



PUBLIC PROTECTOR
SOUTH AFRICA

Accountability • Integrity • Responsiveness

PRESENTATION TO THE PORTFOLIO COMMITTEE ON HUMAN SETTLEMENTS BY THE PUBLIC PROTECTOR ADV TN MADONSELA

Wednesday 20 February 2013



integrity responsiveness integrity accountability good governance prompt remedial
action responsiveness integrity accountability good governance prompt remedial
action responsiveness integrity accountability good governance prompt remedial action

“The independence and impartiality of the Public Protector will be vital to ensuring effective, accountable and responsive government. The office inherently entails investigation of sensitive and potentially embarrassing affairs of government.” (Certification of the Constitution judgement)

“The ANC proposes that a full time office of the Ombud should be created, with wide powers to investigate complaints against members of public office and other holders of public office and to investigate allegations of corruption, abuse of their powers, rudeness and maladministration. The Ombud shall have the power to provide adequate remedies. He shall be appointed by and answerable to Parliament.” (ANC, Ready to Govern, 1992)

CONTENTS

1. Introduction and Purpose
2. Complaints relating to the Delivery of RDP Houses
 - 2.1 The Story of Gogo Nkosi: October 2012
 - 2.2 Planning of Human Settlements
 - 2.3 Procurement
 - 2.4 Allocation of RDP Houses
 - 2.5 Post Allocation
 - 2.6 General Housing complaints
3. Key Observations on RDP Housing
 - 3.1 Number of complaints received July to September 2012
 - 3.2 Observations relating to Planning
 - 3.3 Observations relating to Procurement

CONTENTS CONT...

- 3.4 Observations relating to Allocation
- 3.5 Observations relating to Post Allocation
- 3.6 General Observations and Policy Considerations
- 4. Conclusion
- 5. Pictures

PUBLIC PROTECTOR
SOUTH AFRICA



1. Introduction and Purpose

1. The Public Protector is honoured and grateful for the opportunity to address the Portfolio Committee on Human Settlements.
2. Constitutional and legal mandate of Public Protector: Established under Chapter 9 of the Constitution, the Public Protector has the power under section 182 of the Constitution to strengthen and support constitutional democracy by:
 - investigating **any conduct in state affairs**, or in the public administration in **any sphere of government**, that is alleged or suspected to be **improper** or to result in any impropriety or **prejudice**;
 - to **report** on that conduct; and
 - to **take appropriate remedial action**.



1. Introduction and Purpose cont...

3. **Mission:** To strengthen constitutional democracy in pursuit of our constitutional mandate by investigating, rectifying and redressing any improper or prejudicial conduct in state affairs and resolving related disputes through mediation, conciliation, negotiation and other measures to ensure fair, responsive and accountable public sector decision-making and service delivery.
4. **Vision:** A trusted, effective and accessible Public Protector that rights administrative wrongs and consistently acts with integrity to ensure fair, accountable and responsive decision-making, service delivery and good governance in state affairs and public administration in every sphere of government.
5. **Core Values:** Independence and impartiality; human dignity and ubuntu; transparency; equality and fairness; redress.



1. Introduction and Purpose cont...

6. Role modelling against the Makhadzi institution.
7. Standard approach to investigations: what happened, what should have happened, is there any discrepancy, if so, does it constitute maladministration and what should be the relevant appropriate remedial action (see Certification case).
8. When we receive a flood of complaints which are similar in nature we normally conduct a systemic investigation to determine the root cause of these complaints.



1. Introduction and Purpose cont...

9. A systemic investigation covers accountability for specific wrongs and more. We normally adopt a diagnostic systems approach with a view to establishing the causal factors behind a flood of complaints or a potential flood of complaints.
10. During 2011/2012, approximately 10% of the complaints received by the Public Protector were related to maladministration pertaining to the delivery of the low cost housing.
11. We then decided to conduct a systemic investigation.

1. Introduction and Purpose cont...

12. In the 2012/13 financial year, we combined our annual stakeholder consultative process with public hearings in respect of complaints relating to delivery of low cost housing.
13. The purpose of this presentation is to share with the Portfolio Committee on Human Settlements the following:
 - A general profile of the complaints received (prior to and during public hearings)
 - Observations and experiences



2. Complaints relating to the delivery of RDP houses

1. We have in the past received, and continue to receive, complaints regarding maladministration in the delivery of RDP houses.
2. Approximately 10 % of the complaints received during 2010/2011 financial year related to maladministration in the delivery of RDP houses in South Africa.
3. By July 2012, the Public Protector had received approximately 1987 complaints relating to maladministration in the delivery of RDP houses .

