



SOUTH AFRICAN HUMAN RIGHTS COMMISSION REPORT

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NW/2122/0060

KEBANEILE TUMELO PHINDA

First Complainant

CARIN VISSER

Second Complainant

FLOGGIES LUCAS

Third Complainant

and

NGAKA MODIRI MOLEMA

DISTRICT MUNICIPALITY

First Respondent

TSWAING LOCAL MUNICIPALITY

Second Respondent

FINAL INVESTIGATIVE REPORT

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INTRODUCTION AND MANDATE OF THE SOUTH AFRICAN HUMAN RIGHTS COMMISSION

1. This is a report of the South African Human Rights Commission (“the Commission”) issued in terms of section 13 of the South African Human Rights Commission Act 40 of 2013 (“the SAHRC Act”).
2. The report is the result of investigations arising from consolidated complainants lodged on behalf of the residents of Agisanang, Jachtkraal Farm, Delareyville and Letsopa concerning allegations that:
 - 2.1. the residents of Agisanang in Sannieshof, Jachtkraal Farm and Delareyville do not have access to sufficient water and basic sanitation.
 - 2.2. raw sewage flows into the streets, people’s homes, the cemetery and rivers in Agisanang, Delareyville and Letsopa.
 - 2.3. the residents of Agisanang, Delareyville and Letsopa live in an environment that is harmful to their health and wellbeing.
 - 2.4. the Ngaka Modiri Molema District Municipality and the Tswaing Local Municipality have breached their constitutional and statutory obligations to provide services to the residents of Agisanang, Delareyville and Letsopa in a sustainable manner and to promote a safe and healthy environment.
 - 2.5. the Ngaka Modiri Molema District Municipality and the Tswaing Local Municipality are in breach of their obligations to prevent contamination of the environment whilst allowing raw sewage to spill.
3. The Commission is an independent State institution established in terms of section 181 of the Constitution of the Republic of South Africa of 1996 (“the Constitution”) to strengthen constitutional democracy. In terms of section 184(1) of the Constitution, the Commission is mandated to:
 - 3.1. promote respect for human rights and a culture of human rights;
 - 3.2. promote the protection, development and attainment of human rights; and

- 3.3. monitor and assess the observance of human rights in the Republic.
4. The Commission is empowered, in terms of section 184(2)(a) and (b) of the Constitution to investigate and report on the observance of human rights in the country and to take steps to secure appropriate redress where human rights have been violated.
5. The Commission has additional powers in terms of legislation, including the SAHRC Act. Further, the Commission follows the procedures set out in the South African Human Rights Commission Complaints Handling Procedures in conducting investigations into allegations of human rights violations.

THE PARTIES

6. The parties are as follows:
 - 6.1. The First Complainant is Kebaneile Tumelo Phinda. She is the Party Administrator of the Batho Pele Party in the Ngaka Modiri Molema District, North West.¹ She lodged the complaint on behalf of the residents of Agisanang in Sannieshof and Letsopa in Ottosdal.
 - 6.2. The Second Complainant is Carin Visser, a member of the Democratic Alliance and Member of Parliament serving in the National Council of Provinces. She lodged the complaint on behalf of the residents of Sannieshof and Delareyville.
 - 6.3. The Third Complainant is Floggies Lucas, an adult male residing at Jachtkraal Farm. He lodged the complaint in his personal capacity as an affected resident and on behalf of the residents of Jachtkraal Farm.
 - 6.4. The First Respondent is the Ngaka Modiri Molema District Municipality, a category C municipality envisaged in section 155(1)(c) of the Constitution. It is mandated to deliver basic services, particularly sanitation and water, throughout the five constituent local municipalities, including the Second

¹ Batho Pele Party is a political party registered with the Electoral Commission of South Africa.

Respondent, in terms of the Local Government: Municipal Systems Act, No. 32 of 2000.

- 6.5. The Second Respondent is Tswaing Local Municipality, a category B municipality envisaged in section 155(1)(b) of the Constitution. Its territorial area extends to the towns of Sannieshof, Delareyville and Ottosdal. It is one of the five local municipalities in the area of jurisdiction of the First Respondent. The Second Respondent provides basic services in its area of jurisdiction except for water and sanitation, which are provided by the First Respondent.

FACTUAL MATRIX

7. The Commission received a complaint from the First Complainant alleging that the First and Second Respondents have, for more than five years, violated the rights of the residents of Agisanang in Sannieshof and Letsopa in Ottosdal in that they have failed to maintain and repair the sewer and sanitation infrastructure, and which failure has resulted in raw sewage flowing in the streets and homes of residents. She further alleged that the residents are exposed to water borne diseases as a result of living in an environment contaminated by raw sewage. She further alleged that the First Respondent is aware of the residents' plight but has not taken steps to address the concerns.
8. The Second Complainant lodged a complaint in terms of which she alleged that:
- 8.1. The Second Respondent supplies water to residents within its jurisdiction using diesel pumped boreholes.
- 8.2. The diesel generators constantly run out of diesel leaving the residents without water for prolonged periods of time.
- 8.3. There are fourteen (14) boreholes in Delareyville but only two (2) work. In Sannieshof, there are five (5) boreholes, but only one is in good working order.

