectiveness of those measures. Additionally, the NW DOT and NW OTP should indicate the ongoing measures they will take to provide support to the NW DHS and ensure its effectiveness in the discharge of its mandate. Thereafter, the NW DOT and NW OTP are required to provide the Commission with bi-annual reports on the progress of their respective interventions and the impact thereof.
- 10.1.6 Within 90 days of this report, the municipalities in which housing projects could not be completed due to land availability issues, such as COMLM, MHLM and RLM, should submit reports on the measures taken since the conclusion of the inquiry in August 2023 to address the land availability issues and the effectiveness of those measures. Additionally, the municipalities should indicate the ongoing time-bound measures they will take to address the land availability challenge. Thereafter, the municipalities should provide the Commission with bi-annual reports on the implementation of those measures.
- 10.1.7 All municipalities cited in this report are to ensure that issues of incomplete and inadequate RDP houses in their jurisdiction receive the attention of their Councils at their ordinary sittings. Thereafter, all municipalities should provide the Commission with bi-annual reports on Council deliberations on RDP housing issues in their jurisdiction.
- 10.1.8 The allegations of corruption, maladministration and maleficence in the management of RDP housing projects in the North West should be referred to the Office of the Public Protector and Special Investigating Unit for further investigation.
- 10.1.9 Criminal charges should be opened against the Accounting Officers of MLM and JBMLM who failed to appear before the Commission when they were subpoenaed to appear before the Commission in terms of section 22(a) of the SAHRC Act.



Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities all at a reasonable cost".

11

0091A

COMMENTS ON
THE PROVISIONAL
INQUIRY REPORT



- 11.1 The provisional inquiry report was shared with all the cited parties on 27 June 2024. All the parties cited in this report were invited to submit their comments on the provisional report in writing within 14 days of this report, being 17 July 2024.
- 11.2 Only the Third and Eighth Complainants responded to the provisional inquiry report. The Third Complainant expressed her appreciation for the provisional report. The Eighth Complainant advised that while there were movements to complete some of the incomplete RDP houses in extensions 17 and 18 in MHLM in 2023 following the inquiry, the movements have since stalled, with contractors leaving their sites due to disputes over payment.
- 11.3 The Respondents did not submit their comments on the provincial report by 17 July 2024
- 11.4 As the above comments merely confirm the status quo and do not challenge any of the findings and recommendations made in the provisional inquiry report, the findings and recommendations in the provisional inquiry report have been confirmed as is.

SIGNED AT JOHANNESBURG ON THE 4th DAY OF NOVEMBER 2024



Philile Ntuli
Commissioner
South African Human Rights Commission





The advisory report relates to complaints concerning RDP houses dating as far back as 2011/2012.

25 Heystek Street
Rustenburg

Tel: 014 592 0694

Fax: 086 747 5111 Cell

WhatsApp: 063 728 8544

Email: NWComplaints@sahrc.org.za