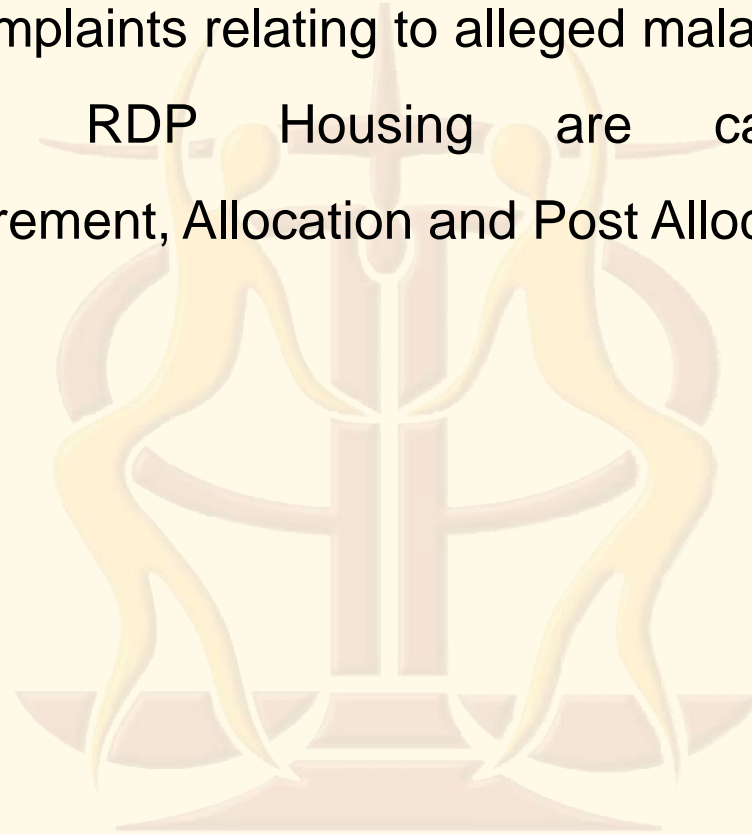


2. Complaints relating to the delivery of RDP houses cont...

4. In order to address the causes of these complaints, we decided to embark on an own initiative systemic investigation in response to the flood of complaints received over the years ranging from:
 - Planning inadequacies;
 - Procurement irregularities (including corruption and fraud) leading to defective houses among many inadequacies;
 - Allocation irregularities; and
 - Post allocation challenges such as missing title deeds and illegal sale of RDP houses.

2. Complaints relating to the delivery of RDP houses cont...

5. In a nutshell, complaints relating to alleged maladministration in the delivery of RDP Housing are categorised under Planning, Procurement, Allocation and Post Allocation.