- 8.4. Some of the water pipes in Delareyville and Sannieshof have blockages and others are damaged resulting in leakages. Water therefore decants into and fills the entire catchment area.
 - 8.5. The First and Second Respondents have failed to maintain and repair the water reticulation system resulting in the residents of Delareyville and Sannieshof going for days without access to water.
 - 8.6. Numerous human settlement developments have been established without augmenting the bulk water capacity.
9. The Third Complainant lodged a complaint on behalf of the residents of Jachtkraal Farm near Delareyville. The complainant alleged a number of human rights violations including the following:
- 9.1. The residents of Jachtkraal Farm have been living on the farm for more than fifteen (15) years without any human settlement development.
 - 9.2. The residents do not have access to basic municipal services including water, sanitation, electricity and housing.
 - 9.3. There is an unresolved land dispute between the State and private land owner, Mr Badenhorst. The State alleged that it purchased the land from Mr Badenhorst without furnishing the residents with any proof of purchase or ownership.
 - 9.4. The land is currently registered under Mr Boshoff's name. He is willing to sell the land to the State. The Department of Rural Development Land Reform stated that it cannot buy the same land twice, and that the matter is under investigation. The residents seek the outcome of an investigation which has been pending for more than five (5) years, from the Department of Rural Development Land Reform.

CONSOLIDATION OF THE COMPLAINTS

10. The First to Third Complainants' complaints relating to water and sanitation were consolidated pursuant to the provisions of the Commission's Complaints Handling Procedures on the basis that:
 - 10.1. The cause of action is the same on the basis that the complaints raise allegations of failure by the First and Second Respondents to deliver municipal services in a sustainable manner.
 - 10.2. The complaints were lodged against the same Respondents.
 - 10.3. The sought relief is similar.
11. The Third Complainant's complaint relating to housing development is being processed separately.

PRELIMINARY ASSESSMENT

12. The Commission determined that the complaints raise allegations of human rights violations which fall within the mandate of the Commission, including the rights to:
 - 12.1. access to sufficient water in terms of section 27 of the Constitution;
 - 12.2. basic sanitation;
 - 12.3. an environment that is not harmful to the health and wellbeing in terms of section 24 of the Constitution; and
 - 12.4. dignity in terms of section 10 of the Constitution.

STEPS TAKEN BY THE COMMISSION IN CONDUCTING ITS INVESTIGATION

13. The Commission addressed correspondence in respect of the complaints inviting a response to the allegations that had been levelled against the First and Second Respondents. No response was received from the First and Second Respondents.

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14. On 22 September 2021, the Commission addressed further correspondence to the First Respondent advising that it would conduct site inspections in Sannieshof, Delareyville and Ottosdal; and requested officials of the First Respondent to join the site inspections. No response was received from the First Respondent.
15. On 28 September 2021, the Commission's investigators attended the offices of the First Respondent and requested a meeting with the Municipal Manager of the First Respondent, Mr Allan Losaba. The Municipal Manager facilitated a meeting between the Commission's investigators and Mr Mohamed Rassool, the Senior Manager for Public Works and Basic Services and Mrs Malebogo Mokgalagadi, an electrician, which meeting took place in the office of the Municipal Manager. The Commission informed the officials of the First Respondent about the complaints being investigated by the Commission. The First Respondent's officials denied that any challenges relating to water and sanitation existed in Sannieshof, Delareyville and Ottosdal. It was agreed that the officials of the First Respondent would conduct joint inspections with the Commission's investigators on 29 September 2021.
16. On 28 September 2021, the Commission held a consultation with the Second Complainant who reiterated the averments contained in her complaint. The Commission's investigators proceeded to Agisanang to consult with the affected residents.
17. On 29 September 2021, the Commission's investigators were joined by two officials of the First Respondent, Mr Motlakase Tshekiso, the Senior Foreman for Water Services and Mrs Malebogo Mokgalagadi and conducted joint site inspections in Agisanang, Jachtkraal Farm, Delareyville and Letsopa.
18. Inspections were conducted as follows:

Agisanang

- 18.1. The first inspection took place at Agisanang, a township in Sannieshof. Some of the affected residents live in subsidised "RDP" housing.

