

**-CONFIDENTIAL-**



**REPUBLIC OF NAMIBIA**

## **STATEMENT ON THE MASS HOUSING DEVELOPMENT PROGRAMME (MHDP)**

1. On 03 November 2015, Honorable Shixwameni enquired about the status of the MHDP and demanded answers about what is going to happen on the way forward. Citing newspaper reports on the matter, he expressed some confusion regarding the awarding of tenders to the same tenderpreneurs “who inflated their prices in the first instance....to continue with the same mess they had under your watch and clock”. Honorable Shixwameni strongly suggested that the process of ‘re-awarding’ the same tenders to same people who could not deliver, should be reviewed and that said contractors should be blacklisted if they are not delivering.
2. In addition to the above, an editorial in the *Confidenté* newspaper, titled “Mass Housing Blackmail”, dated 29 October – 04 November 2015, contained conflicting and contradictory information which served no purpose other than to negate the hard work done during negotiations with the MHDP contractors as well as to sensationalise the outcome.
3. In the above mentioned editorial, the opening paragraph states that “Government and taxpayers appear to have been held hostage and blackmailed into conceding

- b) The fourth paragraph refers to the MHDP as the “mass housing scam” and alludes to “loopholes” having been discovered with Government negotiators as well as allegations of “astronomic bribes” being paid to influential figures.
  - c) Paragraph six contains a damning allegation that Hon. Sophia Shaningwa was “sidelined in most of these negotiations regarding payment to some of the banished contractors.”
  - d) Paragraph eleven states that “instead of re-evaluating our mass housing strategy, we are again being advised by some of our ‘greedy experts’ to rush into the mass housing programme with the same questionable contractors”.
- 4. In an exclusive interview with the *Confidenté* newspaper, an article titled “Shocker! N\$45 billion more needed for mass housing” and dated 05 November – 11 November 2015, quoted Honorable Sophia Shaningwa saying the following:
  - a) “through negotiations the ministry through the Attorney-General’s Office are having with service providers that were awarded contracts for the first phase of the project have managed so far to lower the estimated costs by over N\$ 200 million.” [Paragraph 12]
  - b) “Shaningwa justified making use of the initial contractors saying that they had already bought materials stored at their various sites adding that it is cheaper to continue utilising their services.” [Paragraph 13]
- 5. In light of the above, the following four main issues arise:
  - a) Did the Office of the Attorney-General sideline the Ministry of Urban and Rural Development (the Ministry) during negotiations with MHDP contractors?
  - b) Why did we agree to give the contractors the contracts to complete the commenced but incomplete houses?

6. **DID THE OFFICE OF THE ATTORNEY-GENERAL SIDELINE THE MINISTRY DURING NEGOTIATIONS WITH MHDP CONTRACTORS?**

6.1 On 20 July 2015, an Agenda Memorandum from the Honorable Sophia Shaningwa, who by the way, is the Minister of Urban and Rural Development, titled “**BRIEFING ON THE FUTURE PROSPECTS OF THE MASS HOUSING DEVELOPMENT PROGRAMME (MHDP)**” was delivered to Cabinet. The Agenda Memorandum recommended that Cabinet:

6.1.1 Takes note of the legal and financial implications outlined in the legal opinion received from the Attorney-General;

6.1.2 Supports the revocation of the mandate given to the Namibia Housing Enterprise (“the NHE”) under the Blueprint on the Mass Housing Development Program (MHDP);

6.1.3 Supports the settlement of all invoices of houses constructed under the MHDP; and

6.1.4 Supports the establishment of a committee responsible for negotiating and settling contracts entered into between NHE and contractors under the MHDP, said committee falling under the chairmanship of the Attorney-General and comprising of Permanent Secretaries.

6.2 In Cabinet Decision 7th/21.07.15/001, Cabinet approved the following:

6.2.1 Settlement of all invoices of houses constructed under the MHDP;

6.2.2 The establishment of a Committee that will be responsible for negotiating and settling contracts entered into between the NHE and contractors under the MHDP to be chaired by the Attorney-General and comprised of the Permanent Secretaries involved in the coordination of implementation of the MHDP; and

Director-General of the National Planning Commission, the Minister of Presidential Affairs and the Minister of Works and Transport were also receiving these daily negotiation reports. The line Minister was kept informed about the outcome of each meeting and furthermore, officials from the Ministry were part and parcel of the negotiations as they sat in on each and every meeting.

6.5 It is unfathomable as to what more could have been done to further accommodate the Minister or to ensure more inclusivity in the negotiation process.

6.6 Lastly, during the period of negotiations, no objections or negative comments were raised or expressed by the Minister regarding the manner or the outcome of negotiations. I can confirm that one evening, the Minister was in attendance as my team and I debated amongst ourselves as to strategy, positions to be taken on issues etc. The Minister expressed her confidence in the team and the manner of detail with which we dissected the claim we were examining.

6.7 Also, part of the team were quantity surveyors from the firms of Richard Frankle & Partners, as well as Jordaan Oosthuysen Nangolo who scrutinized every claim. The NHE was also represented and proved very helpful in the negotiations.