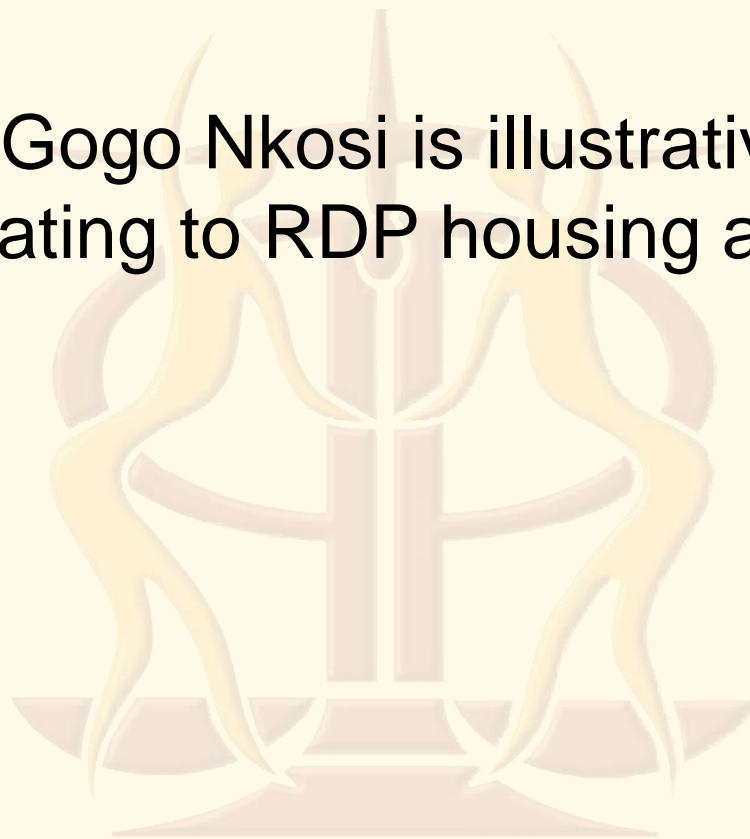


PUBLIC PROTECTOR
SOUTH AFRICA



2.1 The Story of Gogo Nkosi October 2012

- The story of Gogo Nkosi is illustrative of the problems relating to RDP housing and bears telling.



PUBLIC PROTECTOR
SOUTH AFRICA



2. 2 Planning of Human Settlements

Planning of Human Settlements

- Complaints relating to *planning* deal with the planning and/or administrative processes involved in the delivery of RDP houses.
- The issues raised generally related to tardiness on the part of government institutions in the planning processes.
- Non-compliance with the **Development Facilitation Act** which requires that the objectives of land development shall take into account access to public transport, health, water and education facilities.

2. 2 Planning of Human Settlements cont...

- In the Eastern Cape, for example, Sakhisizwe Local Municipality residents complained about houses built without the provision of water and sanitation;
- In the Free State and North West, residents complained about approved projects which were never implemented and blocked projects; and
- Planning does not always factor in rapid urbanisation, which admittedly is compounded by informal settlements that mushroom overnight and have implications for proper planning.

2. 2 Planning of Human Settlements Cont...

- In Gauteng Province, Midvaal Municipality residents complained about houses which were built in a water filled area.
- In the City of Johannesburg, residents complained about land reserved for RDP housing which was sold to private developers.
- In Thabazimbi, residents alleged that 800 stands were approved in 2002 for RDP housing and they were later sold to a private developer.

PUBLIC PROTECTOR
SOUTH AFRICA



2.3 Procurement

- The key problem in procurement relates to Peoples' Housing Projects which placed the initiative at the door of beneficiaries but are hijacked by developers who sometimes provide below specification dwellings.
- Municipal inspectors sometimes abrogate their duties and forego occupancy certificates, leaving it up to beneficiaries to provide “happy letters” which are supposed to confirm building according to specification.
- This was prevalent in the North West.
- Beneficiaries are also expected to report defects within a short space of time, usually 6 months.

2.3 Procurement cont...

- The PHPs had the impact of allowing beneficiaries to jump the queue by becoming members of PHPs.
- In some instances there are perceptions of contracts being awarded to members of the ruling party.
- In some provinces, developers do not even follow the same specifications when they build houses, which causes dissatisfaction.
- False billing is also an issue, for example where 200 houses are approved, and only 150 are build, but payment is made for 200 houses.
- Disabled people complained about their houses not being user-friendly. In one province, a beneficiary had to widen the entrance to allow him access.
- In some provinces there were complaints about the size of houses

PUBLIC PROTECTOR
SOUTH AFRICA



2.4 Allocation of RDP Houses

Allocation of RDP Houses

- Allocation is another key issue. Sometimes houses are allocated to wrong beneficiaries.
- Some beneficiaries have been on waiting lists since 1996, especially the elderly.
- There are allegations relating to the removal or substitution of names on beneficiary lists.
- PHPs have also affected allocation.
- Double and multiple allocations are also common in some provinces.

2.4

Allocation of RDP Houses Cont...

- Allocations are also affected by the length of time it takes to evict illegal occupants of RDP houses.
- Complaints were raised relating to bias and/or corrupt activities on the part of officials, in that RDP houses are allocated to the families and friends of officials.
- There are also allegations that some officials sell RDP houses.
- A problem arises in some provinces where an intended beneficiary dies before allocation of the house, and the house is not given to a dependant who is also indigent .
- Disabled people complained that they are not given priority when it comes allocation of RDP houses.
- In some areas people do not know where to apply for housing