- 18.2. The inspection commenced at the boreholes and found that the pumps were in operation. The First Respondent's official confirmed that at times the borehole pumps run out of diesel. They further informed the Commission that plans are underway to electrify the boreholes.
- 18.3. The Commission also observed widespread accumulation of refuse and solid waste littering the township. The environment was polluted and contaminated by sewage and refuse.
- 18.4. The Commission and the officials of the First Respondent proceeded to conduct inspections at the cemetery, and the streets and homes affected by spillage of raw sewage. The Commission observed that there was an overflow of raw sewage in the cemetery resulting in graves being flooded with sewage and some graves appeared completely inaccessible.
- 18.5. The sewerage pipes in the homes of Mooki and Mohulate were badly damaged, resulting in blockages and overflow of raw sewage in their yards. Neighbouring homes were also affected by the overflow. Moreover, the toilets in the two homes inspected did not function properly, resulting in backflows when flushed.
- 18.6. There was also an overflow of sewage from several manholes which were covered by debris.
- 18.7. The residents attributed the overflow to:
 - 18.7.1. Dysfunctional and aging infrastructure in Agisanang.
 - 18.7.2. Incorrect design and installation of the sewer network.
 - 18.7.3. Inadequate or small sewerage pipes that are not fit for purpose.
 - 18.7.4. Lack of or inadequate maintenance of the infrastructure.
- 18.8. The officials of the First Respondent undertook to provide supplies, equipment and machinery to the Second Respondent's employees in order

to address the damaged and blocked pipes in people's homes, cemetery and the streets.

Jachtkraal Farm

- 18.9. Jachtkraal Farm is a settlement situated between Sannieshof and Delareyville. The residents have been living in the area for more than fifteen (15) years.
- 18.10. During the inspection, the Commission observed that:
- 18.10.1. The residents do not have access to adequate housing, water, sanitation and electricity.
 - 18.10.2. The residents rely on water from the borehole installed by the First Respondent. The borehole is pumped by a diesel generator.
 - 18.10.3. The resident reported going for days without access to water when the borehole pump does not have diesel.
 - 18.10.4. Some residents are outside the 200 metre radius from the borehole.
- 18.11. During the inspection, Mr Motlakase Tshekiso, undertook to provide more water service points and to attend to the diesel shortage challenges by 1 October 2021. The Commission was advised that First Respondent failed to deliver on its promises leaving the residents destitute and without access to basic services.
- 18.12. In December 2021, the Commission addressed a comprehensive allegations letter to the First Respondent setting out all allegations of human rights violations made against it. No response was received to this letter.

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Delareyville

- 18.13. In Delareyville, the inspections were conducted at the hostel, the pump station near Du Plessis Street, and at Supa Quick.²
- 18.14. The pump was not working resulting in sewage not reaching the pump station and therefore being discharged into the environment. The sewage is transmitted through the stormwater drainage passing through Supa Quick into the river.
- 18.15. A bad stench was clearly detected. Workers and customers at Supa Quick indicated to the Commission that they were affected by this stench.
- 18.16. There are broken sewerage pipes in the hostel resulting in sewage overflowing in open spaces.
- 18.17. A bad stench emanates from the accumulating raw sewage.
- 18.18. The residents live in an environment that is contaminated by raw sewage.

Letsopa, Ottosdal

- 18.19. Letsopa is a township in Ottosdal. Some of the resident live in extensions in which subsidised "RDP" housing had been constructed. Other residents live in shacks.
- 18.20. The last inspection was conducted in Letsopa, a township in Ottosdal. The Commission observed that:
- 18.20.1. Sewerage infrastructure is damaged and blocked resulting in the overflow of raw sewage into the streets, homes and rivers.
- 18.20.2. There is lack of maintenance and repair of the sewerage infrastructure.

² A tyre store situated at 5 Du Plessis Street in Delareyville.

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- 18.20.3. There was raw sewage flowing out of manholes, into private yards and streets in some parts of the township.
 - 18.20.4. There were homes which were completely flooded with raw sewage.
 - 18.20.5. The floors of one home was completely covered with sewage on account of the backflows of sewage from the toilet. The yard around this home was also flooded with raw sewage.
- 18.21. The residents informed the Commission's officials that they have been exposed to raw sewage in their homes for prolonged periods.
- 18.22. It appeared from the stench in the air and visible sewage on the surface that the environment is contaminated by raw sewage.
19. After the inspection, the Second Respondent advised the Commission that it had appointed a service provider to use a Sewer Jet to unblock the sewerage pipes in Agisanang, Delareyville and Letsopa. The Second Respondent provided photographs to the Commission depicting the Sewer Jet operating in the Agisanang, Delareyville and Letsopa.
20. As part of the investigative process, the Commission conducted follow up site inspections in Agisanang, Delareyville and Letsopa on 14 October 2021 and made observations as set out below. The purpose of follow up inspections was to assess whether the sewage spillage challenges had been resolved by the Second Respondent.

Agisanang

- 20.1. The sewage spillage problems in the premises of the Mooki and Mohulate homes had not been addressed.
- 20.2. There was less flooding at the cemetery.
- 20.3. There was still an overflow of sewage on the streets.

- 20.4. The environment was still contaminated by raw sewage, refuse and solid waste.

Delareyville

- 20.5. The pump was not working resulting in sewage being discharged onto the environment through the stormwater drainage passing through Supa Quick. The Commission requested Mr Bumani Abel Ntshalati of the Second Respondent to join in in the site inspection. Mr Ntshalati advised that the pump had been fixed, but that on the day of the follow up inspection, the pump was not working and that raw sewage was therefore decanting into the river near the Supa Quick.