## **7. WHY DID WE AGREE TO GIVE THE CONTRACTORS THE CONTRACTS TO COMPLETE THE COMMENCED BUT INCOMPLETE HOUSES?**

7.1 On 21 August 2015, an Agenda Memorandum from the Attorney-General was written pursuant to Cabinet Decision 7th/21.07.15/001. The Agenda Memorandum recommended that Cabinet approve the parameters for negotiation as well as to bring the MHDP to an end.

7.2 Under paragraph 3.1.3 of the abovementioned Agenda Memorandum, the terms of negotiation were outlined as follows:

7.2.4 Completion of partially-constructed-but-incomplete-houses will be done by the same contractor/developer with the NHE contract, but NHE will no longer be a party and the Government and that contractor/developer will enter into a separate construction agreement for that purpose (price per house remains); and

7.2.5 Should the Government re-commence the process, they shall be invited to tender under that new regime.

7.3 The agreement to give contractors the contracts to complete the commenced but incomplete houses was done with a view to ensuring that contractors finish what they started.

7.4 In addition, it made sense cost wise to continue with the original contractors because they are operating on the old prices as quoted at the time the contracts were entered into. A new contractor would give a new quote based on current prices and this is going to be more expensive. This is what our quantity surveyors advised us.

7.5 Lastly, the continuation is important as far as liability for defects and safety for the envisaged homeowner is concerned.

7.6 With a view to avoiding future issues with regard to liability for defects, it seemed prudent to allow the contractors to finish the houses which they had started because if these houses had been passed on to another contractor to finish, it would in future become very difficult to determine who went wrong.

## **8. WHY DID WE SETTLE AND THEN ENTERTAIN ANOTHER CLAIM FROM THE SAME CONTRACTOR?**

8.1 Power-Oyeno sued government in June 2015 and in a court related settlement agreement signed on 21 August 2015, the contractor was paid N\$ 104,068,674.85 for outstanding payment (N\$ 93,908,196.26), approved variation orders (N\$ 2,709,652.32), materials on site (N\$ 5,781,295.20) and interest on value added tax (N\$ 1,669,527.77).

was fully verified by the independent Quantity Surveyors appointed by the Ministry of Works and Transport to:

- 8.2.1 Measure and cost all work done at each site;
- 8.2.2 Measure and cost work that still needs to be done to complete unfinished structures;
- 8.2.3 Estimate the time required to finalise the individual contracts of housing units that are currently under construction;
- 8.2.4 Reconcile payments due to contractors for measured work done versus payments already made per structure/unit; and
- 8.2.5 Propose on how future payments on the individual projects should be dealt with.

- 8.4 I have not signed this agreement yet, as I must get the concurrence of the Committee of Ministers, those Ministers who received those daily reports.
- 8.5 The first settlement agreement with Power-Oyeno was a court related matter and the second negotiation was for costs incurred as a result of the suspension of the contract. These negotiations were approved by Cabinet for all contractors under the MHDP. The only distinguishing factor between Power-Oyeno and the other contractors is the fact that Power-Oyeno was the only MHDP contractor to sue government.

9. **THE SETTING UP OF THE MHDP CONTRACTS VIS-À-VIS HOW WE INTEND TO GO ABOUT EVERYTHING.**

**LUMP SUM CONTRACT**

- 9.1 The NHE used a lump sum contract to determine costs under the contract. A lump contract is one under which a principal (customer or owner) agrees to pay the contractor a specified amount for completing work without requiring a cost breakdown. The price is fixed and payment to the contractor is made on the basis of work completed.

## **BILLS OF QUANTITIES**

- 9.4 We want to use Bill of Quantities. The Bills of Quantities are prepared by Quantity Surveyors to provide an extensive and itemised trade list, including a description and quantity, of each of the components or items required for a construction project.
- 9.5 The Bills of Quantities are also a tool for monthly valuations and assist in calculating the final cost of the project.
- 9.6 Bills of Quantities are more reliable because they can be used to determine a fair price and reasonable market rates to obtain prices for each house type.

## **GOING FORWARD**

- 9.7 New contracts will be entered into with the same contractors and Government (acting through the Ministry), to complete the commenced but not yet completed units.
- 9.8 The revised contracts will contain Bills of Quantities prepared by the independent Quantity Surveyor firms that have been appointed by the Ministry of Works and Transport. The main purpose of using the Bill of Quantities is to itemise and define the project so that all contractors prepare their price and submissions on the same information.
- 9.9 Ultimately, the Minister will be presenting to the Cabinet and eventually to this August House, how the Mass Housing Development Program will be reconceived as a long term, comprehensive, sustainable targeted housing plan incorporating the identification of the ultimate beneficiaries of the houses, the identification of land, urban planning and town planning upon the land, acquisition of the land, servicing of the land and construction of townlands upon such land where people live, play and work. This would be Phase 2 of Mass Housing under the Government auspices.
- 9.10 Yes, mistakes were made. With big projects of this nature, what we have learnt is that we need to take time to plan things properly and deliver services and amenities to our people correctly, with prudence and for the long term.