2.5 Post Allocation

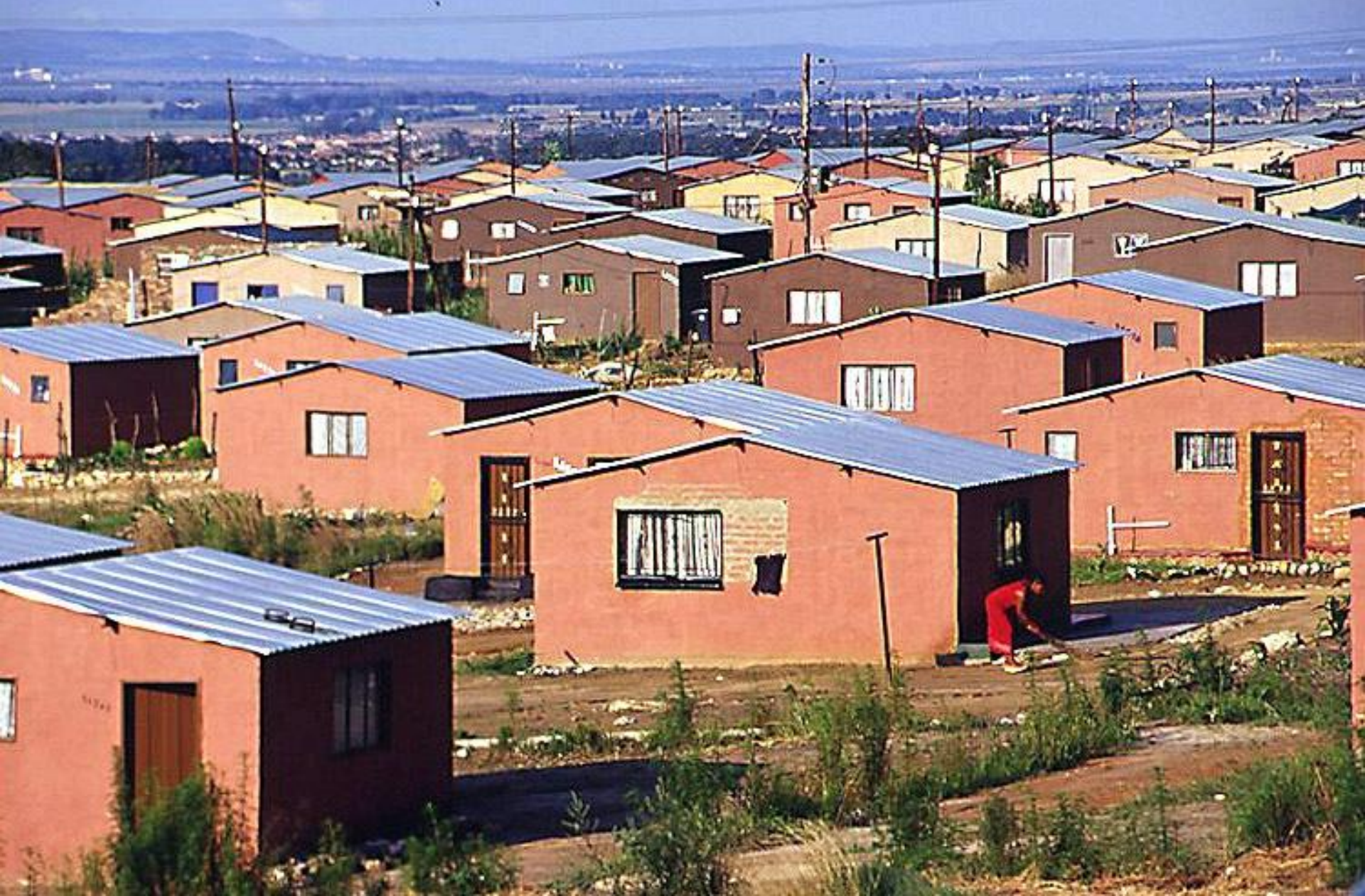
Post Allocation

- There were a number of Complainants who had issues relating to the RDP houses which were already allocated to them.
- Some of the complaints relate to the failure of the state to ensure that title deeds are issued to the Complainants.
- Other complaints relate to substandard RDP houses being allocated and/or structural defects in the RDP houses which were allocated.
- Another issue raised was the illegal sale of RDP houses by the beneficiaries after allocation.
- Some sellers are allegedly councillors.