Letsopa

- 20.6. The sewage problems had been addressed in some of the streets. However, there was still sewage overflow in many streets including areas where no overflow had been observed during the inspection of 29 September 2021.
- 20.7. The blocked sewerage pipes in the homes of people had not been addressed.
- 20.8. The environment was still contaminated by raw sewage.
- 20.9. The Commission's investigators sent GPS coordinates of all the problem areas to Mr Ntshalati. These challenges were not addressed by the Second Respondent. This was confirmed by the community members who had taken the Commission's officials to all areas of concern in Letsopa.

LEGAL FRAMEWORK

Constitution

21. The fundamental right of access to sufficient water is enshrined in section 27(1)(b) of the Constitution, which states that –

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(1) *Everyone has the right to have access to –*

(a) . . .

(b) *sufficient food and water;*

(c) . . .

(2) *The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.*

22. The fundamental right to dignity under section 10 of the Constitution is also relevant to the issues of access to socio-economic rights. It is inconsistent with the right to dignity to have to live without access to water and sanitation.
23. Also relevant, is the duty of local government, in terms of section 7(2) of the Constitution to “*respect, protect, promote and fulfil*” the rights in the Bill of Rights.
24. Section 152 of the Constitution states that the objects of local government are to:
- (a) *provide democratic and accountable government for local communities;*
 - (b) *ensure the provision of services to communities in a sustainable manner;*
 - (c) *promote social and economic development;*
 - (d) *to promote a safe and healthy environment; and*
 - (e) *encourage the involvement of communities and community organisations in the matters of local government.*
25. In terms of Section 156(1)(a), read with Schedule 5B of the Constitution, local government is responsible for administering “*Water and sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems.*”

26. Section 154(1) of the Constitution also enjoins national government and provincial government, by legislative and other measures, to support and strengthen the capacity of municipalities to manage their own affairs, to exercise their powers and to perform their functions. One of the functions envisaged under this section is the provision of water services to communities in a sustainable manner.
27. Section 139(1) of the Constitution states that when a municipality cannot or does not fulfil an executive obligation in terms of the Constitution or legislation, the relevant provincial executive may intervene by taking any appropriate steps to ensure fulfilment of that obligation. *In re Certification of the Constitution of the Republic of South Africa, 1996 (4) SA 744 (CC)* the Constitutional Court held that provincial supervision of local government in terms of section 139 has two components: the first entails a process of provincial *review* of the actions of local government so as to measure the fulfilment by local government of executive obligations conferred by statute, and the second is a process of implementing *corrective measures* should local government fall short of its obligations.

The Water Services Act 108 1997 (“the Water Services Act”)

28. The Water Services Act was adopted *inter alia* “*To provide for the rights of access to basic water supply and basic sanitation*”. It regulates the right of access to water and the state’s obligations in that regard.
29. Section 1 of the Water Services Act provides that –
- 29.1. “**Basic sanitation**” means the prescribed minimum standard of services necessary for the safe, hygienic and adequate collection, removal, disposal or purification of human excreta, domestic wastewater and sewerage from households, including informal households.”
- 29.2. “**Basic water supply**” means the prescribed minimum standard of water supply services necessary for the reliable supply of a sufficient quality and quantity of water to households, including informal households, to support life and personal hygiene.”

30. Section 3 of the Water Services Act establishes the following rights and obligations in respect of access to basic water supply and basic sanitation –

(1) Everyone has a right of access to basic water supply and basic sanitation.

(2) Every water services institution must take reasonable measures to realise these rights.

(3) Every water services authority must, in its water services development plan, provide for measures to realise these rights.

(4) The rights mentioned in this section are subject to the limitations contained in this Act.”

31. Section 9 of the Water Services Act provides that the Minister may from time to time prescribe “compulsory national standards” relating, amongst others, to the provision of water services and the “effective and sustainable use of water resources for water services”. The Minister has published the Regulations Relating to Compulsory National Standards and Measures to Conserve Water (Government Notice R509 in Government Gazette 22355 of 8 June 2001 (“the National Water Standards Regulations”) in that regard.

Regulations Relating to Compulsory National Standards and Measures to Conserve Water (Government Notice R509 in Government Gazette 22355 of 8 June 2001 (“the National Water Standards Regulations”)

32. Regulation 2 provides as follows –

“The minimum standard for basic sanitation services is –

(a) . . .

(b) a toilet which is safe, reliable environmentally sound, easy to keep clean, provides privacy and protection against the weather, well ventilated, keeps smells to a minimum and prevents entry and exit of flies and other disease-carrying pests”

33. Regulation 3 provides as follows –

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“The minimum standard for basic water supply services is –

(a) . . .

(b) a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per households per month –

(i) at a minimum flow rate of not less than 10 litres per minutes;

(ii) within 200 metres of a household; and

(iii) with an effectiveness such that no consumer is without a supply for more than seven full days in any year.”

ISSUES FOR DETERMINATION

34. The pertinent question arising in this matter is whether the First and Second Respondents have violated the human rights of residents, particularly the right to water, sanitation, environment and dignity. That enquiry requires a determination to be made on the following basis:
- 34.1. Whether the First and Second Respondents breached their constitutional and statutory obligations to provide services to the residents of Agisanang, Delareyville and Letsopa in a sustainable manner and to promote a safe and healthy environment.
- 34.2. Whether the First and Second Respondents are in breach of their obligations to control or manage the movement and discharge of raw sewage and to allow sewerage to flow into residential properties and roads
- 34.3. Whether the First and Second Respondents have violated the rights of the residents of Agisanang, Delareyville and Letsopa in terms of sections 24, 27 and 10 of the Constitution.

ANALYSIS

35. This matter concerns the rights of the residents of the four communities to have access to sufficient water and basic sanitation as well as the residents' right to live in an environment that is not harmful to their health and wellbeing.
36. In terms of the Constitution, everyone has the right of access to sufficient water, and the state has the corresponding obligation to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.³ Local government is primarily responsible for the supply of potable water to the residents in its jurisdiction. The First Respondent is the water services authority in respect of Agisanang, Delareyville, Jachtkraal Farm and Letsopa.
37. Section 3 of the Water Services Act provides that everyone has a right of access to basic water supply and basic sanitation. Every water services authority is prompted to take reasonable measures to realise these rights. The section furthermore requires every water services authority to provide for measures to realise these rights in its water services development plan.
38. Regulation 2 of the National Water Standards Regulations describes the minimum standard for basic sanitation services as a toilet which is safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against weather, well ventilated, keeps smells to the minimum and prevents the entry and exit of flies and other disease-carrying pests.
39. The Commission's investigation revealed that the residents of Agisanang, Delareyville and Letsopa live in an environment polluted by raw sewage and refuse. In summary the areas are characterised by:
- 39.1. Unsafe living conditions which are unhygienic and unsafe.
- 39.2. Poorly maintained sewerage infrastructure which results in raw sewage spilling into the streets, homes and rivers.

³ Section 27 of the Constitution.

- 39.3. Foul air quality dominated by the stench of the raw sewage.
- 39.4. Flooding of the cemetery in Agisanang by raw sewage.
- 39.5. Inaccessible streets on account of the sewage and refuse covering parts of them.
- 39.6. The danger inherent in livestock drinking water contaminated by raw sewage .
- 39.7. Serious and systemic challenges with the management and treatment of wastewater at the First and Second Respondents. These challenges pose serious and adverse impacts on a number of communities and the environment, which impacts are exacerbated for vulnerable groups in the communities such as women, children, persons with disabilities, persons who are of ill health and the elderly.
- 39.8. The First and Second Respondents are aware of the residents' plight.
40. In October 2021, the Second Respondent hired a Sewer Jet to unblock the sewerage pipes.
41. The Commission's subsequent inspection of 14 October 2021 revealed that the efforts by the Second Respondent did not yield positive results in addressing the challenges in the affected communities.
42. It is not disputed that the First Respondent is responsible for providing water and sanitation services in Agisanang, Delareyville and Letsopa. It is also not in dispute that the Second Respondent is the basic services provider in its area of jurisdiction except for water and sanitation, which are provided by the First Respondent.
43. The Second Complainant argued that the system of providing potable water through the boreholes that use diesel to pump the water is neither sustainable nor reliable. Some of the diesel generators run out of diesel and therefore leave the residents without an effective or reliable supply of potable water for extended periods of time, beyond the seven day period prescribed in the Regulations. The residents further remonstrated that every day that they are without access to an

effective and reliable supply of potable water constitutes a gross infringement of the constitutional right to have access to sufficient water.

44. The Second Complainant further requested that the First and Second Respondents put measures in place in the medium and long term in order to:
- 44.1. Ensure the effective or reliable supply of potable water potable to the residents of Sannieshof and Delareyville.
 - 44.2. Mitigate and prevent the spillage of sewage into the streets, homes and rivers.
 - 44.3. Repair and maintain the sewerage infrastructure in Sannieshof and Delareyville.
45. The Commission's determination on the issues and recommendations raised above follows.

Whether the First and Second Respondents breached their constitutional and statutory obligations to provide services to the residents of Agisanang, Delareyville and Letsopa in a sustainable manner and to promote a safe and healthy environment.

46. Section 152 of the Constitution and the Municipal Systems Act enjoin the First and Second Respondents to provide basic municipal services. Section 1 of the Municipal Systems Act defines basic municipal services as a municipal service that is necessary to ensure an acceptable and reasonable quality of life and, if not provided, would endanger public health or safety or the environment.
47. Section 1 of the Municipal Systems Act defines "environmentally sustainable", in relation to the provision of a municipal service, as the provision of a municipal service in a manner aimed at ensuring that—

(a) the risk of harm to the environment and to human health and safety is minimised to the extent reasonably possible under the circumstances;

(b) the potential benefits to the environment and to human health and safety are maximised to the extent reasonably possible under the circumstances; and

(c) legislation intended to protect the environment and human health and safety is complied with.