2.6 General Housing Problems

- Who should get an RDP house?
- Should every beneficiary get ownership of a house or should others, like the poor, get houses but not own them so that the state can maintain them?
- There is an emerging group of elderly people without dependants; what should happen to their houses when they die?
- What kind of house should go to whom; should families and single people get the same kind of house?
- Young people who may enter the job market later and afford houses, should they own or rent houses?

3. Key observations on RDP housing



3. Key Observations on RDP Housing

- a) Number of complaints received by end September 2012.
- b) Planning related allegations and observations
- c) Procurement related allegations and observations.
- d) Allocation related allegations and observations
- e) Post-allocation related allegations and observations.
- f) General observations including policy considerations.

3.1 Number of complaints received between July and September 2012

Number of RDP housing complaints received between July and September 2012 (Unaudited Figures)

Province	Number of complaints
Eastern Cape	60
Free State	275
Gauteng	1828
KwaZulu Natal	88
Limpopo	242
Mpumalanga	80
Northern Cape	84
North West	154
Western Cape	66
TOTAL	2877



3.2 Key observations relating to Planning

a) Planning related allegations and observations

- Giving effect to the concept of human settlements: houses to go with bulk infrastructure, sanitation, electricity, access roads and social services such as healthcare facilities, safety and security, schools and recreation
- PHPs: failure to take into account administrative capacity inadequacies in community structures
- Urban migration challenges, particularly mushrooming of informal settlements/property hijacking
- Failure to procure and pay attention to geotechnical reports

PUBLIC PROTECTOR
SOUTH AFRICA



3.3 Key observations relating to Procurement

b) Procurement related allegations and observations

- Alleged irregular award of tenders, including allegations of corruption
- Alleged poor vetting of service providers, leading to unmanaged performance and financial security risks
- Alleged overbilling and false billing
- Alleged poor or no quality assurance leading to shoddily built houses to be demolished and rebuild at state expense. Role of municipal inspectors/engineers/HBRC
- Alleged poor role clarification: Councillors and contractors
- Defective houses, including after rectification
- Lack of standardisation of houses

3.4 Key Observations relating to Allocations

c) Allocations related allegations and observations

- Long wait for RDP houses, some since 1996, mainly the elderly, people with disabilities and so-called backyard dwellers
- Poor management of waiting lists with some lists alleged to have disappeared or names on lists having disappeared
- Fraud and corruption in allocations with fingers pointed at councillors, officials and contractors
- Double allocations and illegal sales of houses
- Mismatch between allocation of stands and built structures in some areas
- Plight of child-headed households

3.5 Key observations relating to Post Allocation

d) Post-allocation related allegations and observations

- Poor management of complaints relating to structural damages and other quality related complaints (direct interface between contractors and beneficiaries)
- Failure to provide title deeds, some beneficiaries dying before getting their title deeds and allegations that such title deeds are subsequently fraudulently given to other people who are not dependants of the beneficiaries
- Illegal sale of RDP houses, particularly to non-nationals who use them for rental and business premises

3.6 General observations and policy considerations

e) General observations including policy considerations

- Prioritisation of allocations
- Risk management
- Compliance with Section 26 of the Constitution; does it always have to be ownership for people earning below the current threshold? What about older persons without descendants or young people without dependants or with a potential to earn
- Infrastructure challenges in response to rapid urbanisation and informal settlements
- Standardization of sizes of RDP houses