48. There are systemic challenges with sewer spillages and the treatment of waste water in Agisanang, Delareyville and Letsopa.

49. The First and Second Respondents have failed to provide municipal services in an environmentally sustainable manner and are therefore in breach of their obligations to provide services to the residents of Agisanang, Delareyville and Letsopa in a sustainable manner and to promote a safe and healthy environment.

Whether the First and Second Respondents are in breach of their obligations to prevent contamination of the environment by allowing raw sewage to spill

50. The environmental right is guaranteed in section 24 of the Constitution. The environmental right in terms of section 24 of the Constitution is a two-fold right, with the first part being the fundamental right of every person to be protected from the harmful effects of environment pollution and degradation and, the second part requiring the state to take positive steps to ensure the protection of the environment for the benefit of present and future generations. Section 7(2) of the Constitution provides that the State has an obligation to respect, protect and fulfil the rights in the Bill of Rights.

51. Section 1 of the National Environmental Management Act 107 of 1996 ("NEMA") defines environment as: "*...the surroundings within which humans exist and that are made up of—*

(i) the land, water and atmosphere of the earth;

(ii) micro-organisms, plant and animal life;

(iii) any part or combination of (i) and (ii) and the inter-relationships among and between them; and

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(iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being;

52. In *Hichange Investments (Pty) Ltd v Cape Produce Co (Pty) Ltd t/a Pelts Products*,⁴ the court found that exposure to stench has adverse impacts on one's well-being and that therefore, no one should be required to operate in such an environment.
53. Exposure to raw sewage has an adverse impact on human health and wellbeing. Not only is untreated sewerage aesthetically offensive, it is usually accompanied by an unpleasant stench, as was observed during the site inspections by the Commission to the various communities. In addition, the release of air-borne disease from exposed sewage is more than likely to affect the health of people and vulnerable groups such as children, and older persons quite adversely. The pollution of scarce water resources with untreated or inadequately treated sewage also has an adverse impact on human health and wellbeing. Not only are the users of such water directly exposed to disease and infirmity, the environmental degradation that results from the pollution also offends the mental wellbeing of the local residents,, and is a cause for serious anxiety.
54. The First and Second Respondent are in breach of their obligations to prevent contamination of the environment whilst allowing raw sewage to spill. Their conduct is in contravention of the obligations in the legislation, including NEMA and the National Water Act 36 of 1998 ("National Water Act") enacted to give effect to the environmental and related human rights to health and dignity entrenched in the Constitution.
55. Section 19 of the National Water Act imposes a duty on land owners or users to prevent and remedy the effects of pollution. In this regard, an owner or user of land on which any activity is undertaken which causes or is likely to cause pollution of a water resource is required to take **all reasonable measures** to prevent any such pollution from occurring, continuing or recurring.⁵ These measures may include modifying or controlling the processes causing pollution, complying with waste management standards, and remedying the effects of the pollution.⁶ The National

⁴ 2004 (2) SA 393 (E).

⁵ Section 19(1) of the National Water Act.

⁶ Section 19(2) of the National Water Act.

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Water Act makes it a criminal offence to “unlawfully and intentionally or negligently commit any act or omission which pollutes or is likely to pollute a water resource” or “which detrimentally affects or is likely to affect a water resource”.⁷ This offence is punishable by a fine or imprisonment not exceeding five years on first conviction.⁸

56. Equally, section 28 of NEMA imposes a duty on every person “who causes, has caused or may cause significant pollution or degradation of the environment to **take reasonable measures** to prevent such pollution or degradation from occurring, continuing or recurring.”⁹ These measures may also include modifying or controlling the processes causing pollution or remedying the effects of the pollution or degradation.¹⁰ NEMA also makes it a criminal offence to “unlawfully and intentionally or negligently commit any act or omission which causes significant pollution or degradation of the environment” or “which detrimentally affects or is likely to affect the environment”.¹¹ This offence is punishable by a fine not exceeding R10 000 0000 or imprisonment not exceeding 10 years on conviction.¹²
57. Collectively, NEMA and the National Water Act impose a duty on First and Second Respondent to take all reasonable measures to ensure that the provision of such services does not cause environmental degradation or the pollution of water resources, either through sewage spillages or through the discharge of untreated effluent. Moreover, where pollution has occurred, there is a duty on the First and Second Respondents to take steps to remedy the effects of the pollution on both the environment and the water resources in particular.
58. The sewage spillages and discharge of untreated effluent in Agisanang, Delareyville and Letsopa causes pollution and environmental degradation. Accordingly, the First and Second Respondents have failed in their obligation to take all reasonable measures to prevent and, to remedy the effects of environmental pollution or degradation.

⁷ Section 151(1)(i) and (j) of the National Water Act.

⁸ Section 151 (2) of the National Water Act.

⁹ Section 28(1) of NEMA.

¹⁰ Section 28(2) of NEMA.

¹¹ Section 49A(e) and (f) of NEMA.

¹² Section 49B(1) of NEMA.

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59. In view of the above, it is evident that the First and Second Respondents have failed in their constitutional and legislative obligations to ensure to the residents of Agisanang, Delareyville and Letsopa an environment that is not harmful to their health and well-being and have violated the rights of residents.
60. Whilst the Commission appreciates the interventions of the Second Respondent after it was alerted to the investigation by the Commission, to address the sewer spillages, including the hiring of a Sewer Jet, such interventions were not effective and sustainable to provide appropriate redress. The interventions fell short of what is required to adequately and fully deal with the challenges in the three areas.

Whether the First and Second Respondents violated the rights of the residents of Agisanang, Jachtkraal Farm, Delareyville and Letsopa to have access to sufficient water in terms of the law and therefore section 27 Constitution

61. The First Respondent supplies water through diesel pumped boreholes. The diesel generators constantly run out of diesel leaving many residents without water for prolonged periods.. Some pipes have blockages and others are damaged resulting in leakages. Both the Constitution and the Water Services Act grant everyone the right have access to sufficient water and obliges the State, through local government, to take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right to access water.
62. It is evident that water supply in Sannieshof, Jachtkraal Farm, Delareyville and Letsopa is woefully below the prescribed minimum standards in terms of the National Water Standards Regulations.
63. In *Government of the Republic of South Africa v Grootboom*, the Constitutional Court held that local governments have an important obligation to ensure that services are provided in a sustainable manner to the communities they govern. A reasonable programme therefore must clearly allocate responsibilities and tasks to the different spheres of government and ensure that the appropriate financial and human resources are available.¹³ The constant interruptions in water supply due to

¹³ 2001 (1) SA 46 (CC) para 39.

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shortage of diesel does not accord with the duty to deliver services in a sustainable manner.

64. The system of providing water through the diesel pumped boreholes is proving inadequate. Sometimes some boreholes pumps are not refilled with diesel for days. The end result is that the majority of the residents spend days without access to water. It is also quite clear that the amount of diesel usage and need is not adequately measured, monitored and planned for to ensure continued operations required for the provision of water.
65. The First and Second Respondents bear an obligation to put measures in place in the medium and long term that will at the minimum provide potable water to the residents as well as for the mitigation and prevention of water pollution caused by sewage discharge in Sannieshof, Jachtkraal, Delareyville and Letsopa. These measures should be made in consultation with the residents, experts and other interested and affected parties.
66. The residents of Sannieshof, Jachtkraal Farm, Delareyville and Letsopa do not have an effective or reliable supply potable water for an extended period beyond the seven day period prescribed for this year in terms of the National Water Standards Regulations.
67. It is evident that First and Second Respondents have violated the human rights of the residents of Sannieshof, Jachtkraal Farm, Delareyville and Letsopa including the right to have access to have access to water.
68. The First and Second Respondents are enjoined by the Municipal Systems Act to strive to achieve the objectives of local government envisaged under section 152 of the Constitution. The achievement of these objectives must adequately be planned for, performance monitored and evaluated, and oversight authorities held to account for under performance. It suffices that any such planning and performance must be time bound and include risk mitigation measures which ensure objectives are ultimately achieved, but that risks in the supply of essential services are not repeatedly interrupted. These obligations require the First and Second Respondents to strive to resolve as speedily as possible shortage of water challenges in Sannieshof, Jachtkraal Farm, Delareyville and Letsopa. The First and

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Second Respondents must equally have a reasonable and progressive plan to achieve this objective and must engage and inform the community of the steps and progress in implementation of the plan.

FINDINGS

69. After considering the Complainant's complaint, the Second Respondent's response and the observations made during the inspection in loco, the Commission makes the following findings:¹⁴

69.1. The allegations that the First and Second Respondents have failed to provide the resident of Sannieshof, Delareyville and Letsopa with effective and reliable supply of potable water are substantiated. The failure by the First and Second Respondent to provide the resident of Sannieshof, Delareyville and Letsopa with effective and reliable supply of potable water constitutes a gross infringement of the residents' right to have access to water in terms of section 27 of the Constitution, section 3 of the Water Services Act and Regulation 3 of the National Water Standards Regulations.

69.2. The First and Second Respondents are in breach of their obligations in terms of section 24(b) of the Constitution, section 19 of the National Water Act and Section 28 of NEMA respectively, as a result of their failure to protect the environment and to prevent and remedy the effects of environmental pollution, in the course of providing sanitation services. This constitutes a violation of the rights of residents of Sannieshof, Delareyville and Letsopa to an environment that is not harmful to the health and wellbeing in terms of section 24 of the Constitution.