4. Conclusion

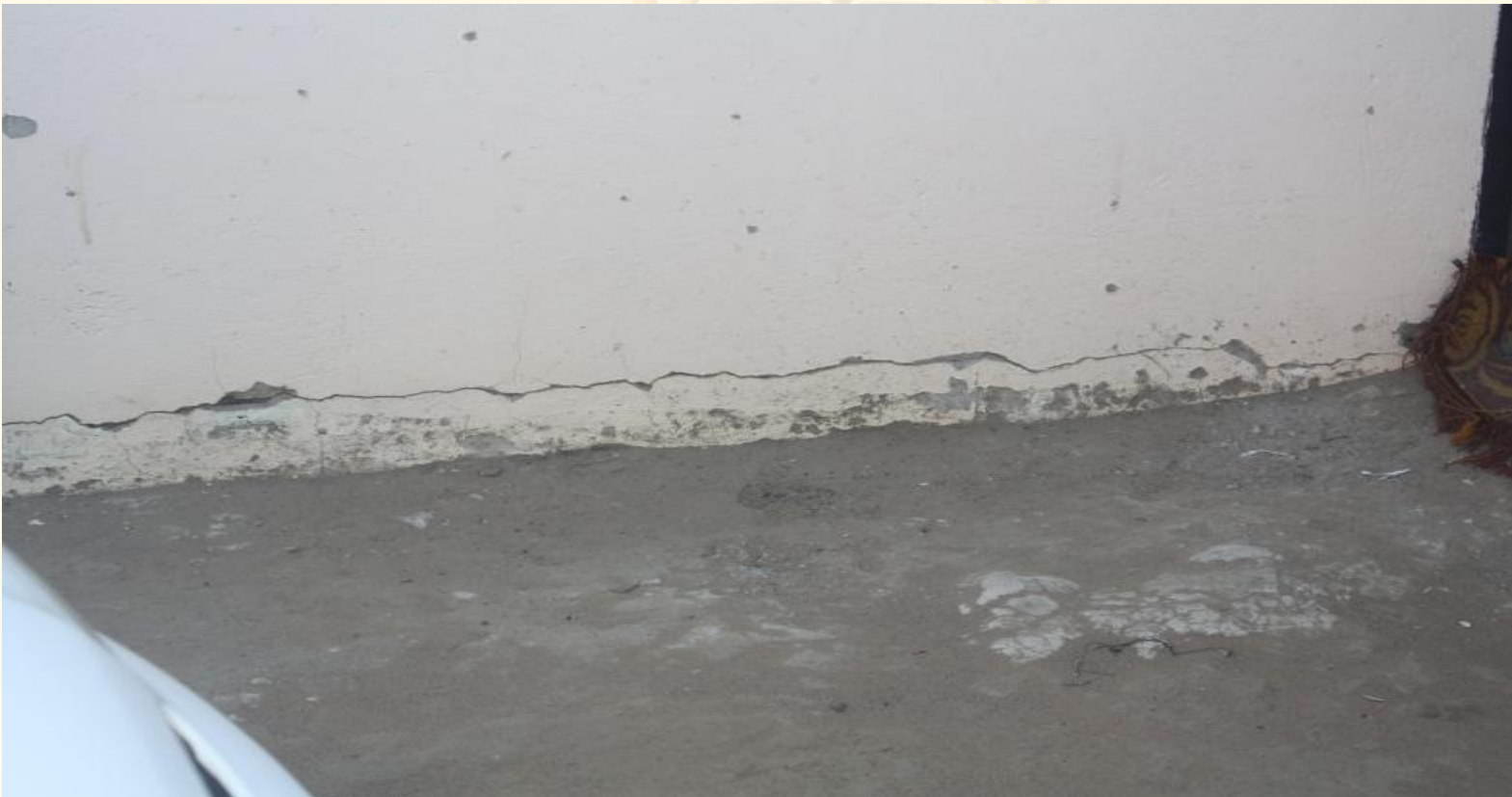
1. In certain Provinces concessions have already been made regarding problems relating to RDP housing. In these instances, the relevant authorities will be requested to submit implementation plans in terms of which they will address the problems.
2. Regarding the other complaints, investigations will be conducted and a report issued.

PUBLIC PROTECTOR
SOUTH AFRICA



5. PICTURES

A picture of a defective RDP house in the Free State with cracks



A picture of a defective house in Thabazimbi



PUBLIC PROTECTOR
SOUTH AFRICA

A picture of a defective RDP house showing cracks on the wall in De Aar



A picture of a defective RDP house



SOUTH AFRICA

A picture of an incomplete house in Thabazimbi



A picture an incomplete RDP house in Mpumalanga



PUBLIC PROTECTOR
SOUTH AFRICA

A picture of a defective house in Mpumalanga



A picture of an incomplete house in Klerksdorp



PUBLIC PROTECTOR
SOUTH AFRICA

A picture of a defective house in Klerksdorp



FINALLY

“We live with the hope that as she battles to remake herself, South Africa will be a microcosm of the new world that is striving to be born. Let it never be said by future generations that indifference, cynicism or selfishness made us fail to live up to the ideals of humanism which the Nobel Peace Prize encapsulates.” (Former President Nelson Mandela during his acceptance of the Nobel Peace Prize in 1993)

THANK YOU

0800 11 20 40

www.publicprotector.org

PUBLIC PROTECTOR
SOUTH AFRICA