¹⁴ The Commission notes that the findings and directives contained herein shall not in any way limit the rights of affected persons to seek recourse before the courts.

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- 69.3. The failure to provide sanitation services in an environmentally sustainable manner to the residents of Sannieshof, Delareyville and Letsopa constitutes a violation of the residents' right to basic sanitation in terms of section 3 of the Water Services Act and Regulation 3 of the National Water Standards Regulations.

DIRECTIVES

70. In terms of the SAHRC Act, the Commission is empowered to make findings and recommendations in respect of a matter investigated by it. In view of the above, the Commission makes the following directives:

- 70.1. The First and Second Respondent comply with Regulation 3 of the Regulations Relating to Compulsory National Standards and Measures to Conserve Water (GN R509 in GG 22355 of 8 June 2001) by –

- 70.1.1. Installing a sufficient number of water user connections to supply a minimum quantity of potable water of 25 litres per person per day or 6 kilolitres per household per month to the residents of the Sannieshof, Jachtkraal Farm, Delareyville and Letsopa:

70.1.1.1. at a minimum flow rate of not less than 10 litres per minute;

70.1.1.2. within 200 metres of each of the residents' households; and

70.1.1.3. with an effectiveness such that the residents are not without a water supply for more than seven full days in any year.

- 70.2. The First and Second Respondent comply with Regulation 2 of the Regulations Relating to Compulsory National Standards and Measures to Conserve Water (GN R509 in GG 22355 of 8 June 2001) by providing the

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residents of Sannieshof, Jachtkraal Farm, Delareyville and Letsopa with toilets which are safe, reliable, environmentally sound, easy to keep clean, provides privacy and protection against weather, well ventilated, keeps smells to the minimum and prevents the entry and exit of flies and other disease-carrying pests.

- 70.3. The First and Second Respondents, in consultation with the Provincial Department of Cooperative Governance and Traditional Affairs and the Department of Water and Sanitation, must immediately conduct a comprehensive assessment of the water and sanitation infrastructure in Sannieshof, Jachtkraal Farm, Delareyville and Letsopa. The comprehensive assessment must reflect the cost implications of rectifying the challenges identified in the assessment. This assessment must be conducted within one (1) month of this report.
- 70.4. That the First and Second Respondents engage meaningfully with the community members of Sannieshof, Jachtkraal Farm, Delareyville and Letsopa for in the course of the assessment referred to in paragraph 70.3 above.
- 70.5. The First and Second Respondents submit a report to the Commission under oath, within two months of the completion of the assessment mentioned in paragraph 70.3 above, detailing the steps that they will take in the short, medium and long term to:
- 70.5.1. address the inadequacies of the waste management system, and the sewer network or infrastructure servicing the affected areas; with specific detail in respect of the planning, budgeting, monitoring and evaluation, and oversight and accountability measures to be taken.
 - 70.5.2. prevent the spillage of raw sewage into the streets, and homes; and into rivers.
 - 70.5.3. prevent backflows of sewage when residents flush the toilets in their homes.

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- 70.5.4. to prevent and/or mitigate the impact of the sewage spillages on both the residents and the environment.
- 70.5.5. provide security to safeguard its sewer infrastructure.
- 70.5.6. provide for adequate financial and other resources required to implement the corrective measures identified in the report.
- 70.5.7. ensure the provision of potable water in a manner that is effective and sustainable, including the provision of interim water supply services.
- 70.5.8. ensure the provision of all municipal services in a manner that is effective and sustainable.

OPPORTUNITY TO COMMENT ON THE PROVISIONAL INVESTIGATIVE REPORT

- 71. On 22 August 2022, a copy of the provisional investigative report was shared with the parties for their review and comments. In this regard, the parties were invited to submit their comments to the provisional investigative report in writing within twenty-one (21) days of the report, being on or before 20 September 2022.
- 72. No comments were received from the parties.
- 73. In view of the above, the Commission's analysis, findings and directives in the provisional investigative report have been confirmed in this report unaltered.

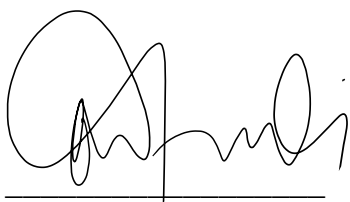
JUDICIAL REVIEW

- 74. The Commission's directives herein are binding on the Respondent. Should any of the parties be aggrieved by the findings and directives of the Commission as contained herein, such a party is entitled to challenge same in court through the process of judicial review. An application for judicial review must be made within 180 days of the date on which all internal remedies were exhausted. Where there are no internal remedies available, the application must be made within 180 days

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of the date on which the applicant became aware of the decision (or could reasonably be expected to have become aware of the decision).

SIGNED AT DURBAN ON THIS THE 20th DAY OF APRIL 2022.



A handwritten signature in black ink, appearing to read 'Philile Ntuli', written over a horizontal line.

Ms Philile Ntuli

Commissioner

South African Human Rights Commission